



LEGISLATIVE COUNCIL

GENERAL PURPOSE STANDING COMMITTEE NO. 3

# Reparations for the Stolen Generations in New South Wales

*Unfinished business*

Report 34

June 2016





General Purpose Standing Committee No. 3

# **Reparations for the Stolen Generations in New South Wales**

*Unfinished business*

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### Artwork

The original artwork on the cover of this report, entitled ‘Trees of Home’, was provided by artist Kim Healey, a descendant of the Bundjalung and Gumbaynggirr nations and a descendant of the Djunbun (Platypus) Clan.

Ms Healey provided the following meaning for this artwork:

“With a contemporary reflective palette trees of home encapsulates our history that holds our memories within these ancient vessels”.

Permission from the artist to crop and use parts of this image throughout the report was obtained by the committee.



### Title of report

The committee acknowledges that the phrase ‘*Unfinished business*’ has been used in a number of other reports and documents relating to Indigenous issues.

The committee considered the use of this title was fitting for this report given that the business of making reparations to Stolen Generation survivors is unfinished.

## *Belonging where?*

*Caught in an abyss  
Belonging where?  
Thousands of children  
Heartache despair.*

*Stolen, separated  
Leaving mothers behind  
Lost to our Culture, Music, Dance and Art.  
Lost to Ourselves—our Families—our Hearts.*

*As a child—wondering  
What did I do wrong?  
Who the hell am I?  
A feeling so strong  
The taunts of a childhood  
All a whirl  
"Half-caste, half-caste  
a little black girl".*

*Italiano? Greek?  
Maori or what?  
Some of the questions asked a lot.*

*Too black to be white.  
Too white to be black.  
Caught in the middle  
Belonging no where.*

Poem provided by Ms Lorraine McGee-Sippel, Stolen Generations survivor.

## How to contact the committee

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## Terms of reference

1. That General Purpose Standing Committee No. 3 inquiry into and report on reparations for the Stolen Generations in New South Wales, and in particular:
  - (a) the New South Wales Government's response to the report of the 1996 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and Their Families entitled 'Bringing them Home' and the recommendations made in the report regarding reparations
  - (b) potential legislation and policies to make reparations to members of the Stolen Generations and their descendants, including approaches in other jurisdictions, and
  - (c) any other related matter.
2. That for the purposes of paragraph 1, the committee adopt the definition of 'reparations' contained in recommendation no. 3 of the 'Bringing them Home' report, which states that reparation should consist of:
  - (a) acknowledgement and apology
  - (b) guarantees against repetition
  - (c) measures of restitution
  - (d) measures of rehabilitation, and
  - (e) monetary compensation

These terms of reference were referred to the committee by the Legislative Council on 25 June 2015.<sup>1</sup>

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<sup>1</sup> *Minutes*, Legislative Council, 25 June 2015, p 241.

## Committee membership

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<b>Ms Jan Barham MLC</b>	The Greens	<i>Chair</i>
<b>The Hon Natasha Maclaren-Jones MLC</b>	Liberal Party	<i>Deputy Chair</i>
<b>The Hon Ben Franklin MLC</b>	The Nationals	
<b>The Hon Courtney Houssos MLC</b>	Australian Labor Party	
<b>The Hon Sarah Mitchell MLC</b>	The Nationals	
<b>Revd the Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Shaoquett Moselmane MLC</b>	Australian Labor Party	

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\* Mr Moselmane replaced Mr Walt Secord as a member of the committee for the duration of the inquiry.



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## Chair's foreword

Chairing this inquiry has been an enormous privilege but also an immense responsibility, particularly when Stolen Generation survivors have spent a lifetime struggling for justice. They have trusted us with their painful stories and shared how their lives and their children's lives have been affected by the wrongdoings of the past.

With these injustices in mind I called for this inquiry because I wanted to ensure that the needs of Stolen Generation survivors in this state, and the needs of their families and communities, were finally addressed. It was imperative that their needs no longer be overlooked, and that the government be called upon to take urgent action to deliver the reparations they so rightly deserve.

As a committee we were all moved to tears many times during this inquiry. We recognised the importance of delivering on the unfinished business that has caused ongoing trauma and harm to survivors and their families. All Aboriginal children who were wrongly stolen from their families under the government's past forcible removal policies and practices are entitled to reparation, and this was recommended almost 20 years ago in the *Bringing them home* report.

While the word 'reparation' means making amends for a wrong that has been done, it is clear that no amount of financial or non-financial reparations can ever fully restore what people have lost as a result of past forcible removal policies and practices. Reparations will not heal the loss of identity, culture and community that they have experienced, nor will it mend the relationships and connections within families and communities that were broken.

Reparations will, however, make a difference to the future of Stolen Generation survivors and their families. Providing reparations will not only demonstrate the government's acknowledgement of the harm caused by forcible removal policies, it will also show a genuine commitment to addressing this harm.

For far too long, survivors have been left to take costly, time consuming and complex legal action to seek compensation for the damage they experienced as a result of being removed from their family. Although some survivors have recently been able to obtain compensation through settlement agreements with the government, other members of the Stolen Generations, particularly those who were in non-government homes or who were fostered or adopted, have found this type of legal action too difficult to pursue.

Financial reparation is a key component to addressing these issues. Through the establishment of a financial reparation scheme, all Stolen Generation survivors in New South Wales could easily access redress for the terrible injustice and horrible atrocities they have experienced. An administrative based reparation scheme, rather than a tribunal, can also be set up quickly, which is important given that many survivors are elderly and/or in poor health. It will also ensure that as much money as possible reaches Stolen Generation survivors, rather than going towards administrative costs.

Other non-financial forms of reparation are equally important, such as healing programs and forums, and healing centres. Ongoing funding and support for these initiatives is essential given the extensive trauma and loss individuals and families continue to endure. The establishment of memorials and Keeping Places will also have a powerful effect in terms of healing, and can also acknowledge and educate others about what members of the Stolen Generations have experienced.

Overcoming the intergenerational trauma and Indigenous disadvantage that has occurred as a result of forcible removal policies is much more of a challenge for government. Beginning that process requires recognition of the past, and a commitment to self-determination and the provision of a trauma-informed workforce to provide support and services.

It is clear that certain steps can be taken to address the loss of opportunities people have experienced in terms of education, employment and housing. An educational scholarship scheme and priority access for survivors to social, public and affordable housing, which the committee has recommended, are important measures which will no doubt make a difference to people's lives. Other important recommendations, such as the delivery of culturally appropriate aged care services for Stolen Generation survivors, are also essential, given the unique needs of those who were removed, many of whom have indicated that they would like to live with their 'family' as they age – their 'brothers' and 'sisters' from the homes.

It is imperative that Stolen Generation survivors have input into any decisions or policies affecting them, especially in relation to any measure of reparation. It is essential that the government take the time to listen to survivors, to understand their needs, and to actively and genuinely engage them in the development and implementation of all forms of reparation. In my view, this is the least we can do, considering how poorly individuals were treated by the government in the past.

Although this inquiry has been challenging, it provides a path forward; a new foundation for government action on these issues, action that is long overdue. I hope that the government's response is positive and swift, given survivors have been continually let down and are tired of waiting, tired of fighting for their rights, and tired of being overlooked.

To my fellow committee members, thank you for working collectively on such important issues, matters that transcend politics. I feel proud as the Chair to know that our committee was able to reach a unanimous agreement on the report and its recommendations. To the secretariat, thank you for your hard work and professional support, it has been a journey for all of us.

Finally, to all those who contributed to this inquiry, especially the Stolen Generation survivors who gave evidence and/or assisted the committee with visits to the former homes – thank you for sharing with us your story. Despite the adversity you have experienced your courage and resilience in standing strong and continuing to tell your painful stories in the hope that it leads to change is amazing. You are truly inspirational people.



Ms Jan Barham  
**Chair**



## Summary of key issues

Between the late 1800s and 1970s, thousands of Aboriginal children were forcibly removed from their families and communities by the New South Wales Aborigines Welfare Board or the Aborigines Protection Board. Some children were placed in government controlled training homes, or non-government or religious institutions, whereas others were fostered or adopted into white families.

The experiences of those who were removed was documented in detail by the Human Rights and Equal Opportunity Commission (now known as the Australian Human Rights Commission) in the 1997 *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children* (commonly known as the *Bringing them home* inquiry and report).

The *Bringing them home* report was a turning point in Australia's history. It recommended that all those affected by the government's forcible removal policies be provided with financial and non-financial reparations, including an apology and monetary compensation. Unfortunately though, despite almost 20 years passing since the *Bringing them home* report was released, it is clear that there remains much 'unfinished business' in terms of providing reparations to Stolen Generation survivors and their families in New South Wales, as highlighted below in the summary of key issues raised during this inquiry.

### A voice for survivors

“It is important that the NSW government is active in its attempt to address this legacy of trauma and begin the process of healing and reconciliation for the members of the Stolen Generations in NSW”.<sup>2</sup>

One of the overarching themes of the inquiry was the need for Stolen Generation survivors to have a greater voice and input into decisions and policies that affect them, particularly in relation to how their needs are addressed by government and what reparations are provided.

As there is no formal structure in New South Wales for this to occur, the committee has recommended that a Stolen Generations Advisory Committee be established, whose role will be to advise the Premier and Minister for Aboriginal Affairs on Stolen Generations issues, including on the development and implementation of reparations for those affected by forcible removals.

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#### Recommendation 1

That the Premier of New South Wales and Minister for Aboriginal Affairs establish a Stolen Generations Advisory Committee, comprised of a majority of Aboriginal representatives including members of the Stolen Generations, with responsibility for:

- advising the Premier and Minister for Aboriginal Affairs on any matters related to the Stolen Generations
  - monitoring and reviewing the implementation of recommendations in this report, with a progress report to be tabled by the Premier in Parliament every two years.
- 

<sup>2</sup> Submission 18, New South Wales Reconciliation Council, p 2.

## Financial reparation

“ ... to have proper recognition you have to have some form of compensation, because a wrong has been done to these people ... Unless there is proper recognition of what has been done, people really cannot begin to heal properly”.<sup>3</sup>

Stolen Generation survivors have a right to financial reparation for what they have experienced as a result of being forcibly removed from their family, without survivors having to take challenging, costly and time consuming civil action through the courts.

While some survivors have been able to obtain compensation through the government’s current settlement of civil claims forming part of a group action initiated by Carroll & O’Dea Lawyers, all Stolen Generation survivors in New South Wales would be able to benefit from the establishment of an administrative based financial reparation scheme, similar to those which have been provided in Tasmania and South Australia. Such a scheme would enable survivors to apply for a monetary payment from the state government – a payment that would acknowledge the devastating impacts caused to those who were forcibly removed from their family.

An administrative based financial reparation scheme will be easily accessible, informal and efficient, and can operate in a way that does not re-traumatise survivors. It could also be implemented quickly, which is one of its key benefits, considering many survivors are ageing and/or in poor health.

While the committee acknowledges that no amount of money could ever fully compensate survivors for the trauma they have experienced as a result of being taken away from their family, the implementation of this scheme would be a recognition of the government’s genuine commitment to providing reparation to Stolen Generation survivors, which is why it was one of the key recommendations of this inquiry.

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### Recommendation 2

That the NSW Government establish a reparations scheme for Stolen Generation survivors, in accordance with the principles of self-determination and doing no further harm, with the scheme to:

- be developed in close consultation with Stolen Generation survivors
- complement the current group action involving Stolen Generation survivors
- provide appropriate communal and individual responses, including a personal letter of apology from the Premier and Minister for Aboriginal Affairs
- include a right of appeal
- consider learnings from the South Australian and Tasmanian reparation schemes.

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<sup>3</sup> Submission 17, NSW Aboriginal Land Council, p 13.

## Healing

An ongoing need of Stolen Generation survivors is the need to heal. As a result of being taken away from their family, individuals were also disconnected from their community and culture. The impact of this has been devastating for all those involved, causing significant grief, loss and trauma, much of which continues to this day and has been passed down through generations.

**“Let’s be a family. Let’s unite and get rid of all this hate which was the past and let’s all heal together”**

Uncle Manuel Ebsworth  
7 December 2015.

While the journey to heal can be a long road, healing programs and initiatives and reunions can play a significant role in supporting survivors and their families and communities. In particular, collective healing programs – programs where people can heal together – are important, especially for those who were in government training homes, such as the Kinchela Boys’ Home and Cootamundra Girls’ Home.

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### Recommendation 3

That the NSW Government provide funding for collective healing initiatives, programs, forums and community centres, to support and assist Stolen Generation survivors and their families and communities, with contributions sought from relevant churches, religious bodies and other organisations and institutions that were involved in past forcible removal policies and practices.

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Healing centres are also valuable. Such centres provide a dedicated, safe place where people can go to heal, with integrated support and community involvement. In recommendation 8, the committee has requested that the New South Wales Government collaborate with and provide support, both financial and non-financial, to the Coota Girls Corporation, Kinchela Boys’ Home Aboriginal Corporation and the Children of the Bomaderry Aboriginal Children’s Home Incorporated, to establish healing centres for the benefit of individuals formerly institutionalised in those homes and their families and communities.

## Restoring culture, language and identity

“ ... it is a part of our identity; it is a part of our soul. Language is a part of culture, culture is a part of language – the two are married. If we do not know where we come from, we do not know where we are going. It is like a tree without roots; it won’t grow”.<sup>4</sup>

Members of the Stolen Generations have lost their identity, culture and connection to Country. Many do not know where they belong, who their family is or where they come from. This loss has been passed down through the generations, contributing to the intergenerational trauma that exists in Aboriginal families and communities today.

Tracing family and history is a critical component of restoring identity and culture. It is important that Stolen Generation survivors are able to reconnect with family members, where possible, and easily access records about their personal history, if they exist.

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<sup>4</sup> Evidence, Ms Rhonda Ashby, Gamilaraay/Yuwaalaraay/Yuwaalayaay Language and Culture Nest, 18 February 2016, pp 29 and 33.

While the quest to find family can have different outcomes for survivors, such as graveside reunions, it is only fair that members of the Stolen Generations and their family members be provided with assistance in terms of tracing their family and history and holding reunions, as provided by recommendations 25 and 27.

### **Overcoming disadvantage**

The impact of the government's past forced removal practices and policies has not only led to deep feelings of loss, resentment and trauma within Indigenous families and communities, but has left many without a sense of identity and some without the skills to effectively parent their own children. It has also contributed to entrenched disadvantage, particularly in terms of education, employment, housing, health and justice.

While finding solutions to overcome this disadvantage may be difficult, there are measures that can help to address the loss of opportunities individuals and families have experienced. The committee considers that measures such as the establishment of a Stolen Generations educational scholarship scheme and the provision of a health care card for Stolen Generations survivors will go a long way toward assisting peoples' needs in these areas.

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#### **Recommendation 4**

That the NSW Government establish a Stolen Generations Scholarship Scheme to support Stolen Generation survivors and their descendants in accessing educational opportunities.

#### **Recommendation 5**

That the NSW Government seek the support of the Australian Government to create a health care card for Stolen Generation survivors, similar to other Commonwealth health care cards, that will provide better access to medical services (including mental health services) and reduced costs of medication and gap fees payable under Medicare.

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Other measures, such as ensuring survivors have priority access to social, public and affordable housing (recommendation 18), and the delivery of culturally appropriate aged care services (recommendation 19) have also been recommended by the committee.

### **Avoiding a repetition of the past**

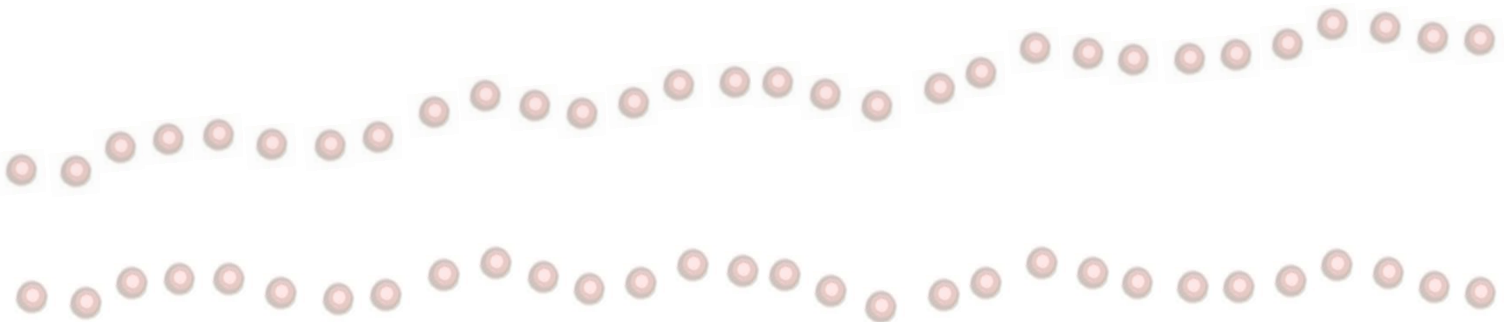
In light of the loss of identity and disconnection from culture Stolen Generation survivors have experienced, and the overrepresentation of Aboriginal children and young people in the care and protection system, it is essential that contemporary approaches to the management of Indigenous children's welfare value the importance of Aboriginal culture, language and community.

In this vein, the Department of Family and Community Services must have effective strategies in place to ensure that Aboriginal children and young people remain with their family as the first priority. Early intervention services play an important role in this regard; however, the evidence suggests that Aboriginal families may be reluctant to engage these services, due largely to mistrust and suspicion arising out of the historical treatment of Indigenous peoples within Australia. The committee has

therefore recommended that the department identify strategies to better promote these services and programs to the Aboriginal community (recommendation 31).

Where it is not feasible for an Aboriginal child or young person to remain with their family, it is vital that they maintain a strong connection to their culture and community when placed in out-of-home care. Two important mechanisms in this regard are the Aboriginal Child Placement Principles, which set out principles for the preferred order of placement for children who are removed from their family, and cultural care planning, which focuses on how an Aboriginal child or young person in out-of-home care is to maintain a cultural connection. However, evidence to this inquiry has suggested that both of these mechanisms are not operating as effectively as they should, which is why the committee has recommended an independent audit of the Department of Family and Community Services' compliance with the principles, with a view to improving compliance and reporting (recommendation 32), and a review of cultural care planning (recommendation 33).

The report makes a number of other important recommendations to government to address the needs of those who have been affected by past forcible removal policies and practices, and provides a solid framework for the development and implementation of reparations for Stolen Generation survivors in New South Wales.





## Summary of recommendations

### Recommendation 1

xv

That the Premier of New South Wales and Minister for Aboriginal Affairs establish a Stolen Generations Advisory Committee, comprised of a majority of Aboriginal representatives including members of the Stolen Generations, with responsibility for:

- advising the Premier and Minister for Aboriginal Affairs on any matters related to the Stolen Generations
- monitoring and reviewing the implementation of recommendations in this report, with a progress report to be tabled by the Premier in Parliament every two years.

### Recommendation 2

xvi

That the NSW Government establish a reparations scheme for Stolen Generation survivors, in accordance with the principles of self-determination and doing no further harm, with the scheme to:

- be developed in close consultation with Stolen Generation survivors
- complement the current group action involving Stolen Generation survivors
- provide appropriate communal and individual responses, including a personal letter of apology from the Premier and Minister for Aboriginal Affairs
- include a right of appeal
- consider learnings from the South Australian and Tasmanian reparation schemes.

### Recommendation 3

xvii

That the NSW Government provide funding for collective healing initiatives, programs, forums and community centres, to support and assist Stolen Generation survivors and their families and communities, with contributions sought from relevant churches, religious bodies and other organisations and institutions that were involved in past forcible removal policies and practices.

### Recommendation 4

xviii

That the NSW Government establish a Stolen Generations Scholarship Scheme to support Stolen Generation survivors and their descendants in accessing educational opportunities.

### Recommendation 5

xviii

That the NSW Government seek the support of the Australian Government to create a health care card for Stolen Generation survivors, similar to other Commonwealth health care cards, that will provide better access to medical services (including mental health services) and reduced costs of medication and gap fees payable under Medicare.

### Recommendation 6

47

That the NSW Government develop a plan to build a trauma-informed workforce to support Stolen Generation survivors and their families and communities.

### Recommendation 7

55

That the NSW Government request the Department of the Prime Minister and Cabinet to consider amending the role and title of Social and Emotional Wellbeing Counsellors to ensure there is a clear focus on the provision of support to Stolen Generation survivors and their families.

- Recommendation 8** **61**  
That the NSW Government collaborate with and provide support, both financial and non-financial, to the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and the Children of the Bomaderry Aboriginal Children's Home Incorporated, to establish healing centres in appropriate locations to support the healing of individuals formerly institutionalised in those homes and their families and communities.
- Recommendation 9** **70**  
That the NSW Government, on the 20th year anniversary of the tabling of the *Bringing them home* report, acknowledge the wrongdoing of past government policies and practices, and the ongoing commitment to provide reparations to Stolen Generation survivors, and that it request the Office of Local Government to encourage local governments to do the same.
- Recommendation 10** **70**  
That the Parliament of New South Wales acknowledge and promote the strength and importance of Aboriginal culture and heritage at the commencement of each new parliament.
- Recommendation 11** **75**  
That the NSW Government, in consultation with Stolen Generation survivors, establish a memorial to acknowledge and commemorate members of the Stolen Generations in a prominent location in Sydney.
- Recommendation 12** **75**  
That the NSW Government, in consultation with Stolen Generation survivors, establish other memorials in areas of significance for members of the Stolen Generations.
- Recommendation 13** **80**  
That the NSW Government, in cooperation with the Australian Government, collaborate with and support the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home incorporated and relevant local Aboriginal land councils to establish Keeping Places or museums at the sites of these former homes.
- Recommendation 14** **80**  
That the NSW Government work with relevant organisations to investigate and search the sites of the former Cootamundra Aboriginal Girls' Training Home, Kinchela Aboriginal Boys' Training Home and the Bomaderry Aboriginal Children's Home to locate the remains of any Aboriginal children.
- Recommendation 15** **82**  
That the NSW Government work with the Australian Government to establish a dedicated fund to assist families with the cost of funeral expenses for members of the Stolen Generations.
- Recommendation 16** **91**  
That the NSW Government, in consultation with the Aboriginal community, re-establish the Aboriginal Trust Fund Repayment Scheme to continue repaying the 'stolen wages' of Aboriginal people, taking into account any lessons learnt from the previous operation of the scheme, with the scheme to operate for an open-ended period of time.



- Recommendation 17** **138**  
 That the NSW Government, in consultation with Stolen Generation survivors and the NSW Aboriginal Land Council, review the requirements and costs involved for survivors and their descendants to verify their Aboriginality, to ensure these stakeholders are not disadvantaged in obtaining proof of Aboriginality letters due to record keeping issues.
- Recommendation 18** **140**  
 That the NSW Government ensure that Stolen Generation survivors have priority access to social, public and affordable housing.
- Recommendation 19** **145**  
 That the NSW Government, in consultation with Stolen Generation survivors, partner with the Australian Government to identify and deliver innovative and culturally appropriate aged care services for Stolen Generation survivors.
- Recommendation 20** **145**  
 That the NSW Government explore opportunities for Stolen Generation survivors to better access existing aged care facilities.
- Recommendation 21** **149**  
 That the NSW Government encourage the Australian Government to negotiate the return of incarcerated Stolen Generation survivors from overseas jurisdictions.
- Recommendation 22** **152**  
 That the NSW Government, in consultation with Stolen Generation survivors, explore options for government agencies to identify and capture the needs of survivors and their descendants, for the purpose of ensuring services are tailored appropriately.
- Recommendation 23** **153**  
 That the NSW Government establish a direct point of contact that:
- will assist Stolen Generation survivors to navigate the service system by providing information and making referrals to appropriate services
  - is staffed by people who are trauma-informed and have specialist knowledge about the Stolen Generations, and who are preferably Aboriginal or Torres Strait Islander.
- Recommendation 24** **160**  
 That the NSW Government consider increasing the number of Aboriginal Language and Culture Nests under its OCHRE strategy.
- Recommendation 25** **166**  
 That the NSW Government, in consultation with Stolen Generation survivors, undertake a comprehensive review of how records relating to the Stolen Generations are managed and accessed, with a view to:
- removing any barriers that inhibit Stolen Generation survivors and their descendants from accessing records related to their family and history, including any fees that may apply when individuals apply for records from government agencies, such as the Registry of Births, Deaths and Marriages
  - ensuring that appropriate mechanisms are in place for Stolen Generation survivors to correct, alter or supplement records relating to their removal

- allocating additional funding to the Aboriginal Affairs NSW Family Records Unit so that it can provide increased assistance to those accessing records and better promote its services.

**Recommendation 26****168**

That the NSW Government provide funding to the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home Incorporated for the purpose of recording the testimonies of Stolen Generation survivors.

**Recommendation 27****171**

That the NSW Government:

- request the Department of the Prime Minister and Cabinet to provide additional funding to Link-Up NSW so that it can provide an increased number of reunions for Stolen Generation survivors each year
- review if any state funding can be provided for the reunification program.

**Recommendation 28****178**

That the NSW Government ensure that the history of past forcible removal policies and practices and its continuing impacts on Aboriginal people are compulsory modules in primary and secondary school curricula, and encourage private providers to do the same.

**Recommendation 29****179**

That the NSW Government ensure that all public sector staff undertake Aboriginal cultural awareness training, and that the training include mandatory information about the impacts of past forcible removal policies and practices on Aboriginal communities.

**Recommendation 30****179**

That the NSW Government collaborate with community organisations to develop educational resources about the Stolen Generations for the broader community, with the resources to be made available in public libraries.

**Recommendation 31****188**

That the Department of Family and Community Services, in consultation with Aboriginal organisations and communities, identify strategies to promote early intervention services and programs that aim to prevent Aboriginal children and young people being removed from their family.

**Recommendation 32****192**

That the Department of Family and Community Services commission an independent audit of adherence to the Aboriginal and Torres Strait Islander Child Placement Principles, with a view to improving compliance and reporting.

**Recommendation 33****195**

That the Department of Family and Community Services review the quality and effectiveness of cultural care planning for Aboriginal children and young people placed in out-of-home care.

**Recommendation 34**

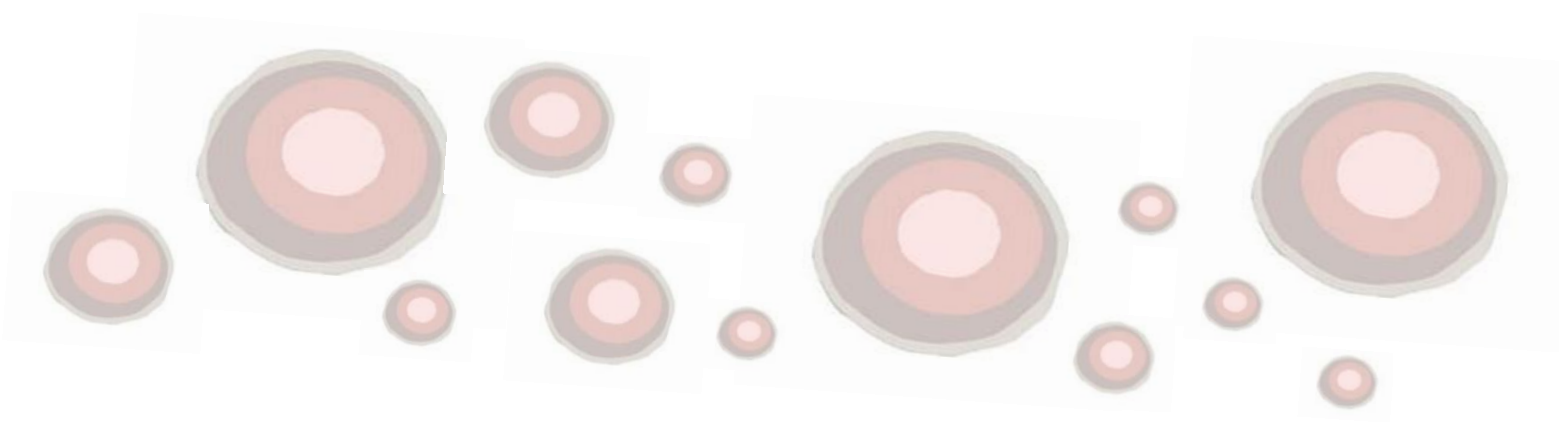
**202**

That the Premier of New South Wales and the Minister for Aboriginal Affairs be given joint responsibility for overseeing the NSW Government's implementation of recommendations from this inquiry and that they provide a report to Parliament in 2018 for review by General Purpose Standing Committee No. 3 on the implementation of the recommendations of its 2016 report into reparations for the Stolen Generations in New South Wales.

**Recommendation 35**

**203**

That, in conjunction with its consideration of the findings and recommendations of this inquiry, the NSW Government review the commitments made in its 1999 response to the *Bringing them home* report.



# Chapter 1 Introduction

This chapter provides an overview of the establishment and conduct of the inquiry, as well as an outline of the structure of this report.

## Terms of reference

- 1.1 On 25 June 2015 a motion was moved by Ms Jan Barham MLC and passed by the Legislative Council for the establishment of this inquiry. The inquiry terms of reference required the committee to inquire into and report on reparations for the Stolen Generations in New South Wales.
- 1.2 The full terms of reference can be found on page v.

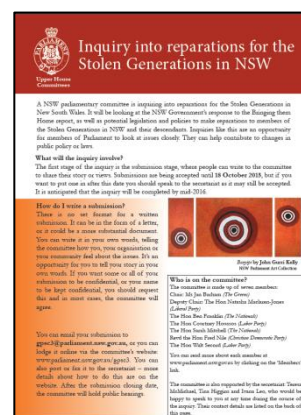
## Conduct of the inquiry

### Aboriginal cultural awareness and inter-cultural communication training

- 1.3 Prior to the hearings, the committee and secretariat staff participated in Aboriginal cultural awareness and inter-cultural communication training facilitated by Mr Dave Widders from Widders Consultancy and Professor Diana Eades, an Adjunct Professor from the University of New England.
- 1.4 The training focused on Aboriginal history, culture and communication, including strategies in which the committee could engage with local Aboriginal communities. The committee thanks Mr Widders and Professor Eades for their valuable assistance.

### Submissions

- 1.5 The committee wrote to a number of key stakeholders inviting them to make a submission. Plain language and culturally appropriate factsheets about the inquiry process and committee membership were also produced and distributed to stakeholders actively throughout the inquiry. In addition, short videos of the Chair explaining aspects of the inquiry process were placed on the inquiry webpage.
- 1.6 A media release announcing the inquiry was also sent to all media outlets in New South Wales, and the inquiry was advertised on Twitter and Storify.
- 1.7 The committee received 53 submissions and 5 supplementary submissions. A full list of submissions can be found in **appendix 1**.



- 1.8** The closing date for submissions was extended a number of times, so as to ensure as many people as possible had the opportunity to participate in the inquiry. The final closing date for submissions was 31 March 2016.

#### **Site visits**

- 1.9** On 6 November 2015 the committee visited the former Cootamundra Aboriginal Girls' Training Home, accompanied by Aunty Isabel Reid, Aunty Doreen Webster and Aunty Shirley McGee, members of the Coota Girls Corporation and former residents of the home.
- 1.10** The committee also visited the former Kinchela Aboriginal Boys' Training Home on 7 December 2015, where it met with representatives of the Kinchela Boys' Home Aboriginal Corporation and Benelong's Haven Family Rehabilitation Centre (the current lessee of the site). The committee appreciates the assistance provided by all those present during the visit, including Uncle Manuel Ebsworth, Uncle Lester Maher, Uncle James Michael Welsh, Uncle Harry Ritchie and Dr Tiffany McComsey, Chief Executive Officer of the Kinchela Boys' Home Aboriginal Corporation.
- 1.11** On 2 March 2016 the committee visited the former Bomaderry Aboriginal Children's Home. Uncles Willy Dixon and Sonny Simms, and Aunty Christine Blakeney, all former residents of the home, accompanied the committee on this visit, with Uncle Willy conducting a tour of the site and memorial garden. Representatives from the Nowra Local Aboriginal Land Council were also present during this visit.
- 1.12** The committee would like to thank everyone who provided assistance with these visits, particularly the former residents of each home, who undoubtedly would have found it difficult and painful to revisit the home and share their personal experiences with the committee.
- 1.13** The committee would also like to acknowledge the assistance provided by Ms Kerrie Kelly, the Network Coordinator for the Coota Girls Corporation, and Dr McComsey from the Kinchela Boys' Home Aboriginal Corporation, in arranging these visits and in providing ongoing assistance to the committee during the inquiry.



*Committee members and former residents of the Kinchela Aboriginal Boys' Training Home at a site visit to the former home*

## Hearings

- 1.14** The committee held a total of ten public hearings, four in Sydney at Parliament House and six in regional areas – Wagga Wagga, Kempsey, Grafton, Broken Hill, Walgett and Nowra. The transcripts from each public hearing are available on the inquiry webpage.
- 1.15** A list of witnesses who gave evidence at the hearings is available at **appendix 2** and a list of documents tabled during the hearings is included at **appendix 3**. Transcripts from all of the public hearings are available via the committee's website: [www.parliament.nsw.gov.au/gpsc3](http://www.parliament.nsw.gov.au/gpsc3).
- 1.16** A list of inquiry participants who provided answers to questions on notice following the hearings is also included at **appendix 4**.
- 1.17** The committee would like to thank witnesses for their contribution to the inquiry, particularly members of the Stolen Generations and/or family members who came forward to share their personal stories.



*Committee members and former residents of the Cootamundra Aboriginal Girls' Training Home at a site visit to the former home*

### **Support for witnesses**

- 1.18** Given the nature of the inquiry, the committee wanted to ensure that witnesses felt well supported during site visits and hearings. Where possible, a local Bringing Them Home worker or Social and Emotional Wellbeing counsellor was invited to each hearing to offer support to witnesses throughout the hearing process. Counsellors from Link-Up NSW also attended numerous hearings to provide this support to witnesses. The committee acknowledges and thanks these counsellors for their invaluable assistance.

### **Consultation**

- 1.19** Recognising the importance of genuine consultation with Stolen Generation survivors on reparation measures, the committee held a face-to-face consultation on Thursday 9 June 2016 with representatives from the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home Incorporated. The purpose of the consultation was to discuss some of the committee's proposed report recommendations.
- 1.20** The committee acknowledges the valuable input it received from representatives of each of these organisations during the consultation process. In particular, it thanks Stolen Generations survivors for their perseverance and patience – the committee is in awe of your continued strength and resilience.



## Terminology

### Aboriginal vs Indigenous

- 1.21 Throughout this report, the terms ‘Aboriginal’ and ‘Indigenous’ are used in accordance with the evidence of stakeholders, except in committee comment sections where the committee has used the term ‘Aboriginal people’ to refer to the original people of Australia and their descendants (defined below) and ‘Indigenous people’ to refer to Australian Aboriginal and Torres Strait Islander peoples.
- 1.22 The committee acknowledges that use of these terms can vary depending on the context and people’s preferences. The committee has, to its best ability, endeavored to be culturally appropriate and respectful in its use of these terms throughout the report.

### Bringing them home report

- 1.23 References to the 1997 *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* are referred to throughout the report as the *Bringing them home* inquiry and report. Further detail about the significance of the *Bringing them home* report is canvassed in chapter 2.

### Past forcible removal policies and practices

- 1.24 The ‘past forcible removal policies and practices’ were the government policies between the late 1800s and 1970s which enabled Aboriginal children to be forcibly removed from their family.
- 1.25 Use of the word ‘forcible’ recognises that Aboriginal and Torres Strait Islander children were removed from their families through compulsion, duress or undue influence. This will be discussed further in chapter 2.

### ‘Stolen Generations’ and ‘descendants’

- 1.26 The ‘Stolen Generations’ is a term generally used to refer to the Aboriginal and Torres Strait Islander children who were forcibly removed from their families and communities between the late 1800s and 1970s. The term is discussed further in chapter 2.
- 1.27 When referring to a person who was forcibly removed from their family and community, the report uses the following phrases: ‘member of the Stolen Generations’ or ‘Stolen Generation survivors’.
- 1.28 While a descendant of a member of the Stolen Generations could potentially include any individual whose ancestor was forcibly removed, the term is generally used in this report to refer to second and third generations.

## Structure of this report

- 1.29** **Chapter 2** examines the history of past forcible removal policies and practices in New South Wales and the significance of the 1997 *Bringing them home* inquiry and report.
- 1.30** **Chapter 3** details how members of the Stolen Generations and their families continue to be affected by past forcible removal policies and practices.
- 1.31** In **chapter 4** the importance of healing is discussed, with a focus on the benefits of collective healing for Stolen Generation survivors.
- 1.32** **Chapter 5** focuses on the value of apologies to members of the Stolen Generations and the need for continued acknowledgment of the effects of past forcible removal policies and practices. It also discusses the significance of Stolen Generation memorials for the Aboriginal community.
- 1.33** **Chapter 6** looks at two issues, the need for monetary payments to be provided to Stolen Generation survivors as a key component of reparation, and the previous repayment scheme for ‘stolen wages’.
- 1.34** **Chapter 7** examines how the various components of reparation, particularly monetary compensation, can be provided as part of a broader reparation framework for Stolen Generation survivors. It also highlights the inadequacies of existing legal remedies in providing redress to members of the Stolen Generations.
- 1.35** **Chapter 8** looks at the disadvantage experienced by members of the Stolen Generations and their families, and measures to address this, particularly in the areas of health, education, employment, housing and justice.
- 1.36** The focus of **chapter 9** is on Aboriginal culture, language and identity, including the importance of Language and Culture nests, family reunions, recording of oral testimonies and access to records for those affected by past forcible removal policies and practices. It also examines the need for education within the broader community about Stolen Generation issues, and more specifically, the need for cultural competency across the public service.
- 1.37** **Chapter 10** considers contemporary removals of Aboriginal children within the child protection context and strategies which the Department of Family and Community Services has implemented to address the overrepresentation of Aboriginal children in out-of-home care.
- 1.38** **Chapter 11** examines the importance of having an accountability framework in place to ensure that the needs of Stolen Generation survivors remain a priority in this state. It also discusses the need for Aboriginal people to have greater self-determination in relation to policies or decisions that affect them, including how any components of reparation for the Stolen Generations are developed and implemented.

## Chapter 2 The Stolen Generations

The ‘Bringing them home’ report was the first of its kind to acknowledge that wrongdoings were committed by consecutive federal and state governments across an extended period of time throughout the nineteenth century up until the 1970s. It uncovered evidence that depicted abuse and mistreatment by government officials to members of the Stolen Generation. It demonstrated the attempt of government to segregate and marginalise Australia's first people. This was not an historical anomaly; it was a systematic persecution of Australia's first people...<sup>5</sup>

This chapter explores past policies and practices in New South Wales which led to Aboriginal children being forcibly removed from their families and communities. These policies, and the impact they had on those removed and their families and communities, was extensively documented by the Human Rights and Equal Opportunity Commission (now known as the Australian Human Rights Commission) in the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children*, also known as the *Bringing them home* inquiry. The inquiry and its report were a defining moment in Australia's history.

This chapter will explore government responses to the *Bringing them home* report, and key events in New South Wales on Stolen Generation issues since 1997. It will also briefly outline the ‘unfinished business’ of the Stolen Generations, the issues which to this day remain unaddressed. Much of this ‘unfinished business’ is addressed in detail throughout this report.

### The term the ‘Stolen Generations’

- 2.1 Although there is no official definition of the term the ‘Stolen Generations’, as noted in chapter 1, it is generally used to refer to Aboriginal and Torres Strait Islander children who were forcibly removed from their families and communities between the late 1800s and 1970s.<sup>6</sup>
- 2.2 The term was first coined by Peter Read<sup>7</sup> in a report he produced for the NSW Ministry of Aboriginal Affairs in 1981, in which he documented the ‘devastation of forcibly removing Aboriginal children from their parents’. The report focused on the removal of Aboriginal children in New South Wales from 1883 to 1969.<sup>8</sup>
- 2.3 In regard to what is meant by ‘forcibly removed’, the 1997 report of the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (the *Bringing them home* report) provides guidance, using it to refer to any Aboriginal and Torres Strait Islander

<sup>5</sup> Evidence, Ms Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, 9 February 2016, p 37.

<sup>6</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, p 13.

<sup>7</sup> Mr Read at that time was a postgraduate student at the Australian National University, who had just co-founded Link-Up with Oomera (Coral) Edwards, an Aboriginal woman who had been removed from her family by the Aborigines Protection Board and placed in the Cootamundra Aboriginal Girls’ Training Home.

<sup>8</sup> Peter Read, *The Stolen Generations: The removal of Aboriginal children in New South Wales 1883 to 1969* (1981, Fourth ed, 2006), p 10.

children who were removed from their families through ‘compulsion, duress or undue influence’.<sup>9</sup>

2.4 Expanding on these latter concepts, the *Bringing them home* report stated that:

- ‘compulsion’ means force or coercion, encompassing both authorised and illegally exercised force or coercion, for example, the removal of a child by a government officer
- ‘duress’ usually involves threats or moral pressure, for example, where parents (under pressure) relinquished their children to care because they were worried about the children being removed by a government officer and placed further away
- ‘undue influence’ is similar to duress, in that it involves improper pressure being placed on a family to surrender children.<sup>10</sup>

## The history of forcible removals in New South Wales

2.5 The *Bringing them home* report documented much of the past government policies and practices which contributed to Aboriginal children being forcibly removed from their families in New South Wales.<sup>11</sup>

2.6 While this section will not cover this history of forcible removals in New South Wales in detail, it will provide some key points to help set the context for issues examined during this inquiry.

### Past forcible removal policies and practices

2.7 The *Aborigines Protection Act 1909* was introduced to ‘provide for the protection and care of Aborigines’. It enabled the Aborigines Protection Board (from 1909 to 1939) and the Aborigines Welfare Board (from 1940 to 1969) to forcibly remove Aboriginal children from their families in New South Wales. According to the Coota Girls Corporation, the intention of both boards was to ‘remove, train and indenture Aboriginal children as domestic servants and farm labourers and to prevent their return to Aboriginal stations and reserves’.<sup>12</sup>

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<sup>9</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 5, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>10</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 5-8, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>11</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 33-39, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>12</sup> Supplementary submission 36a, Coota Girls Corporation, p 6.

- 2.8** At first, children had to be regarded as ‘neglected’ by a magistrate to be removed, unless parental consent was given, with only those aged 14 years or over ‘placed out’ as apprentices.<sup>13</sup> This changed in 1915, however, when amendments to the *Aborigines Protection Act 1915* allowed the board to remove Aboriginal children without parental consent and without a court order.<sup>14</sup>
- 2.9** Aboriginal children who were removed from their family were placed in a ‘training home’ – either the Cootamundra Aboriginal Girls’ Training Home or the Singleton Boys Home, the latter of which subsequently closed and had children transferred to the Kinchela Aboriginal Boys’ Training Home.<sup>15</sup>
- 2.10** The Cootamundra Aboriginal Girls’ Training Home and Kinchela Aboriginal Boys’ Training Home held an average of 100 children each with a turnover of approximately 25 children per year. Children too young to be placed in the homes were placed in other homes run by religious organisations, such as the Bomaderry Aboriginal Children’s Home which was run by the United Aborigines Mission.<sup>16</sup>
- 2.11** Aboriginal children in training homes who reached school leaving age were indentured by the board to work as domestic servants of farm labourers in wealthy non-Aboriginal households and farms until they turned 18 years old.<sup>17</sup>
- 2.12** Up until 1940, the Aborigines Protection Board’s focus was to segregate and ‘protect’ Aboriginal children, whereas the focus became one more of assimilation when the Aborigines Welfare Board took over. By this time, all states and the Commonwealth Government had adopted an assimilation policy at the Commonwealth/State Conference on Native Affairs in 1937.<sup>18</sup>
- 2.13** From 1943, Aboriginal children found to be ‘uncontrollable’ by the Children’s Court became the responsibility of the Child Welfare Department and were sent to state corrective institutions such as the Parramatta Girls Home or Mt Penang Boys’ Training Home.<sup>19</sup>
- 2.14** A few years later, in 1943, an amendment to the *Aborigines Protection Act* allowed the Aborigines Welfare Board to arrange for ‘wards’ (any child who had been admitted to the control of the board) to be placed in foster homes.<sup>20</sup> While most children were still placed in a training home, from about 1956 children of ‘lighter caste’ were fostered out or adopted by white families. As the Coota Girls Corporation noted:

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<sup>13</sup> Supplementary submission 36a, Coota Girls Corporation, p 6.

<sup>14</sup> NSW Government, *Securing the Truth: NSW Government submission to the Human Rights and Equal Opportunity Commission Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1998), p 12.

<sup>15</sup> Supplementary submission 36a, Coota Girls Corporation, p 7.

<sup>16</sup> Supplementary submission 36a, Coota Girls Corporation, p 7.

<sup>17</sup> Supplementary submission 36a, Coota Girls Corporation, p 9.

<sup>18</sup> Supplementary submission 36a, Coota Girls Corporation, p 8.

<sup>19</sup> Supplementary submission 36a, Coota Girls Corporation, p 8.

<sup>20</sup> NSW Government, *Securing the Truth: NSW Government submission to the Human Rights and Equal Opportunity Commission Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1998), p 13.

Those who 'looked' Aboriginal were streamed into the Children's Training Homes. Once in the Homes, children were 'streamed' again, with 'lighter caste' children being placed-out with Board-arranged 'white' foster parents, and the remainder being employed or indentured as servants in non-Aboriginal households and farms, under harsh conditions.<sup>21</sup>

- 2.15** The Public Interest Advocacy Centre (PIAC), in its 2002 report entitled *Restoring Identity*, noted that churches and religious bodies were also heavily involved in the care of separated Aboriginal and Torres Strait Islander children. It asserted that these organisations 'share some responsibility for forcible removals because of their involvement in providing accommodation, education, training and work placements for children'.<sup>22</sup>
- 2.16** In 1969, the *Aborigines Protection Act* was repealed by the *Aborigines Act 1969*, leading to the Aborigines Welfare Board being abolished and the children's training homes being closed.<sup>23</sup> However, the committee heard from a number of individuals who told the committee that they had been removed after this date.<sup>24</sup>
- 2.17** Many of the Aboriginal children who were forcibly removed from their families and placed in government or non-government homes, or who were fostered or adopted out, experienced systematic discrimination and psychological, physical and sexual abuse. These experiences were well documented in the *Bringing them home* report, and have been recognised in a number of other forums, including the current Royal Commission into Institutional Responses to Child Sexual Abuse.<sup>25</sup>

### **The number of Aboriginal children forcibly removed**

- 2.18** The exact number of Aboriginal children forcibly removed from their families is unknown. Some records were not kept, and others are missing, incomplete or have since been destroyed.
- 2.19** Despite the lack of records, the *Bringing the home* report estimated that about one in ten Aboriginal and Torres Strait Islander children in Australia were forcibly removed from their families and communities between 1910 and 1970.<sup>26</sup>
- 2.20** Further insight can be gained from the results of the National Aboriginal and Torres Strait Islander Social Survey conducted in 2008, which surveyed approximately 13,300 Indigenous Australians between August 2008 and April 2009. The results showed that 10,500 Indigenous Australians aged 45 years or older across Australia reported that they were removed from their

<sup>21</sup> Supplementary submission 36a, Coota Girls Corporation, p 10.

<sup>22</sup> Submission 16, Public Interest Advocacy Centre, Appendix B, p 9.

<sup>23</sup> Supplementary submission 36a, Coota Girls Corporation, p 10.

<sup>24</sup> Submission 45, Name suppressed, p 1; Submission 48, Name suppressed, p 1.

<sup>25</sup> For example, the experiences of women who were sexually abused at The Parramatta Girls' Training School were documented in Case Study 7 of the Royal Commission into Institutional Responses to Child Sexual Abuse.

<sup>26</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, pp 33-39, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

natural families by government or welfare. Of this total, 2,500 people were in New South Wales, which was the second highest number reported by state or territory across the country.<sup>27</sup>

- 2.21** In terms of New South Wales, although there are some official records from the Aborigines Protection Board and Aborigines Welfare Board which indicate the number of Aboriginal children who were removed and placed in the Kinchela Aboriginal Boys' Training Home or Cootamundra Aboriginal Girls' Training Home, there were no systematic records kept relating to Aboriginal children sent to other homes, including state or religious homes not specifically designed for Aboriginal peoples.<sup>28</sup>
- 2.22** There are also no records relating to the unknown number of children committed unofficially to the Child Welfare Department by the board, including children who were placed with local church bodies and other families. Nor are there records for Aboriginal children who reportedly went away to white people for a 'holiday' and did not return.<sup>29</sup>
- 2.23** In Peter Read's report *The Stolen Generations*, it was estimated that over 6,000 Aboriginal children in New South Wales were removed between 1883 and 1969, as shown in the table below. It is important to note that many of the figures included in the table are an approximate only, due to the lack of records for Aboriginal children who were removed and placed in non-government, non-Aboriginal or foster homes.<sup>30</sup>

**Table 1 Estimates of the number of Aboriginal children removed - 1883 to 1969**

	Number of children
Placed at Warangesda dormitory and subsequently in services before 1909*	300
<b>Under the Aborigines Protection Act:</b>	
Aborigines Protection Board – placed between 1909 – 1916*	400
Aborigines Protection Board – placed between 1916 – 1938 (according to the Board's records)	2300
Kinchela and Cootamundra Homes combined – children placed between 1939 - 1969	825
Other official denominational homes (e.g. Marella, Boystown etc)*	300
Other official non-Aboriginal institutions (e.g. Mittagong Homes)*	200
In Aboriginal Welfare Board foster homes*	300

<sup>27</sup> Supplementary submission 36a, Coota Girls Corporation, p 17.

<sup>28</sup> Peter Read, *The Stolen Generations: The removal of Aboriginal children in New South Wales 1883 to 1969* (1981, Fourth ed, 2006), p 10.

<sup>29</sup> Peter Read, *The Stolen Generations: The removal of Aboriginal children in New South Wales 1883 to 1969* (1981, Fourth ed, 2006), p 10.

<sup>30</sup> Peter Read, *The Stolen Generations: The removal of Aboriginal children in New South Wales 1883 to 1969* (1981, Fourth ed, 2006), p 11.

	Number of children
<b>Under Child Welfare Legislation:</b>	
'Uncontrollable' children committed to non-Aboriginal institutions (e.g. Mt Penang, Parramatta) *	400
'Delinquent' children committed for offences to non-Aboriginal corrective institutions*	400
Children of 'light caste' committed to the Child Welfare Department as wards, placed in non-Aboriginal homes, foster homes*	800

Source: Peter Read, *The Stolen Generations: The removal of Aboriginal children in New South Wales 1883 to 1969* (1981, Fourth ed, 2006), p 11.

\* Denotes figures are approximate due to lack of records.

### Current Stolen Generation survivor figures

- 2.24** The committee did not receive any evidence to clearly indicate how many members of the Stolen Generations are still alive today.
- 2.25** Based on the years in which forcible removals took place in New South Wales, the Coota Girls Corporation said that of the children forcibly removed:
- if they were removed between 1916 and 1938 they would now be aged 77 years or older
  - if they were removed between 1939 and 1969 they would now be aged between 46 and 76 years old.<sup>31</sup>
- 2.26** As to how many survivors there are who were placed in the government controlled children's training home – either the Kinchela Aboriginal Boys' Training Home or Cootamundra Aboriginal Girls' Training Home – an approximate figure may be 200. This figure is based on the number of people currently involved in the group action against the state, given the committee was advised that the action involves nearly all of the known survivors of these homes.<sup>32</sup>

<sup>31</sup> Supplementary submission 36a, Coota Girls Corporation, p 17.

<sup>32</sup> *In camera* evidence, Mr John Williams, Public Officer, Stolen Generations Council NSW/ACT, 5 November 2015, pp 1-2. Evidence published by resolution of the committee.



## The Bringing them home inquiry and report

**2.27** Described by some as a ‘pivotal moment’<sup>33</sup> in Australia’s history and a ‘watershed moment in Aboriginal politics’,<sup>34</sup> the *Bringing them home* inquiry and report was a turning point in Australia in recognising the extent and impact of forcible removals.

**2.28** The inquiry, commissioned by the Australian Government in August 1995, was the first to comprehensively document the impact of past forcible removal policies and practices on Aboriginal and Torres Strait Islander families and communities. As stated by the National Sorry Day Committee<sup>35</sup>:

This inquiry and its report revealed the shocking extent of the forced separation of Aboriginal children from their families and communities, and the lifelong impacts of these separations on the Stolen Generations themselves, on their families and communities, and on their descendants. Many in the Australian community were learning of these separations, and the government policies that enforced them, for the first time. Many were also moved to tears by the pain and suffering of the Stolen Generations ...<sup>36</sup>

**2.29** The report was tabled in the Australian Parliament on 26 May 1997. This date has now become National Sorry Day, an annual ‘day of commemoration and remembrance of all those who have been impacted by forcible removal policies’, with events held across the nation. Next year will be the 20th anniversary of the report.<sup>37</sup>

**2.30** The report contained 54 recommendations, including recommendation 3, which captured ‘in general terms the spirit of the BTH [*Bringing them home*] recommendations as a whole’.<sup>38</sup> This recommendation stated:

Recommendation 3: That, for the purposes of responding to the effects of forcible removals, ‘compensation’ be widely defined to mean ‘reparation’; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of:

1. acknowledgment and apology



<sup>33</sup> Submission 35, Link-Up NSW Aboriginal Corporation, p 3.

<sup>34</sup> Submission 8, Jumbunna Indigenous House of Learning, p 3.

<sup>35</sup> The National Sorry Day Committee was established following the tabling of the *Bringing them home* report and is a not-for-profit organisation that advocates for the rights of members of the Stolen Generations at a national level.

<sup>36</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 14, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>37</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 5, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>38</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 18, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

2. guarantees against repetition
3. measures of restitution
4. measures of rehabilitation, and
5. monetary compensation.

**“The *Bringing them home* report ‘is a tribute to the strength and struggles of thousands of Aboriginal and Torres Strait Islander people affected by the forcible removals of children”**

Redfern Legal Centre  
Submission 30

- 2.31** The *Bringing them home* report recommended that reparation be made to all those who suffered because of past forcible removal policies and practices, including:
- individuals who were forcibly removed as children
  - family members who suffered as a result of a child’s removal
  - communities which, as a result of the forcible removal of children, suffered cultural and community disintegration
  - descendants of those forcibly removed who, as a result, have been deprived of community ties, culture and language, and links with and entitlements to their traditional land.<sup>39</sup>
- 2.32** As noted in recommendation 3 of the *Bringing them home* report, the proposed reparation measures were premised on the van Boven principles, international guidelines drafted by Professor Theo van Boven in 1996. These guidelines were adopted by the United Nations General Assembly on 16 December 2005.<sup>40</sup>
- 2.33** In terms of monetary compensation, the report recommended that the Council of Australian Governments establish a National Compensation Fund and National Compensation Fund Board, with the board’s role being to administer the fund and determine claims for monetary compensation.<sup>41</sup>

## Government responses to the report

- 2.34** After the *Bringing them home* report was finalised, the Commonwealth Government and state and territory governments responded by committing to implement a range of initiatives or programs to address the needs of members of the Stolen Generations. This section will briefly look at those responses.

<sup>39</sup> Recommendations 3 - 4, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 245-246, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>40</sup> Submission 35, Link-Up NSW Aboriginal Corporation, p 3.

<sup>41</sup> Recommendations 15 - 16, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 267-268, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

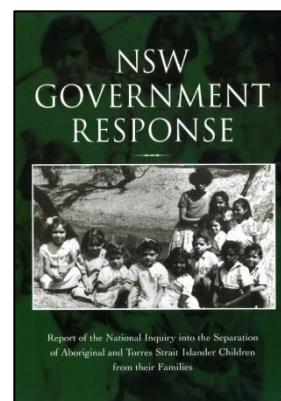
## Commonwealth Government

**2.35** The Commonwealth Government responded to the *Bringing them home* report's recommendations on 16 December 1997. It announced \$63 million in practical assistance for those affected by past forcible removal policies and practices, which included training and new positions for Aboriginal and Torres Strait Islander counsellors, parenting support programs, family reunion services, language and culture programs and an oral history project.<sup>42</sup> The response did not include monetary compensation.<sup>43</sup>

## New South Wales Government

**2.36** The New South Wales Government also responded to the *Bringing them home* report, with the response published by the NSW Department of Aboriginal Affairs (now known as Aboriginal Affairs NSW) in 1999 in a document entitled *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. The response was divided into seven areas:

- apology, acknowledgement and reparations
- commemoration, history and culture
- education and training
- archives and records
- Indigenous well-being model
- contemporary separations
- monitoring process.<sup>44</sup>



**2.37** In its response, the government outlined certain actions it had already taken in key areas of concern, as well as new initiatives or programs which would be introduced or modified in response to the *Bringing them home* report. In particular it outlined these new initiatives:

- an Aboriginal Communities Development Program, which was a seven year program launched in May 1998 aimed at delivering infrastructure and environmental health services to Aboriginal communities
- various programs and services aimed at promoting Aboriginal art, language and culture, including a commitment to work with Aboriginal Elders to record the languages and histories of communities

<sup>42</sup> Public Interest Advocacy Centre, *Restoring Identity: Final report of the Moving Forward consultation project* (2002), p 13, <<http://www.piac.asn.au/sites/default/files/publications/extras/restoringidentity.pdf>>

<sup>43</sup> John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, *Bringing them home: Commonwealth initiatives*, media release, 16 December 1997.

<sup>44</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 6, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

- strategies to increase education and awareness of the history of forcible removal and the impact of those practices, such as incorporation of the history into school curriculums
- the launch of a Records Access Taskforce, which would develop a strategy to improve access to records relating to Aboriginal children who were forcibly removed from their family, and increased support for Link-Up NSW to help with the reunification of Aboriginal families
- various community and health related programs for Aboriginal communities, including mental health services and parenting programs
- strategies aimed at addressing the social and economic disadvantage experienced by Aboriginal people, including programs in the areas of child protection, juvenile justice and criminal justice in general.<sup>45</sup>

**2.38** While the New South Wales Government's response demonstrated its commitment to reparation, it also fell short in addressing the issue of monetary compensation, stating that 'monetary compensation is a matter for the Commonwealth Government'.<sup>46</sup>

**2.39** During this inquiry the committee attempted to ascertain the progress of the State Government's initiatives since 1997 but it was difficult to get a clear picture given the passage of time and changes within government agencies. While a Cabinet Committee on Aboriginal Affairs and a Chief Executive Officers Group on Aboriginal Affairs were established to oversee and monitor the implementation of the government's response, these committees no longer exist.<sup>47</sup>

### **Other responses**

**2.40** Other state and territory government responses were similar to that of New South Wales, with a range of initiatives and programs and initially, no monetary compensation.<sup>48</sup>

**2.41** Importantly though, at the time of the *Bringing them home* report and recommendations, a number of churches also stepped forward to acknowledge their role in past forcible removal policies and practices. As noted by PIAC in its 2002 *Restoring Identity* report, '[a]ll major denominational churches in Australia at national, state and local level have offered apologies

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<sup>45</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, pp 7-9, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>46</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 8, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>47</sup> Confidential correspondence from the Hon Leslie Williams MP, Minister for Aboriginal Affairs, to Chair, 4 November 2015, p 15. Evidence published by resolution of the committee.

<sup>48</sup> Tasmania did, however, later establish a monetary compensation scheme in 2007. South Australia has also since implemented a reparations scheme, which commenced 31 March 2016.

in diverse ways'. They have also assisted with various reparation measures and have offered to contribute to a national compensation fund if it were to be established.<sup>49</sup>

## Key events in New South Wales since the *Bringing them home* report

**2.42** This section will outline five key actions which have been pivotal to addressing the needs of members of the Stolen Generations so far in New South Wales: state and federal government apologies to members of the Stolen Generations; the establishment of the Family Records Unit in 2002; the establishment of the Aboriginal Trust Fund Repayment Scheme to repay stolen wages in 2004; the launch of the Aboriginal Affairs NSW Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) strategy in 2013; and the current settlement of legal claims against the state by Stolen Generation survivors.

### Apologies

**2.43** Following the *Bringing them home* report, each state and territory apologised in Parliament to members of the Stolen Generations. New South Wales was the first, with the Hon Bob Carr MP, then Premier, delivering an apology on 18 June 1997 with bipartisan support.<sup>50</sup> Explaining the impetus for the apology, Mr Carr stated:

The factors in producing the apology by New South Wales were the national inquiry and the process of building a New South Wales submission to that inquiry, and what appeared to be a rejection from the Federal Government—the Prime Minister and his Aboriginal Affairs Minister ... of the notion of a Stolen Generation. There was no such resistance in the New South Wales Parliament that I can recall. Those were the considerations that made me want to take the lead off the back of the work being done in the public service involving Link-Up—the reuniting of Aboriginal families—and the stories that emerged from that that left me and others in no doubt that there had been a forced separation—a forced separation on the basis of race alone.<sup>51</sup>

**2.44** Over a decade later a national apology was delivered by the then Prime Minister Kevin Rudd on 13 February 2008. Annual commemorative events are often held on this date across the country. The apologies are discussed in more detail in chapter 5.

### Establishment of the Family Records Unit

**2.45** In 2002 the Family Records Unit was established within Aboriginal Affairs NSW to consolidate the records of the Aborigines Protection Board and Aborigines Welfare Board.<sup>52</sup>

**2.46** The Family Records Unit manages access to these records, providing assistance to people who are attempting to obtain information about their history and identity. Since 2011, there have

<sup>49</sup> Public Interest Advocacy Centre, *Restoring Identity: Final report of the Moving Forward consultation project* (2002), pp 13-14, <<http://www.piac.asn.au/sites/default/files/publications/extras/restoringidentity.pdf>>

<sup>50</sup> Submission 21, ANTaR NSW, p 5.

<sup>51</sup> Evidence, Mr Bob Carr, former Premier of New South Wales, 5 November 2015, p 29.

<sup>52</sup> Submission 34, Department of Premier and Cabinet, pp 7-8.

been approximately 1,100 applications to the unit for access to records, with 407 applications in 2014 and 2015.<sup>53</sup>

- 2.47 The preservation of records pertaining to members of the Stolen Generations, including issues with accessing and amending records, is examined in chapter 9.

### Repayment of stolen wages

- 2.48 The establishment of the Aboriginal Trust Fund Repayment Scheme to repay the ‘stolen wages’ of Aboriginal and Torres Strait Islander people was an important milestone in New South Wales. From the late 1890s up until approximately 1969 the Aboriginal Protection Board and Aborigines Welfare Board collected monies on behalf of Aboriginal people who had come under their control, with the money held in trust accounts by the government.<sup>54</sup>
- 2.49 The money was deducted from Aboriginal people’s pensions, family endowment payments, apprentice wages, inheritances and lump sum compensation payments, sometimes without peoples’ consent or knowledge.<sup>55</sup> Much of this money was never repaid, with this later forming the basis of another apology to Aboriginal people issued by the New South Wales Government in March 2004.<sup>56</sup>
- 2.50 Subsequently, the New South Wales Government set up the Aboriginal Trust Fund Repayment Scheme to pay back money owed to Aboriginal people whose money was put in trust accounts but never repaid. The scheme operated from December 2004 to June 2010, administered by the Department of Community Services. A total of \$12.9 million was repaid.<sup>57</sup> Concerns about the operation of the scheme are addressed in chapter 6.
- 2.51 A number of other states and territories have also implemented schemes to repay stolen wages, including Queensland which operated a similar scheme in 2008 and have just reopened it again to ‘further address the long standing historical issue of controlled wages and savings taken from Aboriginal and Torres Strait Islander Queenslanders’.<sup>58</sup> Western Australia also established a scheme to repay stolen wages in 2011-12.<sup>59</sup>

### Opportunity, Choice, Healing, Responsibility, Empowerment

- 2.52 In 2011, 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*

<sup>53</sup> Evidence, the Hon Leslie Williams MP, Minister for Aboriginal Affairs, 5 November 2015, p 1; Correspondence from Mr Jason Ardler, Head of Aboriginal Affairs, to Chair, 6 April 2016, p 2.

<sup>54</sup> Submission 34, Department of Premier and Cabinet, p 12.

<sup>55</sup> NSW Aboriginal Trust Fund Repayment Scheme, *Information Sheet*, (accessed 8 April 2016) <<https://www.records.nsw.gov.au/state-archives/documents/indigenous/TrustFund.pdf>>

<sup>56</sup> Submission 19, Herbert Smith Freehills, p 16.

<sup>57</sup> Submission 34, Department of Premier and Cabinet, p 12.

<sup>58</sup> Queensland Government, *About the reparations scheme* (15 April 2016) <<https://www.qld.gov.au/atsi/having-your-say/stolen-wages-about/index.html>>

<sup>59</sup> Department of Indigenous Affairs, Government of Western Australia, *Annual Report 2011-2012*, p 12, <[http://www.daa.wa.gov.au/globalassets/pdf-files/dia\\_annual\\_report\\_2011-12.pdf](http://www.daa.wa.gov.au/globalassets/pdf-files/dia_annual_report_2011-12.pdf)>

*things differently*, the New South Wales Government developed a Ministerial Taskforce on Aboriginal Affairs.<sup>60</sup>

- 2.53** The taskforce's report recommended that there be a new approach to Aboriginal Affairs, including strengthened mutual accountability for the delivery of services, a greater role of Aboriginal people in local decision making, stronger support for Aboriginal language and culture and increased economic participation for Aboriginal people.
- 2.54** Subsequently, in April 2013, the New South Wales Government introduced OCHRE, its strategy for Aboriginal Affairs, capturing the importance of culture, self-determination and healing in Aboriginal families and communities.<sup>61</sup>
- 2.55** Through OCHRE, Language and Culture Nests have been established (discussed further in chapter 9), as have local decision making initiatives which seek to increase the direct involvement of Aboriginal people in the design and delivery of services in their communities, such as the Murdi Paaki initiative in the Far West (discussed in chapter 11).<sup>62</sup>
- 2.56** The Minister for Aboriginal Affairs, the Hon Leslie Williams MP, explained the importance of local decision making and solution brokerage in promoting responsibility for issues such as housing, justice, planning and health. The Minister said that the government is focusing, through OCHRE, on Aboriginal people and communities being part of the decision making process.<sup>63</sup>
- 2.57** A key aspect of OCHRE is its focus on healing, based on the recognition of the continuing trauma and harm caused by the forced removal of Aboriginal people from their families and communities under past government policies.<sup>64</sup> The Kinchela Boys' Home Aboriginal Corporation applauded New South Wales for being the first state in Australia to incorporate healing into the state's Aboriginal Affairs policy.<sup>65</sup> Healing is discussed further in chapter 4.
- 2.58** The committee was advised by Mr Jason Ardler, the Head of Aboriginal Affairs NSW, that there is a senior executive committee on Aboriginal reform which plays a role in the coordination and oversight of OCHRE. Mr Ardler said that this committee also has a 'broader remit' in that it ensures 'that all sorts of reforms that could impact on Aboriginal communities are not colliding or cutting across one another'.<sup>66</sup>

### **Current legal action against the State of New South Wales**

- 2.59** In 2014, Carroll & O'Dea Lawyers, representing a group of Stolen Generation survivors, commenced a class action against the State of New South Wales. The action is founded on allegations that claimants experienced personal injuries as a result of being forcibly removed

<sup>60</sup> Submission 17, NSW Aboriginal Land Council, pp 9-10.

<sup>61</sup> Submission 34, Department of Premier and Cabinet, pp 4-5.

<sup>62</sup> Submission 34, Department of Premier and Cabinet, pp 4-5.

<sup>63</sup> Evidence, Minister Williams, 5 November 2015, p 3.

<sup>64</sup> Submission 34, Department of Premier and Cabinet, pp 4-5.

<sup>65</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 14.

<sup>66</sup> Evidence, Mr Jason Ardler, Head of Aboriginal Affairs NSW, 5 November 2015, p 7.

from their families. The claims also allege false imprisonment and injuries attained as a result of mistreatment, including physical and sexual abuse.<sup>67</sup>

- 2.60** Initiation of the group action followed an out-of-court settlement reached in the case of *Bowden v State of New South Wales* [2014], where Mr Cecil Bowden made a claim against the state for psychiatric injuries he suffered as a result of abuse at the Kinchela Aboriginal Boys' Training Home between 1943 and 1958.<sup>68</sup>
- 2.61** Since that settlement, other members of the Stolen Generations have stepped forward to join the group action with Carroll & O'Dea Lawyers. Mr John Williams, Public Officer with the Stolen Generations Council NSW/ACT Inc, an organisation involved in advocating for and supporting members of the Stolen Generations told the committee that approximately 200 people are now involved in the action.<sup>69</sup>
- 2.62** Most of the individuals involved in the group action were residents of the Kinchela Aboriginal Boys' Training Home or Cootamundra Aboriginal Girls' Training Home, homes that were under the control of the Aboriginal Welfare Board.<sup>70</sup>
- 2.63** To date, the state's response to the group action appears positive. Litigation is being avoided, with the claims instead being managed through a settlement process. According to Mr Michael Waterhouse, General Counsel with the Department of Education, the settlement process is respectful, cost effective and consistent, and aimed at minimising any further trauma to each individual involved:

We have a process underway which is intended to offer both reconciliation and healing to the individuals as well as providing compensation in a legal manner. The process is carried out in a respectful way. It is quick, cost-effective and consistent across all claimants. It is what we would characterise as a low-documentation process in the sense that the state will accept any form of evidence that is able to be provided—we do not insist on extensive medical examination and we will seek to avoid any court claims or cross-examination court processes. We are endeavouring to make sure it is free of any further trauma insofar as possible for the claimants, and we are facilitating access by the claimants to their records that are held by the state.<sup>71</sup>

- 2.64** Mr Waterhouse also explained how the process provides each individual the opportunity to tell their story, to be supported by family members and to receive a personal apology:

Each claimant, with the assistance of their solicitor, provides a written statement to us and then they are given the opportunity, with their lawyers and with support people, to tell their story in a confidential conciliation conference with us first hand. We listen carefully to their story—they are not subject to cross-examination. They bring support people—such as family members, et cetera—with them and each claimant receives a personal apology on behalf of the State. These acknowledge the previous apologies

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<sup>67</sup> Submission 34, Department of Premier and Cabinet, p 13.

<sup>68</sup> Submission 15, University of New South Wales Law Society, pp 19-20.

<sup>69</sup> *In camera* evidence, Mr John Williams, 5 November 2015, pp 1-2. Evidence published by resolution of the committee.

<sup>70</sup> Evidence, Minister Williams, 5 November 2015, p 2.

<sup>71</sup> Evidence, Mr Michael Waterhouse, General Counsel, NSW Department of Education, 5 November 2015, pp 4-5.



given by the then Premier and the Prime Minister and then there is a monetary settlement for the individual claims, with their legal representatives agreeing and negotiating those monetary settlement amounts.<sup>72</sup>

- 2.65** Although the process centres on settling the compensation claim between the parties, Mr John Williams emphasised to the committee that it is about more than just receiving monetary compensation:

It is not just for monetary interest; it is an opportunity for the people concerned to have their day 'in court' and to express their angst, sorrow and utter frustration after all these years, at the end of their lives.<sup>73</sup>

- 2.66** Given the ongoing nature of the settlement process, Minister Williams and her representatives were reluctant to provide the committee with specific detail about the method involved in assessing each claim. From the outset, Minister Williams expressed her concerns about discussing the group action in detail, stressing that she did not want ongoing settlement negotiations to be prejudiced.<sup>74</sup>

### 'Unfinished business'

- 2.67** There was a general consensus among stakeholders that all governments have fallen short in meeting the needs of members of the Stolen Generations. PIAC noted in its *Restoring Identity* report that this has come to be referred to as the 'unfinished business' of reconciliation.<sup>75</sup>
- 2.68** In its submission to this inquiry, PIAC said that '[o]verall ... it is clear that a majority of the BTH [Bringing them home] recommendations are yet to be fulfilled'.<sup>76</sup> Jumbunna Indigenous House of Learning agreed, stating that 'the recommendations of *Bringing them home* have never properly been implemented, nor the lessons it taught properly learnt'.<sup>77</sup>
- 2.69** ANTaR NSW likewise commented that there is 'unfinished business that remains between the governments of Australia and Aboriginal and Torres Strait Islander people who were forcibly removed from their families'. It noted that there has been inconsistent implementation of the recommendations from the *Bringing them home* report across the nation.<sup>78</sup>
- 2.70** The National Sorry Day Committee, in its 2015 *Bringing them home: Scorecard Report*, explained that 'it is impossible to provide a complete account of responses to the *Bringing them home* report as no systematic process was established to monitor, evaluate and review' the recommendations. It also noted that although the *Bringing them home* report recommended a

<sup>72</sup> Evidence, Mr Waterhouse, 5 November 2015, pp 4-5.

<sup>73</sup> *In camera* evidence, Mr John Williams, 5 November 2015, p 2. Evidence published by resolution of the committee.

<sup>74</sup> Evidence, Minister Williams, 5 November 2015, p 2.

<sup>75</sup> Public Interest Advocacy Centre, *Restoring Identity: Final report of the Moving Forward consultation project* (2002), p 20, <<http://www.piac.asn.au/sites/default/files/publications/extras/restoringidentity.pdf>>

<sup>76</sup> Submission 16, Public Interest Advocacy Centre, p 7.

<sup>77</sup> Submission 8, Jumbunna Indigenous House of Learning, p 4.

<sup>78</sup> Submission 21, ANTaR NSW, p 3.

national procedure of implementation and monitoring of the recommendations, this never occurred.<sup>79</sup>

**2.71** The National Sorry Day Committee stated that there is still ‘a distance to travel to honour the *Bringing them home* report’s promise’ and to fulfil the hopes generated by the national apology in 2008.<sup>80</sup> Overall, it noted the following continuing concerns:

- the approaches to date have not, in general, been based on the human rights framework which informed the *Bringing them home* report recommendations
- there is no national accountability framework for implementation of the recommendations
- there are unresolved service system issues
- the socio-economic difficulties of Stolen Generation survivors are far greater than for other Indigenous people, effectively creating ‘a gap within the gap’.<sup>81</sup>

**2.72** Highlighting the pertinence of the *Bringing them home* report recommendations, Jumbunna Indigenous House of Learning stated that they ‘remain a relevant and effective blueprint for reform today’.<sup>82</sup>

**2.73** Dr John Rule, co-author of the 2015 *Scorecard Report*, also noted that the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda, recently highlighted the continuing relevance of the *Bringing them home* report recommendations in the 2015 *Social Justice and Native Title report*.<sup>83</sup>

### **Compensation**

**2.74** With respect to the issue of monetary compensation, the National Sorry Day Committee noted that ‘there has been no attempt, at a national level, to deal with the question of monetary compensation’.<sup>84</sup>

**2.75** Reconciliation Australia highlighted that none of the nine recommendations relating to monetary compensation in the *Bringing them home* report have been implemented, with this ‘failure’ demonstrating that ‘Australia is unable to fully acknowledge, make amends for, and move on together from the past’.<sup>85</sup>

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<sup>79</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 19, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>80</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 29, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>81</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 29, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>82</sup> Submission 8, Jumbunna Indigenous House of Learning, p 7.

<sup>83</sup> Evidence, Dr John Rule, 9 February 2016, p 9.

<sup>84</sup> Submission 16, Public Interest Advocacy Centre, p 7.

<sup>85</sup> Submission 13, Reconciliation Australia, p 2.

- 2.76** There have, however, been attempts to introduce legislation establishing a national compensation scheme. More than a decade after the *Bringing them home* report was released, Senator Andrew Bartlett introduced the Stolen Generations Compensation Bill 2008 into the Australian Parliament. The bill provided a compensation model for ex gratia payments to be made to members of the Stolen Generations and became the subject of an inquiry by the Standing Committee on Legal and Constitutional Affairs.
- 2.77** The Standing Committee on Legal and Constitutional Affairs ultimately recommended that the Stolen Generations Compensation Bill 2008 not proceed, however stated that other compensation models, such as the model proposed by PIAC (which is discussed further in chapter 7), ‘might provide valuable frameworks for consideration in the development of any reparations scheme’.<sup>86</sup>
- 2.78** In its response to the Senate inquiry, the Australian Government reinforced its position on the issue of monetary compensation. The response stated that ‘the government has indicated on a number of occasions that it will not be providing compensation to members of the Stolen Generations’.<sup>87</sup>
- 2.79** The Stolen Generations Reparations Tribunal Bill, versions of which were introduced into the Australian Parliament by Senator Rachel Siewart in 2008 and 2010, also did not progress. This bill was broader in nature than Senator Bartlett’s 2008 bill, providing a reparations framework that included a range of components, such as healing, acknowledgement and financial compensation.<sup>88</sup>
- 2.80** Only Tasmania and South Australia have progressed on this issue. In January 2007, the *Stolen Generations of Aboriginal Children Act 2006* (Tas) commenced, establishing a \$5 million Stolen Generation Fund to compensate eligible Aboriginal and Torres Strait Islanders in Tasmania who have been affected by past forcible removal policies and practices. Under the scheme, financial compensation was paid to 105 claimants, of which 84 were claims by members of the Stolen Generations and 22 were descendant claims.<sup>89</sup>
- 2.81** South Australia’s Stolen Generations Scheme commenced on 31 March 2016. The scheme, described as ‘a significant step in South Australia’s Reconciliation journey’, enables applicants to apply for compensation and tell their stories, which is recognised as being part of the healing process.<sup>90</sup>

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<sup>86</sup> Submission 19, Herbert Smith Freehills, p 53.

<sup>87</sup> Australian Government, *Government response to Senate Standing Committee on Legal and Constitutional Affairs report: Stolen Generations Compensation Bill 2008* (December 2009), p 2.

<sup>88</sup> Submission 19, Herbert Smith Freehills, p 55.

<sup>89</sup> Submission 13, Reconciliation Australia, p 3.

<sup>90</sup> Government of South Australia, *Stolen Generations Reparations Scheme*, (accessed 16 April 2016) <<http://www.statedevelopment.sa.gov.au/upload/aboriginal-affairs/stolen-generations-policy/stolen-generations-reparations-scheme.pdf?t=1460598037052>>

- 2.82** The scheme involves the establishment of an \$11 million Stolen Generations reparations fund, with up to \$6 million being provided for ex gratia payments to members of the Stolen Generations and \$5 million allocated towards community based initiatives, such as memorials and healing programs.<sup>91</sup>
- 2.83** The Tasmanian and South Australian schemes are examined in more detail in chapter 7.

### **The right to reparation**

- 2.84** The failure to provide reparations in a manner consistent with international human rights law is considered part of the ‘unfinished business’ of the Stolen Generations. Stakeholders emphasised that the right to reparation for members of the Stolen Generations remains, despite the fact that almost 20 years has passed since the *Bringing them home* report was released.
- 2.85** As noted earlier, the *Bringing them home* report and recommendations were focused on the right of those forcibly removed from their family to reparation in accordance with international human rights laws, including the ‘Basic Principles and Guidelines’ developed by van Boven for victims of gross violations of human rights.
- 2.86** Herbert Smith Freehills said that ‘even if well-intentioned in some cases ... the discrimination [through forcible removals of Aboriginal children] was systemic, carried out over a considerable period of time and repeated’.<sup>92</sup> It considered this a violation of international human rights instruments, specifically a breach of the United Nations Charter of 1945, the Universal Declaration of Human Rights of 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.<sup>93</sup>
- 2.87** Accordingly, and consistent with the van Boven principles, Herbert Smith Freehills asserted that the need and right to reparation for members of the Stolen Generations remains:
- Until an adequate and effective reparations framework is introduced by the NSW Government, these human rights abuses will remain unaddressed and the rights of the Stolen Generation survivors will remain unrecognised.<sup>94</sup>
- 2.88** The Coota Girls Corporation, comprised of survivors of the Cootamundra Aboriginal Girls’ Training Home, submitted that Stolen Generation survivors still possess a right to reparation under international law because of the harm they experienced:

Survivors of the Cootamundra Girls Home have individually and collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.<sup>95</sup>

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<sup>91</sup> Media release, the Hon Kyam Maher, Minister for Aboriginal Affairs and Reconciliation, South Australia, ‘Reparations scheme for SA’s Stolen Generations’, 19 November 2015.

<sup>92</sup> Submission 19, Herbert Smith Freehills, p 36.

<sup>93</sup> Submission 19, Herbert Smith Freehills, pp 36-37.

<sup>94</sup> Submission 19, Herbert Smith Freehills, p 36.

<sup>95</sup> Submission 19, Herbert Smith Freehills, p 36.

- 2.89** The Royal Australian and New Zealand College of Psychiatrists argued that the ‘fact that these practices [past forcible removal policies and practices] continued as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed, makes the case for reparation even stronger’.<sup>96</sup>
- 2.90** Herbert Smith Freehills contended that Australia has a poor reputation at the international level in providing reparation for members of the Stolen Generations. In particular it highlighted that in:
- 2009 the United Nations Human Rights Committee, in a review of Australia’s compliance with the International Covenant on Civil and Political Rights, recommended adequate reparations be provided to members of the Stolen Generations, including the establishment of a national compensation scheme
  - 2010 the United Nations Committee on the Elimination of Racial Discrimination recommended that a compensation payment scheme be implemented for members of the Stolen Generations
  - 2010 the United Nations Rapporteur James Anaya recommended that the Australian Government collaborate with the Australian Human Rights Commission to ensure that adequate remedies, including compensation, be provided ‘as a matter of urgency to the Stolen Generations survivors’.<sup>97</sup>
- 2.91** More recently, it was noted during the United Nations Universal Periodic Review of Australia on 9 November 2015 that Australia still has significant progress to make in relation to its treatment of Aboriginal and Torres Strait Islander people.<sup>98</sup>

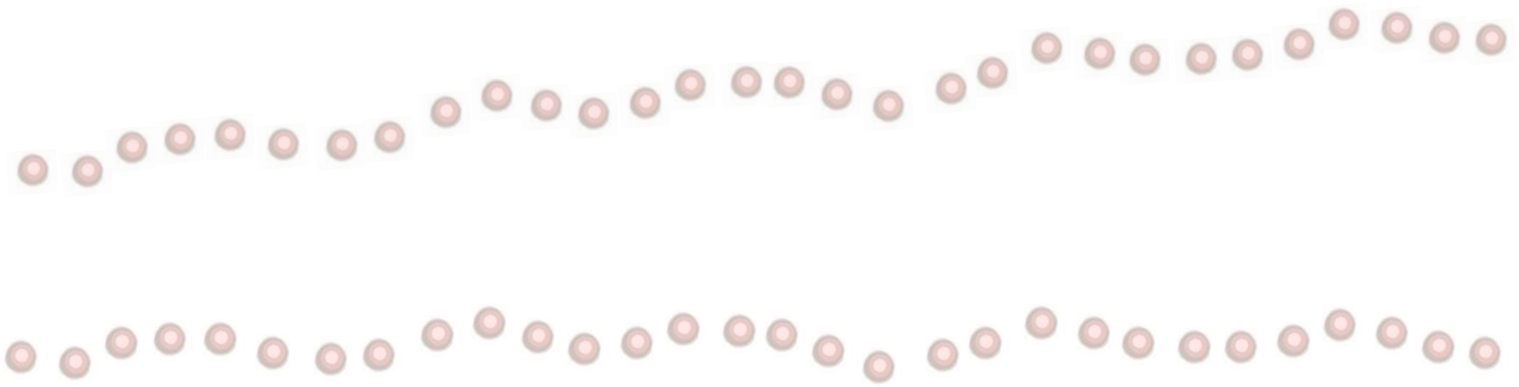
***Committee comment***

- 2.92** The remaining chapters of this report will focus on how the needs of Stolen Generation survivors and their descendants can be addressed in New South Wales, including recommendations as to appropriate forms of reparation, including monetary compensation and other non-monetary measures.

<sup>96</sup> Submission 12, Royal Australian and New Zealand College of Psychiatrists, p 3.

<sup>97</sup> Submission 19, Herbert Smith Freehills, pp 39-40.

<sup>98</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, A/HRC/31/14*, 31<sup>st</sup> sess, Agenda Item 6 (13 January 2016) 28-29. .



## Chapter 3 A legacy of trauma and loss

The impacts of past forcible removal policies and practices have been everlasting for members of the Stolen Generations and their families. Feelings of grief, loss, and not belonging continue to run strong, with survivors experiencing ongoing trauma as a result of being forcibly removed from their families and communities. The legacy of trauma and loss of identity has also had intergenerational impacts, with descendants and family members also affected by these past policies and practices.

### Ongoing impacts on Stolen Generation survivors

- 3.1** The impacts of past forcible removal policies and practices are well documented in the *Bringing them home* report.<sup>99</sup> This chapter does not seek to revisit in detail the experiences of those forcibly removed from their families, rather it will highlight how those impacts are still being experienced today.
- 3.2** Stolen Generation survivors expressed to the committee continuing feelings of grief, loss and not belonging, which are lifelong consequences from being removed and disconnected from family, community, culture and Country.<sup>100</sup>
- 3.3** Link-Up NSW explained that past forcible removal policies and practices have had lasting effects, with individuals continuing to feel ‘alienated from their own people and culture [due to] families being dispersed and broken down’.<sup>101</sup> This has resulted in significant social disadvantages, with ‘cycles of alcoholism, loss of identity and culture, over representation in the judicial system and the further disintegration of family units and community support’ (as will be discussed further in chapter 8).<sup>102</sup>
- 3.4** In the National Sorry Day Committee’s response to a discussion paper on the *Development of a renewed Aboriginal & Torres Strait Islander Social and Emotional Wellbeing framework*, the committee referred to the Healing Foundation’s 2009 discussion paper that highlighted that Aboriginal and Torres Strait Islander peoples are experiencing four types of unresolved trauma:
- Situational trauma – where specific situations such as death or forcible removal produce traumatic responses;
  - Ecological trauma – where chaotic environments contribute to trauma;

**“The memories are so vivid and the heartache so strong...”**

Ms Donna Meehan  
9 February 2016

<sup>99</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 154-214, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>100</sup> Evidence, Ms Lorraine McGee-Sippel, community member, 10 February 2016, pp 39-42; Evidence, Aunty Mary Terszak, community member, 9 February 2016, pp 43-48; Evidence, Aunty Lindy Lawler, community member, 2 March 2016, pp 25-29; Submission 45, Name suppressed, pp 1-2; Submission 46, Ms Margaret Roberts, pp 3-5.

<sup>101</sup> Submission 35, Link-Up NSW, p 2.

<sup>102</sup> Submission 35, Link-Up NSW, p 2.

- Cumulative trauma – where traumas such as daily racism, daily abuse or violence or poverty are repeated; and
- Intergenerational trauma – where trauma left unresolved in one generation it is often unwittingly handed down to the next generation through fear, shame, violence or abusive behaviour for example.<sup>103</sup>

**3.5** Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong and Stolen Generation survivor, advised that there are also different degrees of trauma, and that everyone experiences trauma differently.<sup>104</sup>

**3.6** Professor Norman Sheehan, Director, Gnibi College of Indigenous Australian Peoples, through his research on trauma and its effect on people, found that while people build resilience, trauma itself is something that does not go away: ‘the idea that there is a cure: there is not a cure’.<sup>105</sup>

**3.7** Similarly, the Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, explained that ‘never knowing who your family is, being made to feel ashamed that you are Aboriginal and less than human ... [causes] trauma [that] does not go away’.<sup>106</sup>

**3.8** Professor Sheehan advised that there are four outcomes from extreme trauma:

- freeze – a person feels they cannot do anything for the rest of their lives
- flight – a person runs away from their problems for the rest of their lives
- fight – a person fights with their families, community and authorities
- fracture – a person transfers their trauma on to others.<sup>107</sup>

**3.9** Professor Sheehan stated that the ‘fracture’ component should be acknowledged as an outcome that many people suffer from and this passing down of abuse is very difficult to deal with.<sup>108</sup> This concept is discussed in more detail later in this chapter under ‘Intergenerational impacts’.

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<sup>103</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 2, pp 5-6.

<sup>104</sup> Evidence, Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, 10 February 2016, p 31.

<sup>105</sup> Evidence, Professor Norman Sheehan, Director, Gnibi College of Indigenous Australian Peoples, 9 February 2016, p 31.

<sup>106</sup> Evidence, the Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, 5 November 2015, p 46.

<sup>107</sup> Evidence, Professor Sheehan, 9 February 2016, pp 34-35.

<sup>108</sup> Evidence, Professor Sheehan, 9 February 2016, pp 34-35.



### Case study: Survivors of Kinchela Aboriginal Boys' Training Home

For the men who went through Kinchela Aboriginal Boys' Training Home, memories of their time there are dark and sad, and for many, soul destroying. Boys at the Kinchela Aboriginal Boys' Training Home were subjected to horrendous abuse and punishment.

Uncle Manuel Ebsworth referred to the home as the 'Devil's playground' where, upon walking through the 'gate of hell', boys were stripped of their name and given a number, losing their identity forever: 'We could not find that little boy we left behind at the gate, that Manuel Ebsworth that I was supposed to be called'.<sup>109</sup> Uncle Richard Campbell considered the numbering system as 'a stepping stone' towards a future of institutionalisation, with many boys going on to become incarcerated as adults, mostly due to the hate that was fostered by their experiences in the home.<sup>110</sup>

Memories of abuse and punishment have left an unwelcome legacy for the men, with hatred, anger and resentment being lasting sentiments from their experiences. The men told of how it has been a life long struggle to overcome these strong emotions.

Uncle Lester Maher told the committee of the 'very deep hatred' he had for white people which he reasoned was 'understandable for all the stuff that we went through'.<sup>111</sup> This in turn led to a lack of 'respect for the authorities' and the desire to protect his family from the same cycle of separation: 'I became very protective of my own children because I have always said that no white bastard is going to take my kids away from me'.<sup>112</sup>

Hate and anger have also manifested into violence, as illustrated by Uncle Manuel who described how '[e]very time I had a drink if I saw a white fella come past me even if I did not know him I would just get up and flog him, kick piss out of him and enjoy that. That is how much hate that I had in me. I did not care what I did. A white man was an enemy. To me he was the devil'.<sup>113</sup> As Uncle Manuel explained: 'That is what hate does to do you. Because no child is born with hate, hate is bestowed upon you'.<sup>114</sup>

Painful memories are felt not only by those who were abused and punished but also by those who witnessed it occur to others. As Uncle Richard explained, there were a lot of boys at Kinchela Aboriginal Boys' Training Home who did not get punished themselves, but live with the memories of having seen it happen to others: '[T]hey actually [saw] the punishment of the other boys and that is still stirring around in their brain and in their memories. And they are affected by it too'.<sup>115</sup>

<sup>109</sup> Evidence, Uncle Manuel Ebsworth, Chair, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 4.

<sup>110</sup> Evidence, Uncle Richard Campbell, Secretary, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 4.

<sup>111</sup> Evidence, Uncle Lester Maher, Vice Chair, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 7.

<sup>112</sup> Evidence, Uncle Lester, 7 December 2015, p 7.

<sup>113</sup> Evidence, Uncle Manuel, 7 December 2015, p 7.

<sup>114</sup> Evidence, Uncle Manuel, 7 December 2015, p 7.

<sup>115</sup> Evidence, Uncle Richard, 7 December 2015, p 6.

The serious abuse and mistreatment at Kinchela Aboriginal Boys' Training Home has also meant that love is an unfamiliar concept to many of the men. As noted by Uncle Manuel, growing up in the home deprived him of the word and its meaning, which in turn affected his relationships later in life:

'We never ever heard the word "love" and we do not know the meaning of it. And our children and our wives have suffered because we could not tell them that we loved them, because we did not know the meaning. And it hurts us very bad that we cannot tell our wives and our children that we love them because we do not understand the word – it is foreign to us.'<sup>116</sup>

### **Lack of identity and 'not belonging'**

- 3.10** Stolen Generation survivors continue to experience a disconnect from their identity and culture as a result of being forcibly removed from their families and communities. Many still do not know who they are, who or where their family is or where they belong.
- 3.11** Ms Eliza Hull, Principal Solicitor at Warra Warra Legal Service reflected that the disconnection with family has left Stolen Generation survivors with a sense 'that they have lost something that they cannot get back'. She observed that grief and loss have led to survivors being unable to identify and function within both the Aboriginal community and the wider community.<sup>117</sup>
- 3.12** Ms Donna Meehan, who was removed from her family when she was about four years old, described how she spent her childhood in a foster home believing she was unwanted. The pressure to fit into a 'white world' left her 'wanting to commit suicide at the age of 21 due to the overwhelming feelings she had about not belonging: 'I never belonged anywhere. I was isolated, felt inferior, and did not feel good enough'.<sup>118</sup>
- 3.13** Aunty Lindy Lawler, who was also removed from her family and forced to grow up in several foster homes, said that being removed had caused her to 'grow up disconnected from the Aboriginal community' leaving her to question who she was and who her family was.<sup>119</sup> She explained that by not having a connection to her family and culture it was now 'difficult to piece the memories together to understand our history and our stories. It is like a jigsaw puzzle'.<sup>120</sup>
- 3.14** Civil Liberties Australia noted that many Aboriginal children who were removed have grown up 'believing they were unwanted, abandoned or forgotten'.<sup>121</sup>
- 3.15** This loss of identity and culture has created feelings of rejection and low self-worth which continue to plague members of the Stolen Generations. Ms Sandra Bolt, Board Member of the Jali Local Aboriginal Land Council, said that the loss of connection to family, community

<sup>116</sup> Evidence, Uncle Manuel, 7 December 2015, p 5.

<sup>117</sup> Evidence, Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Service, 17 February 2016, p 6.

<sup>118</sup> Evidence, Ms Donna Meehan, community member, 9 February 2016, p 43.

<sup>119</sup> Evidence, Aunty Lindy, 2 March 2016, p 25.

<sup>120</sup> Evidence, Aunty Lindy, 2 March 2016, p 25.

<sup>121</sup> Submission 38, Civil Liberties Australia, p 7.

and land had left people with ‘no self-confidence’ because they did not have pride in who they were and where they were from:

I look at people who I believe to be confident and I look at my family, my sister’s family, and think they have no self-confidence. And I try to find answers for why they are like this. And then I sort of put it down to, in order to become a happy, healthy, confident person, you have to have pride, pride in who you are and where you are from. And to me, personally, knowing your mob, your community, your connection to the land is very important.<sup>122</sup>

**3.16** Likewise, Ms Julie Perkins, Chairperson of Gurehlgam Corporation Limited, was of the opinion that without a ‘strong identity in terms of where you are from and your mob’ then you start to notice people becoming ‘a bit of a lost sort of soul’.<sup>123</sup>

**3.17** The committee heard that returning home to find out who you are and where you belong invites the possibility of added rejection for many Stolen Generation survivors. As Ms Meehan explained, ‘[n]o-one understands the pressure or fear of going back home to meet the mob and the thought of fear and rejection even from your own’.<sup>124</sup> She went on to say ‘you never really feel complete in your birth family; you are different’.<sup>125</sup>

**3.18** This sentiment was echoed by Aunty Mary Terszak, who shared her experience of returning home and feeling like she did not belong:

Your feet do not sit in the black world, and they do not sit in the white world. You are in between. Family think we are different, when you meet up with the mob that is supposed to be your own family. You are rejected; you are called a ‘coconut’ because you are a bit fairer and you dress different and talk different.<sup>126</sup>

**3.19** Aunty Mary also recalled the day she met her birth mother and the disappointment she felt when she could not reconcile the expectations of the little girl inside her and the woman she was now:

It was the worst day. I was hoping the ground would open up and swallow me. I met this little, old, dark lady—Indian-Aboriginal. She had no teeth. She had a plaster on her leg, her hair in a ponytail, big glasses on, and she was just staring at me. I felt like telling her to stop staring, that I did not like her, because the two-year-old child was looking for something else.<sup>127</sup>

**3.20** As one submission author detailed, the past forcible removal policies and practices broke bonds between siblings, ‘parents, family members, Country, community and culture ... basically destroy[ing] them and their identity’.<sup>128</sup> Even with the passing of time, they noted

<sup>122</sup> Evidence, Ms Sandra Bolt, Board Member, Jali Local Aboriginal Land Council, 8 December 2015, p 22.

<sup>123</sup> Evidence, Ms Julie Perkins, Chairperson, Gurehlgam Corporation Limited, 8 December 2015, p 7.

<sup>124</sup> Evidence, Ms Meehan, 9 February 2016, p 43.

<sup>125</sup> Evidence, Ms Meehan, 9 February 2016, p 44.

<sup>126</sup> Evidence, Aunty Mary, 9 February 2016, p 46.

<sup>127</sup> Evidence, Aunty Mary, 9 February 2016, p 47.

<sup>128</sup> Submission 45, Name suppressed, p 2.



there 'is still that sadness, loneliness and emptiness from not having those many close relationships with the people you should love and do love'.<sup>129</sup>

### Case study: Cootamundra Aboriginal Girls' Training Home

'Think White, Look White, Act White'. This was the doctrine Aboriginal girls were forced to believe and adopt during their time at the Cootamundra Aboriginal Girls' Training Home. The adoption of a 'white' identity and 'white' values, as a method of assimilation, has been referred to as brainwashing by Cootamundra Aboriginal Girls' Training Home survivors.<sup>130</sup> This brainwashing impacted the girls' ability to connect with their culture and people. As one survivor said: 'All Aboriginal identity was wiped off. Being young and brainwashed thinking you're white when you're black, it's a very hard thing to face. It's very hard at our age now to associate with our own people'.<sup>131</sup>

Other survivors spoke about the confusion they felt growing up – thinking they were white but also trying to resolve their Aboriginality: 'Most of us girls were thinking white in the head but were feeling black inside. We weren't black or white. We were a very lonely, lost and sad displaced group of people'.<sup>132</sup> As one survivor explained:

'When they went to mix in white society, they found they were not accepted [because] they were Aboriginal. When they went and mixed with Aborigines, some found they couldn't identify with them either, because they had too much white ways in them. So that they were neither black nor white. They were simply a lost generation of children. I know. I was one of them'.<sup>133</sup>

Unfortunately, many girls left the home 'believing their parents had rejected them and they would not be welcome if they returned. Others did not have the information they required to return home'.<sup>134</sup>

As a state run institution, Cootamundra Aboriginal Girls' Training Home deprived the girls of love and family. Aunty Shirley McGee described how she 'play[ed] up all the time', eventually being transferred to Parramatta Girls Home, all 'because nobody showed me love; nobody said goodnight or tucked the girls in or kissed us and said, "Goodnight. Have a good sleep." We had none of that. Nobody showed us love. All they did was be cruel to us'.<sup>135</sup> Aunty Shirley went on to say that the experiences and memories of Cootamundra Aboriginal Girls' Training Home still make her cry, in particular the lies she was told regarding her parents' whereabouts.

Aunty Doreen Webster recounted how the trauma of being at Cootamundra Aboriginal Girls' Training Home led her to become an alcoholic at one point in her life, falling into the same trap of her mother who also became an alcoholic as a way to cope with the removal.<sup>136</sup>

<sup>129</sup> Submission 45, Name suppressed, p 2.

<sup>130</sup> Submission 36a, Coota Girls Corporation, p 13.

<sup>131</sup> Submission 36a, Coota Girls Corporation, p 13.

<sup>132</sup> Submission 36a, Coota Girls Corporation, p 13.

<sup>133</sup> Submission 36a, Coota Girls Corporation, p 13.

<sup>134</sup> Submission 36a, Coota Girls Corporation, p 14.

<sup>135</sup> Evidence, Aunty Shirley McGee, community member, 6 November 2015, p 4.

<sup>136</sup> Evidence, Aunty Doreen Webster, community member, 6 November 2015, p 8.

A lasting impact for Aunty Isabel Reid has been the mystery concerning the whereabouts of her brother, Jack Hampton, whom she has not seen since she was taken to Cootamundra: 'I have not seen him from that day to this. I have tried everything. I have put ads in the papers, including in the Koori Mail. All to no avail'.<sup>137</sup> For Aunty Isabel what is most heartbreaking is the fact that she still does not know his whereabouts after all this time.<sup>138</sup>

## Intergenerational impacts

- 3.21** A large number of inquiry participants spoke about intergenerational impacts of trauma, grief and loss and the importance of recognising such trauma in order to find ways to deal with it. Participants also highlighted the difficulties in ending the cycle of trauma transference.
- 3.22** The *Bringing them home* report clearly documented the significant intergenerational impacts that have arisen as a result of past forcible removal policies and practices. It stated that there was 'overwhelming evidence ... that the impact does not stop with the children removed. It is inherited by their own children in complex and sometimes heightened ways'.<sup>139</sup>
- 3.23** The concept of intergenerational trauma was defined in the Healing Foundation's 2013 *Growing Our Children Up Strong and Deadly* report, which explained that intergenerational trauma is 'a form of historical trauma that is transmitted across generations'.<sup>140</sup> Citing research from Atkinson, Nelson and Atkinson (2010), the report defined intergenerational trauma as 'the subjective experiencing and remembering of events in the mind of an individual or the life of a community, passed from adults to children in cyclic processes'.<sup>141</sup>
- 3.24** Ms Burney told the committee that when an individual or an entire generation loses their identity it creates 'complete chaos' with that trauma being passed on to other generations.<sup>142</sup>
- 3.25** Ms Hull said that many clients of the legal service 'have suffered intergenerational grief, sadness and loss in relation to past government policies'. She reflected on the pervasiveness of intergenerational impacts and the 'subsequent lack of understanding, lack of specialist services and policies to deal with the issues which stem from that loss'.<sup>143</sup>

<sup>137</sup> Evidence, Aunty Isabel Reid, community member, 6 November 2015, p 2.

<sup>138</sup> Evidence, Aunty Isabel, 6 November 2015, p 2.

<sup>139</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 193, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>140</sup> Healing Foundation, *Growing Our Children Up Strong and Deadly* (2013), p 3, <[http://healingfoundation.org.au/wordpress/wp-content/files\\_mf/1369185755GrowingourChildrenupsinglesfeb2013.pdf](http://healingfoundation.org.au/wordpress/wp-content/files_mf/1369185755GrowingourChildrenupsinglesfeb2013.pdf)>

<sup>141</sup> Healing Foundation, *Growing Our Children Up Strong and Deadly* (2013), p 3, <[http://healingfoundation.org.au/wordpress/wp-content/files\\_mf/1369185755GrowingourChildrenupsinglesfeb2013.pdf](http://healingfoundation.org.au/wordpress/wp-content/files_mf/1369185755GrowingourChildrenupsinglesfeb2013.pdf)>

<sup>142</sup> Evidence, Ms Burney, 5 November 2015, p 46.

<sup>143</sup> Evidence, Ms Hull, 17 February 2016, pp 3 and 6.

- 3.26** Ms Kylie Gilmore, Practice Manager, Walgett Aboriginal Medical Service, told the committee that intergenerational trauma could clearly be seen within her community:

Intergenerational trauma, you see it every day in Walgett. It exists in our primary schools, it exists in our preschools and it exists in our high schools. We see it on the street every day.<sup>144</sup>

**“We lost everything. We lost the love of a mother. I never had a father’s hug. We have to live with that. We live with it every day. We cannot erase it. It happened”**

Aunty Mary Terszak  
9 February 2016

- 3.27** Legal Aid NSW noted that unresolved, intergenerational trauma is contributing to entrenched socioeconomic disadvantage in Aboriginal communities:

Concerns have been voiced that some Indigenous communities are experiencing intergenerational cycles of adversity and trauma, leading to entrenched social problems including poverty, high levels of violence, child abuse and neglect, and individual, family and community dysfunction.<sup>145</sup>

- 3.28** Intergenerational trauma, for the most part, has been transferred unknowingly to younger generations and to those closely connected with Stolen Generation survivors through behaviours, attitudes and values. Ms Hocking spoke about her own personal experience of transferring her trauma on to her family:

I passed it on to my children—not knowingly or deliberately. Those are the things we want to start talking about and the incidence of family violence and incarcerations. We can lead it back to accounts of trauma. It is scientifically proven now.<sup>146</sup>

- 3.29** The families of former residents of the Kinchela Aboriginal Boys’ Training Home have also been traumatised, both as a result of learning how individuals were treated in the home, and in their attempts to support the men:

[The families] trauma has been the result of trying to support the KBH Men and yet being the victims of the behaviours instilled during their time at KBH, including alcohol and substance abuse, domestic violence and social and emotional disconnection.<sup>147</sup>

- 3.30** In addition, many descendants of Kinchela men have been unable to find their place within Aboriginal communities due to not having ‘stories to tell about their parents, families and the communities they come from ... because their parent(s) are members of the Stolen Generations’.<sup>148</sup> This is compounded by an ‘inability to relate and talk to their fathers and family members who went through the Kinchela Boys’ Home’.<sup>149</sup>

<sup>144</sup> Evidence, Ms Kylie Gilmore, Practice Manager, Walgett Aboriginal Medical Service, 18 February 2016, p 40.

<sup>145</sup> Submission 32, Legal Aid NSW, p 21.

<sup>146</sup> Evidence, Ms Hocking, 10 February 2016, p 31.

<sup>147</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 8.

<sup>148</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 8.

<sup>149</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, pp 8-9.



- 3.31** Ms Paulette Whitton, whose father went to Kinchela Aboriginal Boys' Training Home, expressed how it was not only children and family members but also partners of Stolen Generation survivors who have been impacted. She referred to the experience of her parents, and her mother's strength in standing by Paulette's father:

A lot of partners have not been able to stick around with their men because of all the traumatic issues and stuff that they have not dealt with. Then there are other strong women who have put themselves through the wringer, like my mum, to stay. They need to be heard as well.<sup>150</sup>

- 3.32** Link-Up NSW advised that intergenerational trauma is an issue for people even if they were not directly affected by past forcible removal policies and practices due to the 'reoccurring narrative among Aboriginal people of that generation of denying we were Aboriginal'.<sup>151</sup>

### Case study: Impacts on parenting skills

Disconnection from family, community and culture has also culminated in fractured relationships, with Stolen Generation survivors commonly left without the knowledge or skills to effectively parent their children. The committee heard a number of stories about survivors (or descendants of survivors) simply not knowing how to show affection, love or support to their children.

Ms Whitton shared her personal story, explaining how her father, a former Kinchela Aboriginal Boys' Training Home resident, was affected by his experience in the home and the impact this had on their relationship.

'Some of the things I experienced as a child of a KBH [Kinchela Boys Home] man were that Dad's idea of discipline was, I guess, pretty harsh. I had a bit of a hiding there one time that was a little bit more than a slap on the bottom. Dad had alcohol issues and I had a childhood of pulling him out of pubs all the time. I was the eldest child and Mum was raising another kid, really, so—I do not like to say this to put my dad down, but I grew up with very little respect for him as my father. He was there physically but not emotionally. He was not looking out for me like a dad should ... He had no idea how to parent. He was like an absent parent even though he was there. I could see the difference, because Mum was always there... I was angry at Dad for pretty much all my young life. I said I hated him...'<sup>152</sup>

It was not until 2002 at the first reunion held for the men of Kinchela Aboriginal Boys' Training Home that Ms Whitton came to realise that her situation was not unique – there were other families just like hers. With this came the understanding that what she had gone through as a child was not her father's fault but was a consequence of being a Kinchela boy. As Ms Whitton said: 'I started to understand why he was like he was. Since that day ... I think our relationship has got much better. Over the years he has even trusted me with information and stories that he did not want us to know'.<sup>153</sup>

<sup>150</sup> Evidence, Ms Paulette Whitton, community member, 9 February 2016, p 53.

<sup>151</sup> Submission 35, Link-Up NSW, p 4.

<sup>152</sup> Evidence, Ms Whitton, 9 February 2016, pp 49-50.

<sup>153</sup> Evidence, Ms Whitton, 9 February 2016, p 50.

- 3.33** A number of inquiry participants indicated that many people who experience trauma have difficulty understanding and resolving it.
- 3.34** Ms Shaan Hamann, Partner, Winangali Marumali, indicated that ‘it is the legacy of the first generation members, what they leave behind is carried through’ with no one solution that could break the transfer of this trauma.<sup>154</sup>
- 3.35** Ms Hocking noted that regardless if a person knows they are connected to a Stolen Generation survivor or not, they may have complex layers of trauma, with many people unable to recognise it or identify where it stems from. She said it was important to ‘understand the pattern that it [intergenerational trauma] follows and how it is transferred’ so as to help parents recognise it, understand it and deal with it in order to break the cycle.<sup>155</sup>
- 3.36** Mr Ricco Lane, Aboriginal Mental Health Program Worker, Walgett Aboriginal Medical Service, advised that many people who come and see him cannot identify why they have these feelings and often blame other issues, such as alcohol and drugs, instead of targeting ‘the real problem at hand’.<sup>156</sup> Mr Lane suggested it is difficult to treat this trauma as ‘they can’t tell you what is wrong with them and we can’t find out what is wrong with them because they can’t process or know what the feelings are’.<sup>157</sup>
- 3.37** Mr Tim Ireland, Chief Executive Officer from the Aboriginal Child, Family and Community Care State Secretariat (AbSec), highlighted that a ‘failure to address intergenerational trauma’ will continue to impact on Aboriginal families and communities into the future, as people have been left without ‘a sense of identity as they move into adulthood’, and an inability to build family capacity and cultural connection which would lead to empowerment.<sup>158</sup>

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<sup>154</sup> Evidence, Ms Shaan Hamann, Partner, Winangali Marumali, 9 February 2016, p 7.

<sup>155</sup> Evidence, Ms Hocking, 10 February 2016, p 31.

<sup>156</sup> Evidence, Mr Ricco Lane, Aboriginal Mental Health Program Worker, Walgett Aboriginal Medical Service, 18 February 2016, p 41.

<sup>157</sup> Evidence, Mr Lane, 18 February 2016, p 40.

<sup>158</sup> Evidence, Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, 9 February 2016, p 28.



### Case study: A cycle of absence - The Williams sisters

Sisters Gwen Hickling Williams and Jacqui Williams told the story of their maternal grandmother, who was removed from her family as a child, and their mother, who was also removed and placed in Cootamundra Aboriginal Girls' Training Home. The sisters explained to the committee how these removals impacted their upbringing.

Looking back on their childhood, the sisters agreed that they missed out on a mother's 'nurturing' care, commenting that their mother 'failed us in a big way' due to her lack of parenting skills.<sup>159</sup> Jacqui told the committee that she grew up in the family home dealing with issues of feeling unwanted, neglected and witnessing abuse.<sup>160</sup> However, it was not only their mother who was unable to show them love. Gwen said their father 'neglected us too', unable to show the girls that he cared for them.<sup>161</sup>

The sisters talked about how there was always a silence within the family about the past and what their mother went through. It was not until Jacqui was 24 that she found out her mother had been taken. Her response was one of shock. As Jacqui recounted:

'I said, "Why are you telling me this now?" She didn't tell anyone about it. Back then everything was taboo, you wasn't to tell your family. As it is, you were only told certain things and you were only allowed to do certain things and that's how it was with them'.<sup>162</sup>

Jacqui said that many Aboriginal people have trained themselves to keep silent on matters of the past, preferring to 'shut down' as the consequences of speaking out were greater than not saying anything at all.<sup>163</sup>

Jacqui and Gwen considered themselves lucky that they 'never became alcoholics or anything; we were able to get our act together'.<sup>164</sup>

Despite their experiences, the sisters have shown resilience and determination to get on with life. As Jacqui said: 'Either you step up to the plate or you don't ... you have to make your own choices. The choices that you make, you either say yes or no ... I'm a survivor'.<sup>165</sup>

<sup>159</sup> Evidence, Ms Jacqui Williams, community member, 8 December 2015, p 38.

<sup>160</sup> Evidence, Ms Jacqui Williams, 8 December 2015, p 38.

<sup>161</sup> Evidence, Ms Gwen Hickling Williams, community member, 8 December 2015, p 38.

<sup>162</sup> Evidence, Ms Jacqui Williams, 8 December 2015, p 38.

<sup>163</sup> Evidence, Ms Jacqui Williams, 8 December 2015, p 40.

<sup>164</sup> Evidence, Ms Gwen Hickling Williams, 8 December 2015, p 38.

<sup>165</sup> Evidence, Ms Jacqui Williams, 8 December 2015, p 40.

*Committee comment*

- 3.38** The committee is saddened by the pain and suffering Stolen Generation survivors have endured as a result of being forcibly removed from their families and the continuing impacts this has had on their lives. We acknowledge the difficulty members of the Stolen Generations have faced when trying to discover their Aboriginal identity, and the intense desire to belong felt by Stolen Generation survivors and their descendants.
- 3.39** The committee acknowledges the ongoing trauma caused by past forcible removal policies and practices and that this trauma is passed on to other generations as well as to the wider Aboriginal community. We note that intergenerational trauma is difficult to identify thus making it difficult for Aboriginal people to seek help for such issues, and recognise that there is no single solution to end the cycle of trauma.
- 3.40** The need to heal, and ways to heal, will be considered in the next chapter.



## Chapter 4 Healing

Let's be a family. Let's unite and get rid of all this hate which was the past and let's all heal together.<sup>166</sup>

This chapter focuses on the need for members of the Stolen Generations to heal from the trauma and loss discussed in chapter 3. It outlines a number of government-funded healing programs implemented after the *Bringing them home* report, including initiatives under the Aboriginal Affairs NSW strategy, Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE). It then considers the need for the workforce supporting members of the Stolen Generations to be trauma-informed.

The chapter also examines the effectiveness of counselling services under the previous Bringing Them Home Program and the current Social and Emotional Wellbeing Program, before concluding with alternative options to healing, including collective healing and healing centres.

### The need to heal

- 4.1 For Stolen Generation survivors and their families, healing is an important component of reparation. The importance and urgency of healing was a consistent message conveyed by inquiry participants.

*“In the wake of the National Apology, we are also learning more about the importance of healing given the impact of past policies of removal on our people and the intergenerational nature of that trauma that is passed onto our children”.*<sup>167</sup>

- 4.2 The Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, stressed how healing is ‘really, really important’ and fundamental to seeing positive changes in the community, not just for Aboriginal people but also for the country, as it is a ‘two-way healing that has to happen’.<sup>168</sup>
- 4.3 Uncle Richard Campbell, Secretary from Kinchela Boys’ Home Aboriginal Corporation, urged the committee to support the corporation so that it can help Stolen Generation survivors and their families in their healing journey and indicated how urgently this needs to occur:

<sup>166</sup> Evidence, Uncle Manuel Ebsworth, Chair, Kinchela Boys’ Home Aboriginal Corporation, 7 December 2015, p 9.

<sup>167</sup> Australian Human Rights Commission, *Social Justice and Native Title Report 2015, Aboriginal and Torres Strait Islander Social Justice Commissioner*, p 138, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

<sup>168</sup> Evidence, the Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, 5 November 2015, p 47.

This needs to happen now. Time is not on our side. We have lost four men this year alone and this will only continue. The loss of these men means they cannot be part of their families' healings which has a negative impact on attempts made to address the intergenerational trauma affecting those families who are left living with the pain of questions unanswered.<sup>169</sup>

### What is healing?

- 4.4 The concept of healing for Aboriginal people is different to non-Aboriginal people, as it is more holistic, spiritual and emotional, and it links to nature and the environment, with the involvement of not just the individual but their families and communities.<sup>170</sup>
- 4.5 The Healing Foundation defined Indigenous healing as restoring and reaffirming ones sense of pride in cultural identity, connection to Country and participation and contribution within the community through spiritual, emotional and social health and wellbeing.<sup>171</sup>
- 4.6 Ms Janelle Brown, Coordinator, Clarence Valley Aboriginal Healing Centre, also commented on the definition of healing:

Our definition is extremely broad. We see it as anything that improves the quality of life of Aboriginal people, either individually or collectively.<sup>172</sup>

### How to heal?

- 4.7 Inquiry participants referred to a range of activities that can help people heal, including individual counselling services, collective healing, healing centres, support groups, social activities, performance, music, art and poetry, storytelling, educational strategies, history and cultural studies and culture and language activities.<sup>173</sup>
- 4.8 Questioned on how to heal a person who has gone through so much, Mr Greg Telford, Managing Director, Rekindling the Spirit, said that it is not easy and it takes time, and that it depends on the willingness of the person to heal themselves.<sup>174</sup>
- 4.9 Mr Jeff Richardson, also from Rekindling the Spirit, said that as a Bringing Them Home counsellor, he looks at the whole person and concentrates on giving them the skills to 'empower them to take control of their own life again' in order to move forward.<sup>175</sup>

<sup>169</sup> Evidence, Uncle Richard Campbell, Secretary, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 3.

<sup>170</sup> Tabled document, Healing Foundation, *Prospective Cost Benefit Analysis of Healing Centres*, 22 July 2014, p 12.

<sup>171</sup> Tabled document, *Prospective Cost Benefit Analysis of Healing Centres*, p 12.

<sup>172</sup> Evidence, Ms Janelle Brown, Coordinator, Clarence Valley Aboriginal Healing Centre, 8 December 2015, p 2.

<sup>173</sup> Evidence, Ms Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, 9 February 2016, p 38; Evidence, Ms Joanne Taylor, Bringing Them Home worker, Albury Wodonga Aboriginal Health Service, 6 November 2015, pp 16-17; Submission 52, Parramatta Female Factory Precinct Memory Project, pp 4-5.

<sup>174</sup> Evidence, Mr Greg Telford, Managing Director, Rekindling the Spirit, 8 December 2015, pp 34-35.

- 4.10** Mr Richard Weston, Chief Executive Officer, Healing Foundation, similarly advised that ‘it is about people taking responsibility for their healing’ and building on the strength of culture and identity.<sup>176</sup>
- 4.11** Ms Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, emphasised that healing strategies need to ‘involve and allow people to express themselves’ across a variety of social and cultural activities that provide a comfortable environment for people to work through and take responsibility for their issues and problems.<sup>177</sup>
- 4.12** Link-Up NSW stated that the first thing that needs to be considered is the different models of healing that can address the individual and collective trauma suffered by Aboriginal people.<sup>178</sup>
- 4.13** A number of inquiry participants also emphasised that there needs to be a holistic approach to healing, provided by Aboriginal people, that meets both the individual and collective needs of members of the Stolen Generations.
- 4.14** For instance, Ms Brown advocated a holistic approach that incorporates ‘the mind, body and spirit’, and noted that healing is a long-term goal and should not be viewed as a quick fix.<sup>179</sup>
- 4.15** The Dharrivaa Elders Group suggested that the New South Wales Government support the development and implementation of ‘evidence-based healing and rehabilitation strategies’ that include ‘spiritual, mental and physical wellbeing’ healing activities, targeted at various age groups and cohorts.<sup>180</sup>
- 4.16** In a similar vein, Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Service, submitted that services supporting Stolen Generation survivors need to be holistic, culturally appropriate and governed by Aboriginal people.<sup>181</sup>
- 4.17** The importance of governance by Aboriginal people in relation to healing was raised by Link-Up NSW, which urged the committee to ensure that what healing looks like for members of the Stolen Generations are decided by Aboriginal people themselves.<sup>182</sup>
- 4.18** In addition, Ms Marsha Files, a community member, emphasised that a tailored approach to healing is important as a one-size-fits-all approach will never work as there are differences across each community:

I think it is important to implement different, I guess, healing programs within different communities to deal with some of the issues. I think that they need to be

<sup>175</sup> Evidence, Mr Jeff Richardson, Bringing Them Home counsellor, Rekindling the Spirit, 8 December 2015, p 29.

<sup>176</sup> Evidence, Mr Richard Weston, Chief Executive Officer, Healing Foundation, 9 February 2016, p 21.

<sup>177</sup> Evidence, Ms Dennis, 9 February 2016, p 38.

<sup>178</sup> Submission 35, Link-Up NSW Aboriginal Corporation, pp 4-5.

<sup>179</sup> Evidence, Ms Brown, 8 December 2015, p 2.

<sup>180</sup> Submission 29, Dharrivaa Elders Group, p 5.

<sup>181</sup> Evidence, Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Service, 17 February 2016, p 3.

<sup>182</sup> Submission 35, Link-Up NSW, p 7.

specific to the communities that they are aiming and targeted at because we are all different.<sup>183</sup>

### ***Committee comment***

- 4.19** It is clear to the committee that past forcible removal policies and practices of previous governments have had a devastating and lasting impact on Aboriginal people, and that the trauma, grief and loss caused by those practices and policies are still very much present in the lives of many Aboriginal people today.
- 4.20** The committee met with many people during the inquiry that voiced the urgency and importance of healing, a journey that should have been fully supported 20 years ago following the *Bringing them home* report. There is now a critical need to heal all those impacted by past forcible removal policies and practices, including Stolen Generation survivors who are now ageing, and their families, given intergenerational trauma is continuing to impact on Aboriginal communities today.
- 4.21** The committee recognises that the concept of healing for Aboriginal people is different and that each person's healing journey is unique. Any healing programs implemented to meet individual and collective needs must encapsulate a holistic approach and be decided on by, or at least involve genuine engagement with, Aboriginal people and communities. Programs must also be developed for the long term and be funded accordingly to ensure delivery.

## **Government-funded healing initiatives**

- 4.22** The committee was informed about some of the programs and services that the Australian and New South Wales governments have implemented in the area of healing for Aboriginal people since the *Bringing them home* report was implemented.
- 4.23** The *Bringing them home* report made a number of recommendations about healing, including:
- 33a. That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.
  - 33b. That government funding for Indigenous preventive and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.
  - 33c. That all government-run mental health services work towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.
  - 40a. That churches and other non-government welfare agencies that provide counselling and support services to those affected by forcible removal review those services, in consultation with Indigenous communities and organisations, to ensure they are culturally appropriate.
  - 40b. That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their

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<sup>183</sup> *In camera* evidence, Ms Marsha Files, community member, 17 February 2016, p 5. Evidence published by resolution of the committee.

families provide all possible support to Indigenous organisations delivering counselling and support services to those affected by forcible removal.<sup>184</sup>

- 4.24** Dr John Rule and Ms Elizabeth Rice, authors of the 2015 *Bringing them home: Scorecard Report*, found that recommendations 33a, b and c had made ‘significant progress in terms of consultation and report preparation’. In regards to recommendations 40a and b, the *Scorecard Report* noted the ‘valuable work in strengthening practice’ for counselling services, but that this work has been ‘undermined through the withdrawal of essential funding support in a range of program areas’.<sup>185</sup>
- 4.25** Following the *Bringing them home* report the Australian Government provided funding for a number of Aboriginal and Torres Strait Islander mental health programs, including the Bringing Them Home Program, the Social and Emotional Wellbeing Regional Centre program and the national network of Link-Up services.<sup>186</sup> The Bringing Them Home and Social and Emotional Wellbeing programs will be discussed in more detail later in this chapter.
- 4.26** In 1997-98 the New South Wales Government launched the *NSW Aboriginal Mental Health Policy: A Strategy for the Delivery of Mental Health Services for Aboriginal People in NSW*. The strategy recognised the mental health status of Aboriginal people impacted by past forcible removal policies and practices and aimed to develop policies based on Aboriginal ‘well-being’ models. In addition, funding was allocated to services for Aboriginal people to ‘address trauma, loss and grief issues’.<sup>187</sup>
- 4.27** More recently, healing was initiated into the state government’s policy through its 2013 Aboriginal Affairs NSW OCHRE strategy (discussed in chapter 2), and represented a commitment from the government ‘to work with Aboriginal communities to advance the dialogue about the trauma and loss experienced by Aboriginal people in NSW’.<sup>188</sup>
- 4.28** Following the implementation of OCHRE, Aboriginal Affairs NSW, in conjunction with the Healing Foundation, held *Healing Our Way*, a state-wide healing forum attended by over 200 delegates representing 68 organisations.<sup>189</sup> The healing forum facilitated an open discussion between Aboriginal community members, service providers involved in trauma and healing practices, and policy makers able to influence organisations response to healing.<sup>190</sup> A further

<sup>184</sup> Recommendations 33 and 40, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 345-346 and 363, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>185</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, pp 8-9.

<sup>186</sup> Correspondence from Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys’ Home Aboriginal Corporation, to Chair, 11 March 2016, Attachment A, p 1.

<sup>187</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, pp 17-18, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>188</sup> Submission 34, Department of Premier and Cabinet, p 5.

<sup>189</sup> Evidence, the Hon Leslie Williams MP, Minister for Aboriginal Affairs, 5 November 2015, p 2.

<sup>190</sup> NSW Department of Education & Communities, Aboriginal Affairs, *2014 OCHRE Healing Forum*, Mapu Yaan Gurri, Mapu Marrunggirr Healing Our Way, <<http://www.healingourway.com.au/>>

six healing forums are scheduled to take place around regional New South Wales during 2016-17.<sup>191</sup>

**4.29** The Department of Premier and Cabinet outlined the key findings from the *Healing Our Way* forum:

Key findings of the Forum are that there is no quick fix; trauma has had an impact on Aboriginal people and cultures over many generations; and healing is personal, unique and nuanced and must be allowed to take its own shape over time.<sup>192</sup>

**4.30** Mr Weston from the Healing Foundation commended the government for putting healing into its official policy. He said the *Healing Our Way* forum was a good start to commencing conversation on this important issue, and asserted that the government now needs to look at how to implement and respond to healing across New South Wales.<sup>193</sup>

**4.31** The Kinchela Boys' Home Aboriginal Corporation also praised the New South Wales Government for incorporating healing into state policy through the Aboriginal Affairs NSW OCHRE strategy. It noted the following key message from participants involved in the *Healing Our Way* forum:

Following on from the Healing Forum government should support the holding of local forums held by Aboriginal communities, which would enable local communities to determine their own priorities and ways of healing. The dialogue needs to continue and be driven by Aboriginal people and by local communities.<sup>194</sup>

**4.32** The Law Society of New South Wales noted the government's recognition of the need for healing to address the intergenerational nature of the trauma affected by Aboriginal people and suggested the healing work through the Aboriginal Affairs NSW strategy, OCHRE should be connected to reparation work for members of the Stolen Generations.<sup>195</sup>

**4.33** Herbert Smith Freehills agreed, however, said that there is a perception amongst agencies supporting members of the Stolen Generations that 'the healing element of the OCHRE policies has not been adequately developed and therefore has had limited impact'.<sup>196</sup>

**4.34** Similarly, the Clarence Valley Healing Centre submitted that although the New South Wales Government has recognised the need for healing and held a healing forum, not enough has been done to date:

Progress has been way too slow. Three years down the track there now needs to be more than just the occasional 'dialogue' about trauma and healing, talk needs to be put into practice.<sup>197</sup>

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<sup>191</sup> Evidence, Minister Williams, 5 November 2015, p 2.

<sup>192</sup> Submission 34, Department of Premier and Cabinet, p 5.

<sup>193</sup> Evidence, Mr Weston, 9 February 2016, p 23.

<sup>194</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, pp 14-15.

<sup>195</sup> Submission 28, Law Society of NSW, p 3.

<sup>196</sup> Submission 19, Herbert Smith Freehills, p 12.

<sup>197</sup> Submission 39, Clarence Valley Healing Centre, p 4.

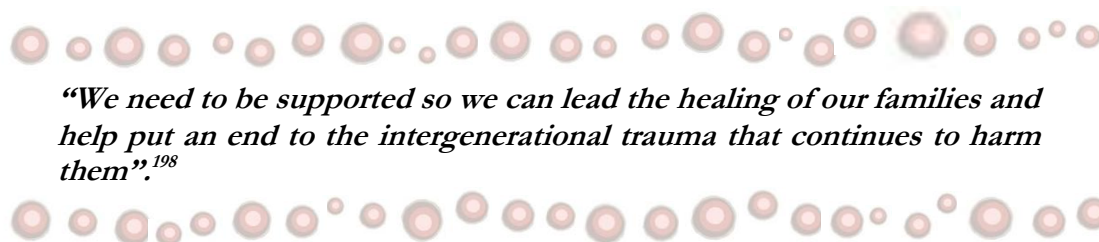


*Committee comment*

- 4.35 The committee commends the New South Wales Government for incorporating healing into its Aboriginal Affairs strategy, OCHRE, and for initiating the *Healing Our Way* forum, but more work needs to be done in this area, with particular attention to healing programs specifically for Stolen Generation survivors.
- 4.36 The remainder of the chapter will consider such programs aimed at addressing the healing of those impacted by past forcible removal policies and practices and the wider Aboriginal community, and the need for additional healing initiatives, programs, forums and centres, for individuals, families and communities affected by past forcible removal policies and practices.

**The need for a trauma-informed workforce**

- 4.37 Chapter 3 discussed the different types of trauma, intergenerational issues linked to trauma and the lack of understanding and awareness of trauma relating to past forcible removal policies and practices. Beyond this, several inquiry participants highlighted the need for a trauma-informed workforce to support Stolen Generation survivors, in order to help break the cycle of trauma and assist individuals to heal.



- 4.38 The Parramatta Female Factory Precinct Memory Project quoted Professor Russell Meares from the University of Sydney, who highlighted the importance of recognising the impact of trauma on mental health:

Failure to acknowledge the reality of trauma and abuse in the lives of children and the long-term impact on the lives of adults is considered to be one of the most significant clinical and moral deficits of current mental health approaches, with only the most inadequate forms of service delivery available.<sup>199</sup>

- 4.39 The Clarence Valley Healing Centre indicated that most workers providing support to Aboriginal communities – although highly qualified – lack expertise in trauma-informed practices. It recommended that additional funding be allocated for:
- training on trauma-informed practices to all service provider staff working closely with Aboriginal communities
  - more opportunities for workers to undertake tertiary qualifications in trauma and healing

<sup>198</sup> Evidence, Uncle Richard, 7 December 2015, p 2.

<sup>199</sup> Submission 52, Parramatta Female Factory Precinct Memory Project, p 5, citing Dr Cathy Kezelma and Dr Pam Stavropoulos, ‘The last frontier: Practice guidelines for treatment of complex trauma and trauma-informed care and service delivery’ (2012).

- programs that incorporate trauma-informed practices to be provided to Aboriginal communities and traumatised individuals in general
- trauma-informed strategies, practices, policies and procedures within government and non-government agencies, organisations and service providers which provide support to Aboriginal communities.<sup>200</sup>

4.40 When questioned on the lack of trauma-informed, culturally sensitive practices across government and non-government agencies, Aunty Lorraine Peeters, Director, Winangali Marumali, stated:

The lack of trauma-informed workers across Australia is huge. A lot of departments that work with or beside Aboriginal people do not understand. For some reason it is not taught in universities.<sup>201</sup>

4.41 Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, argued ‘that we will never close the gap in physical and mental health until we start looking at the trauma, the impact of trauma’ and recommended the government lose the five year plans, strategic plans and mental health plans as these ‘are missing the point hugely’. She went on to suggest that we need to ‘deal with the trauma’ before looking into healing programs and emphasised not putting ‘the cart before the horse’.<sup>202</sup>

4.42 Dr Rule told the committee that a trauma-informed workforce can be made possible ‘through education, department activities’ and ‘training of the healthcare workforce at all levels’.<sup>203</sup>

4.43 The committee heard about a number of trauma-informed workforce initiatives that are either in place or being implemented across the state. For example, Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health, advised that a significant amount of expenditure is already allocated to support Aboriginal family health workers within NSW Health to work with the Aboriginal community on issues of intergenerational trauma under a trauma-informed care model.<sup>204</sup>

**“...we will never close the gap in physical and mental health until we start looking at the trauma, the impact of trauma...”**

Ms Debra Hocking  
10 February 2016

4.44 Similarly, Mr Weston informed the committee that the Healing Foundation is currently working on ‘creating a model for a trauma-informed organisation and a trauma-informed approach to services’ that is not looking at creating something new but looking at existing

<sup>200</sup> Submission 39, Clarence Valley Healing Centre, pp 2-3.

<sup>201</sup> Evidence, Aunty Lorraine Peeters, Director, Winangali Marumali, 9 February 2016, p 5.

<sup>202</sup> Evidence, Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, 10 February 2016, p 37.

<sup>203</sup> Evidence, Dr John Rule, co-author of the 2015 *Bringing them home: Scorecard Report*, 9 February 2016, p 12.

<sup>204</sup> Evidence, Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health, 5 November 2015, p14.

services and their understanding of trauma and the way this is incorporated in service delivery.<sup>205</sup>

- 4.45 Ms Hocking also advised that she will be running Australia's first Indigenous trauma recovery program through the University of Wollongong in July 2016. The program has been 'developed by Aboriginal people for Aboriginal people' and will start by admitting and understanding the impact trauma is having on the Aboriginal community. Ms Hocking said that the program is open to everybody and she has 'received applications from psychologists, lawyers, policemen as well as Elders'. She emphasised that it needs to be a 'united front on which we do this'.<sup>206</sup>

#### ***Committee comment***

- 4.46 The committee acknowledges the ongoing trauma experienced by members of the Stolen Generations as a result of past forcible removal policies and practices, and the intergenerational trauma that continues to impact Aboriginal communities today.
- 4.47 We are concerned that the workforce providing services to Aboriginal communities may not be adequately trained in dealing with trauma and recognise that there is a need for additional training and support to be offered to build a trauma-informed workforce. The committee therefore recommends that the New South Wales Government develop a plan to build a trauma-informed workforce to support Stolen Generation survivors and their families and communities.

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#### **Recommendation 6**

That the NSW Government develop a plan to build a trauma-informed workforce to support Stolen Generation survivors and their families and communities.

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### **Counselling services**

- 4.48 Inquiry participants expressed a range of concerns about the counselling services provided under the previous Bringing Them Home Program and current Social and Emotional Wellbeing Program. They also highlighted the need for more funding and support of specialist and culturally appropriate counselling services and healing programs for members of the Stolen Generations.

#### **Bringing Them Home and Social Emotional Wellbeing programs**

- 4.49 In response to the *Bringing them home* report the Australian Government allocated \$62.85 million between 1998-2001 to establish a number of programs, including the:
- Bringing Them Home Program – which provided funding for 105 counsellor positions across Australia, including 17 positions in New South Wales and the Australian Capital

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<sup>205</sup> Evidence, Mr Weston, 9 February 2016, p 22.

<sup>206</sup> Evidence, Ms Hocking, 10 February 2016, pp 30-31.

Territory. The program provided counselling and support to individuals, families and communities impacted by past forcible removal policies and practices.

- Social and Emotional Wellbeing Regional Centre Program – which provided professional support and training to Bringing Them Home staff, Link-Up staff and other relevant mental health workers across 14 centres across Australia (two of which were in New South Wales).<sup>207</sup>

**4.50** The 2007 *Evaluation of the Bringing Them Home and Indigenous Mental Health Programs: Final Report* concluded that the Bringing Them Home Program had provided services to many Aboriginal and Torres Strait Islander people in a culturally appropriate manner and reported on high levels of client satisfaction and positive outcomes from these services.<sup>208</sup>

**4.51** The report did, however, note some limitations of the program, including:

- a lack of focus and priority on first generation members of the Stolen Generations
- inconsistent levels of staff skills and qualifications in key roles, with a lack of sufficient training and professional and workforce support
- inconsistent service delivery due to variability in implementation and lack of guidelines
- limited geographical coverage with very little outreach work
- management and administrative issues, including inconsistencies with reporting mechanisms, lack of role clarity, program promotion, evaluation and monitoring, and problems coordinating with other programs and services and data management.<sup>209</sup>

**4.52** The evaluation reported that the performance of the Social and Emotional Wellbeing Regional Centres varied. It found that most centres only focused on development and training and did not adequately provide training needs assessments, support to the health workforce and development of cross-sector linkages. As with the Bringing Them Home Program, the centres also lacked consistency of service delivery and geographical coverage.<sup>210</sup>

**4.53** In 2011-12 the Australian Government consolidated the Bringing Them Home Program and Link-Up services under a new Social and Emotional Wellbeing Program. The objective of the Social and Emotional Wellbeing Program was to enhance existing service delivery through a more flexible model and increase the capacity to meet demands. The program did not change the way services were being provided or the primary roles of counsellors, who were still to provide services to Aboriginal people impacted by past forcible removal policies and

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<sup>207</sup> Office for Aboriginal and Torres Strait Islander Health, 'Evaluation of the Bringing Them Home and Indigenous Mental Health Programs Final Report', (2007) pp i and 1-3 and 20.

<sup>208</sup> Office for Aboriginal and Torres Strait Islander Health, 'Evaluation of the Bringing Them Home and Indigenous Mental Health Programs Final Report', (2007) p ii.

<sup>209</sup> Office for Aboriginal and Torres Strait Islander Health, 'Evaluation of the Bringing Them Home and Indigenous Mental Health Programs Final Report', (2007) pp iii-iv.

<sup>210</sup> Office for Aboriginal and Torres Strait Islander Health, 'Evaluation of the Bringing Them Home and Indigenous Mental Health Programs Final Report', (2007) p iv.

practices.<sup>211</sup> However, the names of these positions were changed from ‘Bringing Them Home counsellors’ to ‘Social and Emotional Wellbeing counsellors’.

- 4.54** Relevant to the governance framework for this program, the Australian Government established the Indigenous Advancement Strategy in 2014, which consolidated more than 150 Indigenous policies and programs delivered by government, including the Social and Emotional Wellbeing Program, into five overarching streams: Jobs, Land and Economy, Children and Schooling, Safety and Wellbeing, Culture and Capability and Remote Australia Strategies.<sup>212</sup>
- 4.55** A number of inquiry participants raised concerns with the previous Bringing Them Home Program and the current Social and Emotional Wellbeing Program.
- 4.56** The Coota Girls Corporation expressed the view that the Bringing Them Home Program lacked a coherent policy base, commenting that reviews of the program found it to ‘be inadequate, unsuitable, ineffective and unable to meet the specific needs of members of the Stolen Generations’.<sup>213</sup>
- 4.57** On the other hand, the Aboriginal Health and Medical Research Council stated that reports had been published which indicated some effectiveness to counselling services, but given the complexity of issues due to past forcible removal policies and practices, there had been a need for ‘more resourcing, standardisation and clarity’ around the counsellor roles.<sup>214</sup>
- 4.58** In addition, the Aboriginal Health and Medical Research Council stated that continual changes to the funding and nature of the program, and job roles, have seen a loss of priority to Stolen Generation survivors, which has caused frustration amongst the workforce and an increase in Social and Emotional Wellbeing counsellor vacancies across the state. However, the council noted that regardless of the changes, some workers continue to identify as Bringing Them Home counsellors to provide a focus on the needs of members of the Stolen Generations.<sup>215</sup>
- 4.59** Ms Joanne Taylor, a Bringing Them Home worker at the Albury Wodonga Aboriginal Health Service, explained to the committee that she technically is an unqualified counsellor and that this was an issue in itself, as under the Social and Emotional Wellbeing Program the counsellors are not required to be qualified counsellors when they commence in the role.<sup>216</sup> Ms Taylor spoke about how some of the workers, although genuinely interested in the role, do not have ‘many qualifications or experience in this very specific emotional field’.<sup>217</sup>

<sup>211</sup> Australian Government, Department of Health and Ageing, *Bringing Them Home*, 15 February 2013, <<http://content.webarchive.nla.gov.au/gov/wayback/20130329070335/http://www.health.gov.au/internet/main/publishing.nsf/Content/bringing-them-home-lp>>

<sup>212</sup> Australian Government, Department of the Prime Minister and Cabinet, *Indigenous Advancement Strategy*, <<http://www.dpmc.gov.au/indigenous-affairs/indigenous-advancement-strategy>>

<sup>213</sup> Supplementary submission 36a, Coota Girls Corporation, p 26.

<sup>214</sup> Submission 41, Aboriginal Health and Medical Research Council, p 3.

<sup>215</sup> Submission 41, Aboriginal Health and Medical Research Council, p-5.

<sup>216</sup> Evidence, Ms Taylor, 6 November 2015, p 16.

<sup>217</sup> Evidence, Ms Taylor, 6 November 2015, p 18.

- 4.60** The National Sorry Day Committee highlighted a number of issues with the current service system that are failing to address the needs of Aboriginal communities impacted by past forcible removal policies and practices, including that there are ‘insufficient appropriately trained Indigenous Social and Emotional Wellbeing workers.’<sup>218</sup>
- 4.61** The *Social and Emotional Wellbeing Program: Handbook for Counsellors June 2012* acknowledged the difficulty in finding staff for these roles that have both cultural and professional experience. It stipulated that individuals can commence as a Social and Emotional Wellbeing counsellor without formal qualifications but must complete formal tertiary or vocational qualifications within 12 months of starting. This is a minimum of a Certificate IV qualification from a nationally recognised course of study in counselling, psychology, social work, mental health or other related areas.<sup>219</sup>
- 4.62** Another issue, raised by a number of Social and Emotional Wellbeing counsellors, is that they have experienced some difficulty in engaging with the community as a result of the change to their position title.
- 4.63** Ms Sharlene Cruickshank, a Social and Emotional Wellbeing Counsellor working at the South Coast Medical Service Aboriginal Corporation, noted that her role no longer falls under the Bringing Them Home Program but now sits under the Social Health Team that generally covers drug and alcohol, mental health and social and emotional wellbeing. Ms Cruickshank commented that it is ‘sad’, as changes to the name of her title has meant that people do not know that she is there to offer them support.<sup>220</sup>
- 4.64** Likewise, Ms Erin Fraser, a Social and Emotional Wellbeing Counsellor at the Illawarra Aboriginal Medical Service, advised that since her title has changed from a ‘Bringing Them Home’ worker to a ‘Social and Emotional Wellbeing Counsellor’ people do not know that they can come and see her to assist with reunification services in a supportive and therapeutic manner. Ms Fraser went on to say that the community is not accessing the Social and Emotional Wellbeing services for issues relating to past forcible removal policies and practices, commenting that ‘whether it is funding or not knowing about these services, the community is not accessing them as much as they can’.<sup>221</sup>
- 4.65** ANTaR NSW raised concerns that the Bringing Them Home and Social and Emotional Wellbeing programs implemented after the *Bringing them home* report have been ‘significantly under resourced’ and experience ‘chronic high workloads’.<sup>222</sup> In addition, the Public Interest Advocacy Centre’s (PIAC) *Restoring Identity* report indicated that funding arrangements did not ensure resources were being allocated to the appropriate organisations, particularly for counselling services.<sup>223</sup>

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<sup>218</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 2, p 15.

<sup>219</sup> The Department of Health and Ageing, ‘Social and Emotional Wellbeing Program: Handbook for Counsellors June’, (2012), p 25.

<sup>220</sup> Evidence, Ms Sharlene Cruickshank, Social and Emotional Wellbeing Counsellor, South Coast Medical Service Aboriginal Corporation, 2 March 2016, pp 22-23.

<sup>221</sup> Evidence, Ms Erin Fraser, Social and Emotional Wellbeing Counsellor, Illawarra Aboriginal Medical Service, 2 March 2016, p 29.

<sup>222</sup> Submission 21, ANTaR NSW, p 8.

<sup>223</sup> Submission 16, Public Interest Advocacy Centre, Appendix B, p 74.

**4.66** Questioned on the adequacy of funding grants for the amount of work needed under the Social and Emotional Wellbeing Program, Ms Taylor said ‘unfortunately a lot of them are just a one-off grant and it is not continuing’ and explained that many successful programs she had implemented in her counselling role to assist Aboriginal people impacted by past forcible removal policies and practices would be stopped or put on hold because of lack of funding, just as they were starting to see the benefits in the community.<sup>224</sup>

### Other services and programs

**4.67** In regard to other counselling services, a number of submission authors emphasised that more funding for skilled, supported and culturally appropriate counselling services for Stolen Generation survivors and their families is needed.<sup>225</sup> The committee also heard that there are service delivery gaps in regional areas in particular which need to be addressed.<sup>226</sup>

**4.68** The Aboriginal Health and Medical Research Council submitted that to fill the gaps and respond to the needs of Aboriginal communities, 15 Stolen Generation Wellbeing workers, both male and female, should be created and placed in Aboriginal community controlled health services in each region of New South Wales. It also recommended that a State Coordinator Position be created at the council to coordinate Stolen Generation services and work collaboratively with key stakeholders.<sup>227</sup>

**4.69** In addition, inquiry participants emphasised the need for specialist counselling services over mainstream counselling services, on the basis that mainstream counsellors do not understand what members of the Stolen Generations have experienced. For example, the Kinchela Boys’ Home Aboriginal Corporation referred to a key finding from interviews with former survivors from the home that the ‘men do not want counsellors or psychologists with no experience of what they have been through’ and preferred a counsellor placed within the corporation who is ‘organised, professionally trained, [and] trust worthy’.<sup>228</sup>

**4.70** The Parragirl’s support network for former residents of the Parramatta Girls Home shared the concerns raised by the Kinchela Boys’ Home Aboriginal Corporation in relation to counselling services and similarly recommended that specialist counselling be made available within the Parragirl’s site.<sup>229</sup>

<sup>224</sup> Evidence, Ms Taylor, 6 November 2015, p 17.

<sup>225</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 9; Submission 30, Redfern Legal Centre, p 9; Submission 32, Legal Aid NSW, p 4; Submission 42, Shoalcoast Community Legal Centre, p 30; Public Interest Advocacy Centre, *Restoring Identity: Final report of the Moving Forward consultation project* (2002), pp 74-75, <<http://www.piac.asn.au/sites/default/files/publications/extras/restoringidentity.pdf>>

<sup>226</sup> Submission 41, Aboriginal Health and Medical Research Council, p 5; Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 9; Submission 30, Redfern Legal Centre, p 9; Submission 42, Shoalcoast Community Legal Centre, p 30.

<sup>227</sup> Submission 41, Aboriginal Health and Medical Research Council, pp 6-7.

<sup>228</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 9.

<sup>229</sup> Submission 52, Parramatta Female Factory Precinct Memory Project, p2.

- 4.71** The importance of an Aboriginal approach to counselling was highlighted to the committee, which was told that ‘an analysis of 31 projects involving 3676 Stolen Generation survivors has shown the western model of counselling doesn’t help victims’.<sup>230</sup>
- 4.72** Ms Suzanne Hall, a member of the Stolen Generations, summed up the issue of mainstream counselling services and suggested that it would be beneficial if other members of the Stolen Generations could be trained to provide support:
- [Mainstream counsellors] do not really know what we went through. We need our older people—the likes of me who have been in the homes. They are the only people who can understand us—other people from the Stolen Generation. They have been through the same thing. If you can get them in to help us as a Stolen Generation, teach them to become counsellors and put us in a place that is beautiful and, that would be good. They are the only ones who can help us—the people who were there and suffered.<sup>231</sup>
- 4.73** Another preferred approach to counselling for members of the Stolen Generations which differs from mainstream counselling is the method of collective healing. The Coota Girls Corporation and Kinchela Boys’ Home Aboriginal Corporation asserted that healing collectively as a group, combined of people with shared experiences, is the only way forward.<sup>232</sup> Collective healing will be discussed in the next section of this chapter.
- 4.74** A number of programs that aim to address the healing needs of the Aboriginal community were also highlighted to the committee, in particular the Marumali healing program, services provided by Rekindling the Spirit and the Seasons for Healing program run by Good Grief.
- 4.75** The Marumali healing model, developed by Aunty Lorraine, is a culturally appropriate, holistic healing program that addresses the core issues and transgenerational effects of removal.<sup>233</sup> The committee heard that Marumali is one of the few Indigenous healing models that have been evaluated and proven to repair the damage caused by past forcible removal policies and practices.<sup>234</sup>
- 4.76** Ms Shaan Hamann, Partner, Winangali Marumali, informed the committee that the Marumali healing program is delivered to both Stolen Generation survivors and workers supporting Aboriginal people impacted by past forcible removal policies and practices, ‘to give them a trauma-informed approach so that they can provide trauma-informed care’. Ms Hamann advised they run the program all over Australia, primarily training Aboriginal counsellors in the healing model, but also non-Aboriginal counsellors, health practitioners and anyone who

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<sup>230</sup> Submission 42, Shoalcoast Community Legal Centre, p 29, citing Aunty Lorraine Peeters in Seven News, ‘Trauma of Stolen Generations “passed down”’ (11 February 2016).

<sup>231</sup> Evidence, Ms Suzanne Hall, community member, 17 February 2016, p 21.

<sup>232</sup> Evidence, Aunty Doreen Webster, Member, Coota Girls Corporation, 6 November 2015, pp 3-4; Evidence, Aunty Isabel Reid, Chair, Coota Girls Corporation, 6 November 2015, p 9; Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 9.

<sup>233</sup> Winangali Marumali, *The Marumali Journey of Healing Model*, <<http://marumali.com.au/marumali-journey-healing-model>>

<sup>234</sup> Evidence, Aunty Lorraine, 9 February 2016, p 2.



supports Aboriginal people in their workplace. Since 2002 the program has also been delivered to prison inmates in Victoria.<sup>235</sup>

- 4.77** The services provided by Rekindling The Spirit, an organisation set up by Aboriginal people, are provided by Aboriginal people who work with families on issues relating to alcohol, drugs, violence and parenting.<sup>236</sup> The organisation aims to empower people to take control of their lives and offers counselling and group therapy, including support for Stolen Generation survivors. It also assists people to engage with mainstream services and facilitates shared medical appointments.<sup>237</sup>
- 4.78** Mr Telford and Mr Richardson from Rekindling The Spirit, told the committee how their organisations' programs and services are different to mainstream services in assisting Aboriginal communities. For example, the programs take a holistic approach, looking at the mental health, physical health and immediate needs of people, and in addressing these issues it provides people with the skills to help themselves.<sup>238</sup> The organisation also broaches subjects that people prefer not to talk about stating that 'you cannot help people to heal without addressing those areas too hard to go to'.<sup>239</sup>
- 4.79** Another aspect of Rekindling The Spirit, which particularly applies around their counsellor training, is the importance of self-disclosure. Mr Richardson advised that to work at Rekindling The Spirit 'you have to have had some lived history to understand and have true empathy' and the training then looks at how to use your own story to assist others.<sup>240</sup> Mr Telford explained to the committee how this works:
- I'm not sure how many of you guys have done any sort of training in counselling but one of the things they talk to you about is not to do too much personal disclosure. What I've found working with Aboriginal people is you have to, because I'm trying to dig something out of you that I'm going to keep inside me, it's just not fair. If I share some of me with you, you are more inclined some of you with me. Once people can see that occurring they're only too happy to want to share with you.<sup>241</sup>
- 4.80** Mr Richardson also spoke highly of the Marumali program and how the training Aunty Lorraine provides, in conjunction with training by Rekindling The Spirit, can give counsellors the skills to 'connect with those people'.<sup>242</sup>
- 4.81** Ms Brown and Ms Cruickshank both advocated another program called 'Seasons for Healing' run by Sydney based organisation Good Grief.<sup>243</sup> Seasons for Healing is a culturally

<sup>235</sup> Evidence, Ms Shaan Hamann, Partner, Winangali Marumali, 9 February 2016, p 5.

<sup>236</sup> Evidence, Mr Telford, 8 December 2015, p 29.

<sup>237</sup> Rekindling The Spirit, *Client Services*, <<http://www.rekindlingthespirit.org.au/index.php/what-we-do/client-services>>

<sup>238</sup> Evidence, Mr Richardson, 8 December 2015, pp 32-33.

<sup>239</sup> Evidence, Mr Richardson, 8 December 2015, p 31.

<sup>240</sup> Evidence, Mr Richardson, 8 December 2015, p 31.

<sup>241</sup> Evidence, Mr Telford, 8 December 2015, p 32.

<sup>242</sup> Evidence, Mr Richardson, 8 December 2015, p 31.

<sup>243</sup> Evidence, Ms Brown, 8 December 2015, p 5; Evidence, Ms Cruickshank, 2 March 2016, p 24.

appropriate, educational program that works with small groups of Aboriginal people who are managing experiences of change, loss and grief.<sup>244</sup>

- 4.82** Ms Brown advised they have eight Aboriginal people in the Clarence Valley who have completed a ‘Train the Trainer’ program with Good Grief, who are now qualified to run that grief and loss training, which they hope to do on a regular basis within the community.<sup>245</sup> Ms Cruickshank, who has undertaken some of the training, also spoke about rolling it out across her community in an effort to heal:

I did a bit of it myself and it is a really lovely program that is safe and soft. It is not therapeutic; it is not counselling as such; it is more education around grief and loss. We would like to have more programs like that. We hope over this year to saturate the whole area with Seasons for Healing. Hopefully everyone in the Shoalhaven will be doing Seasons for Healing, so we will all be healed, or on our way to it.<sup>246</sup>

### *Committee comment*

- 4.83** The committee recognises that there are a number of effective existing programs and initiatives in the community that are addressing the healing needs of Aboriginal people, however, it is clear that more work needs to be done in this area to help Aboriginal communities to heal from the effects of past forcible removal policies and practices. The committee commends the excellent work of organisations such as Winangali Marumali, Rekindling The Spirit and Good Grief in supporting those impacted by forcible removals, particularly in terms of the assistance they have provided to survivors in their individual healing journeys.
- 4.84** The committee acknowledges that aspects of the Australian Government’s Bringing Them Home Program have had some success. However, the evaluation of the program in 2007 raised a number of concerns, including a lack of priority for assistance to Stolen Generation survivors, inconsistent levels of staff skills and qualifications, lack of training and support, inconsistent service delivery, limited geographical coverage and administration and management issues. Based on the evidence received during this inquiry, it appears that these issues still have not been resolved and the committee is concerned they are limiting the operations and effectiveness of the program.
- 4.85** The committee also notes the changes to funding arrangements and the consolidation of the Bringing Them Home Program under the Social and Emotional Wellbeing Program, particularly the change to the role and title of the counsellors, which has seen the scope of the role broadened and resulted in a lack of focus and priority on Stolen Generation survivors and their families. The committee was concerned that this change in title has meant that community members seeking to access these services may not be aware that they still exist. Therefore the committee recommends that the New South Wales Government request the Commonwealth Department of Prime Minister and Cabinet to consider amending the role and title of Social and Emotional Wellbeing Counsellors to ensure there is a clear focus on the provision of support to Stolen Generation survivors and their families.

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<sup>244</sup> Good Grief, *Seasons for Healing*, <<https://goodgrief.org.au/node/26119>>

<sup>245</sup> Evidence, Ms Brown, 8 December 2015, p 5.

<sup>246</sup> Evidence, Ms Cruickshank, 2 March 2016, p 24.

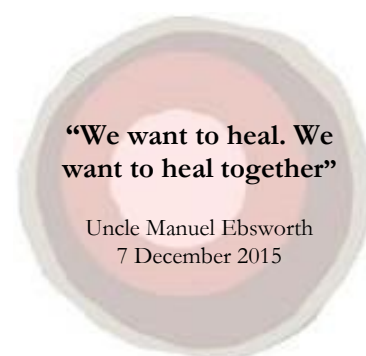
## Recommendation 7

That the NSW Government request the Department of the Prime Minister and Cabinet to consider amending the role and title of Social and Emotional Wellbeing Counsellors to ensure there is a clear focus on the provision of support to Stolen Generation survivors and their families.

## Collective healing

- 4.86** The committee heard from many individuals about the advantages of healing collectively to repair the grief, loss and trauma experienced by those impacted by past forcible removal policies and practices.
- 4.87** The importance of group healing was encapsulated by Aunty Lorraine, who said ‘we suffered collectively and we need to heal collectively’.<sup>247</sup> Aunty Lorraine added that you cannot rule out one-on-one counselling for those who want the privacy, but emphasised the effectiveness of healing within a group.<sup>248</sup>
- 4.88** Mr Terry Chenery, Chief Executive Officer, Link-Up NSW, noted the benefits of his organisation’s healing weekends, where Stolen Generation survivors have the opportunity to come together and talk, without fear and with people who have experienced similar traumatic events.<sup>249</sup>
- 4.89** Similarly, Ms Wendy Spencer, Project Manager, Dharriwaa Elders Group, indicated that by simply allowing Elders to spend quiet time together and support each other is a healing activity in itself.<sup>250</sup>
- 4.90** Mr Weston from the Healing Foundation said that the foundation has seen the ‘power of collective healing’ through its work with members of the Stolen Generations.<sup>251</sup> In addition, he highlighted that it is particularly important for those who have been institutionalised to heal on a collective basis:

It works particularly for Aboriginal people who have been through institutions. Having been taken away as young children they are disconnected from their families and communities; their families and communities are the children they have grown up with in those institutions. They consistently tell us and others that they find great comfort and healing through coming together to share their stories. They have a shared experience.<sup>252</sup>



<sup>247</sup> Evidence, Aunty Lorraine, 9 February 2016, p 2.

<sup>248</sup> Evidence, Aunty Lorraine, 9 February 2016, p 4.

<sup>249</sup> Evidence, Mr Terry Chenery, Chief Executive Officer, Link-Up NSW, 5 November 2015, p 36.

<sup>250</sup> Evidence, Ms Wendy Spencer, Project Manager, Dharriwaa Elders Group, 18 February 2016, p 3.

<sup>251</sup> Evidence, Mr Weston, 9 February 2016, p 19.

<sup>252</sup> Evidence, Mr Weston, 9 February 2016, p 19.

- 4.91** Aunty Isabel Reid, Chair, Coota Girls Corporation, told the committee that the ‘best and utmost support has always come from each other as Cootamundra survivors’. Aunty Isabel spoke about her own community of former Cootamundra girls providing a powerful and effective form of support not offered ‘within both the mainstream and Aboriginal populations’.<sup>253</sup>
- 4.92** Aunty Doreen Webster, a member of Coota Girls Corporation, similarly stressed the need for those who had gone to Cootamundra Aboriginal Girls’ Training Home to come together to heal as a group rather than through mainstream counselling services:
- We want to be together. We want funding for our corporation so that we can meet up and come together. All the trauma and everything we have been through, counsellors would never heal us of it. No—we heal ourselves. When one hurts, we all hurt. We come together and we talk about stuff. So we are healing unto ourselves; we are there for one another. It has always been like that. And I will never, ever speak to a counsellor because the counsellor does not know what I have been through.<sup>254</sup>
- 4.93** The Coota Girls Corporation recommended that collective healing and rehabilitation strategies be put in place, such as healing gatherings and yarning circles, rather than counselling services, to assist survivors of the Cootamundra Aboriginal Girls’ Training Home to support each other.<sup>255</sup>
- 4.94** Similarly, Uncle Richard reflected on the brotherhood that exists amongst former residents of the home that ‘helped us survive Kinchela’. He indicated that this brotherhood continues to help the men today in their healing journey.<sup>256</sup>
- 4.95** Uncle Manuel Ebsworth, Chair, Kinchela Boys’ Home Aboriginal Corporation, advised that the corporation started with only two people and has now grown to 100 people who all come together to heal with those who experienced a similar trauma:
- You know, you got an 84 year-old man who never healed and they are willing to come because they are KBHers [Kinchela Boy’s Home], they come up to Kempsey, sit down and talk to us and bring their wives and that up, and their carers and that. So the testimony that we are doing is bringing healing power to the boys.<sup>257</sup>
- 4.96** The Parramatta Female Factory Precinct Memory Project told the committee that ‘current models of collective healing are not well established’ and emphasised the importance and urgency of ‘resources to develop innovative healing programs that utilise broad based principles that can be modified and adapted to local circumstance’.<sup>258</sup>

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<sup>253</sup> Evidence, Aunty Isabel, 6 November 2015, p 9.

<sup>254</sup> Evidence, Aunty Doreen, 6 November 2015, pp 3-4.

<sup>255</sup> Supplementary submission 36a, Coota Girls Corporation, pp 32 and 40.

<sup>256</sup> Evidence, Uncle Richard, 7 December 2015, p 2.

<sup>257</sup> Evidence, Uncle Manuel, 7 December 2015, p 7.

<sup>258</sup> Evidence, Parramatta Female Factory Precinct Memory Project, p 2.

**4.97** In addition, Uncle Manuel spoke about how healing collectively needs to occur across both Aboriginal and non-Aboriginal people, by putting aside the shame and healing as a ‘united family, not segregated’.<sup>259</sup>

*Committee comment*

**4.98** The committee received consistent evidence on the power of healing collectively for those who have experienced similar traumatic events, such as being forcibly removed from their family and community. We acknowledge that especially for those who were institutionalised after they were removed, healing with fellow survivors and reunions with family members is extremely beneficial in addressing the grief, loss and trauma left as a legacy of past forcible removal policies and practices.

**4.99** The committee supports investment in collective healing as part of making reparations to members of the Stolen Generations and recommends that the New South Wales Government provide funding for collective healing initiatives, programs, forums and community centres, to support and assist Stolen Generation survivors and their families and communities (as outlined in recommendation 3). At the same time we acknowledge that other non-government organisations and institutions were involved in past forcible removal policies and practices, including churches and religious bodies, and as such, we encourage the government to liaise with these organisations and institutions to seek financial contributions for these programs.

## Healing centres

**4.100** The committee received evidence from several inquiry participants highlighting the need for healing centres to support Aboriginal people and communities, including Stolen Generation survivors.

**4.101** A healing centre is a place within a community that supports the healing work and practices of Aboriginal people. Although healing centres can vary depending on the needs of the community, they have some common principles, including that they:

- are physically, socially and culturally safe
- aim to strengthen connections between families, communities, land and culture
- are developed, led and primarily staffed by Aboriginal people
- aim to overcome the causes and symptoms of trauma and meet the healing needs of the community
- facilitate healing through traditional and modern healing practices that is tailored for the community.<sup>260</sup>

**4.102** Mr Weston strongly recommended an investment in collective healing and healing centres. He told the committee that healing centres engage and empower people to take responsibility for their own healing.<sup>261</sup>

<sup>259</sup> Evidence, Uncle Manuel, 7 December 2015, p 9.

<sup>260</sup> Tabled document, *Prospective Cost Benefit Analysis of Healing Centres*, p 14.

<sup>261</sup> Evidence, Mr Weston, 9 February 2016, p 21.

- 4.103** Likewise, the Shoalcoast Community Legal Centre recommended that the ‘NSW Government commit to establishing healing centres and fund those already established to facilitate group healing’.<sup>262</sup>
- 4.104** A number of community members told the committee that they need a safe place to go with their families to heal together, supported by people who understand their needs.<sup>263</sup> Ms Virginia Robinson, Secretary, Dharrivaa Elders Group, reflected on the Elders centre in Walgett that provides ‘a very important place for Aboriginal Elders because it is comfortable and they are very safe at the centre’.<sup>264</sup>
- 4.105** Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation, also noted the importance of a safe place that people can go to find support and assistance:
- They [healing centres] include group work, counselling, social settings and services and therapies that we cannot deliver. That is where we think that healing centres play a role. They are a neutral venue where people can have a discussion with other people within the centre to help them address their problem.<sup>265</sup>
- 4.106** The committee heard that current methods of enabling people to come together to heal collectively outside of healing centres have not been ideal. Aunty Lorraine told the committee that when Winangali Marumali holds gatherings and healing weekends they have to stay in hotels that do not offer a private setting to sit and talk about trauma.<sup>266</sup>
- 4.107** Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys’ Home Aboriginal Corporation, similarly indicated that resources are consumed by the logistics of organising accommodation and sourcing and hiring appropriate rooms and facilitators to bring people together for gatherings with the Kinchela men.<sup>267</sup>
- 4.108** The Kinchela Boys’ Home Aboriginal Corporation, Coota Girls Corporation and the Children of the Bomaderry Aboriginal Children’s Home Incorporated all emphasised the need to establish separate healing centres to assist former residents of the homes and their families to heal.
- 4.109** Kinchela Boys’ Home Aboriginal Corporation has spent a considerable amount of time focusing on the establishment of a healing centre at South West Rocks and a component of it at the former Kinchela Aboriginal Boys’ Training Home site.<sup>268</sup> Discussed further in chapter 5, the proposed multi-sited centre would include a truth-telling space, a residential component and healing programs to support former residents of the home.<sup>269</sup>

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<sup>262</sup> Submission 42, Shoalcoast Community Legal Centre, p 30.

<sup>263</sup> Evidence, Ms Lorraine Mcgee-Sippel, community member, 10 February 2016, p 41.

<sup>264</sup> Evidence, Ms Virginia Robinson, Secretary, Dharrivaa Elders Group, 18 February 2016, p 3.

<sup>265</sup> Evidence, Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation, 8 December 2015, p 14.

<sup>266</sup> Evidence, Aunty Lorraine, 9 February 2016, p 5.

<sup>267</sup> Evidence, Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys’ Home Aboriginal Corporation, 7 December 2015, p 3.

<sup>268</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 10.

<sup>269</sup> Evidence, Dr McComsey, 7 December 2015, p 5.

- 4.110** Uncle Richard asked the committee to assist the corporation in its goal of establishing a healing centre and stressed the importance of the centre in the men's journey to heal:

To this committee, I ask you please do not let the survivors of the Kinchela Boys Home die with regret. This will occur if we are ignored and our requests to achieve our long-term goal of establishing a Kinchela Boys' Home Aboriginal Corporation Healing Centre. Achieving this will allow us to restore our dignity, showing our families and communities that we are Elders by the way we look after our Kinchela brothers and families and by the education we will provide to the larger community about our experiences. We were denied our childhoods; we should not be denied our role as Elders. We need to be supported so we can lead the healing of our families and help put an end to the intergenerational trauma that continues to harm them.<sup>270</sup>

- 4.111** The Coota Girls Corporation also asked the committee to assist in funding for a Cootamundra Girls healing centre in a coastal location in New South Wales, details of which are also discussed further in chapter 5. It said the healing centre would meet the needs of collective rehabilitation for former residents of the home and should include:

- clinical and non-clinical services
- healing gatherings
- yarning circles
- men's and women's groups
- community wide healing circles
- traditional ceremonies and traditional healing
- residential programs and retreats.<sup>271</sup>

- 4.112** In regards to the Bomaderry Aboriginal Children's Home, Mr Greg Peterson, Chief Executive Officer, Nowra Local Aboriginal Land Council, indicated that former residents of the home have different experiences when coming on to the site, as for some 'the site creates upsets and anger while for others it is a place to learn and tell their story'. Mr Peterson envisaged that a healing place for former residents would not occur on the site but would be somewhere more appropriate where people can have 'access to healing through appropriate counselling support'.<sup>272</sup>

- 4.113** During the inquiry, the committee visited the Clarence Valley Aboriginal Healing Centre, which runs a program managed by a community-based Aboriginal organisation providing healing that seeks to improve 'the quality of life of Aboriginal people, either individually or collectively'. Some of the healing programs provided to the community through the healing centre include support groups, workshops, suicide prevention and support for families and youth, trauma-informed practices, natural therapies, bush medicine and cultural activities.<sup>273</sup>

<sup>270</sup> Evidence, Uncle Richard, 7 December 2015, p 2.

<sup>271</sup> Supplementary submission 36a, Coota Girls Corporation, p 42.

<sup>272</sup> Correspondence from Mr Greg Peterson, Chief Executive Officer, Nowra Local Aboriginal Land Council, to Chair, 8 April 2016.

<sup>273</sup> Evidence, Ms Brown, 8 December 2015, p 2.

- 4.114** The committee was impressed by the programs provided by the Clarence Valley Healing Centre and thanks the centre staff for hosting the committee during its visit.



*Committee members and Ms Janelle Brown, Coordinator of the Clarence Valley Healing Centre (centre), during the hearing in Grafton*

- 4.115** When questioned on the success of the healing centre, Ms Brown replied that it was hard to measure as ‘healing is a long-term goal’ and people do not heal overnight. Ms Brown referred to research conducted in Canada indicating it can take up to 10 years to see any results in terms of healing and noted that currently the attendance at the healing centre’s forums was the only measure of its success.<sup>274</sup>
- 4.116** The Healing Foundation also noted that measuring the success of healing programs is difficult due to the ongoing journey of healing that has no definitive end. However, the foundation’s *Prospective Cost Benefit Analysis of Healing Centres* attempts to document the costs and benefits of the establishment of healing centres.<sup>275</sup>
- 4.117** The analysis indicates that healing centres ‘typically return, on average, a benefit to cost ratio of over 4 to 1, primarily from reduced rates of incarceration and recidivism’. Although harder to measure, the results also indicated benefits to ‘improved education, employment and family violence outcomes’ and from an Aboriginal perspective the improved ‘reconnection to community, to Country and to dreaming’.<sup>276</sup>

<sup>274</sup> Evidence, Ms Brown, 8 December 2015, p 6.

<sup>275</sup> Tabled document, *Prospective Cost Benefit Analysis of Healing Centres*, p 21.

<sup>276</sup> Tabled document, *Prospective Cost Benefit Analysis of Healing Centres*, p i.



*Committee comment*

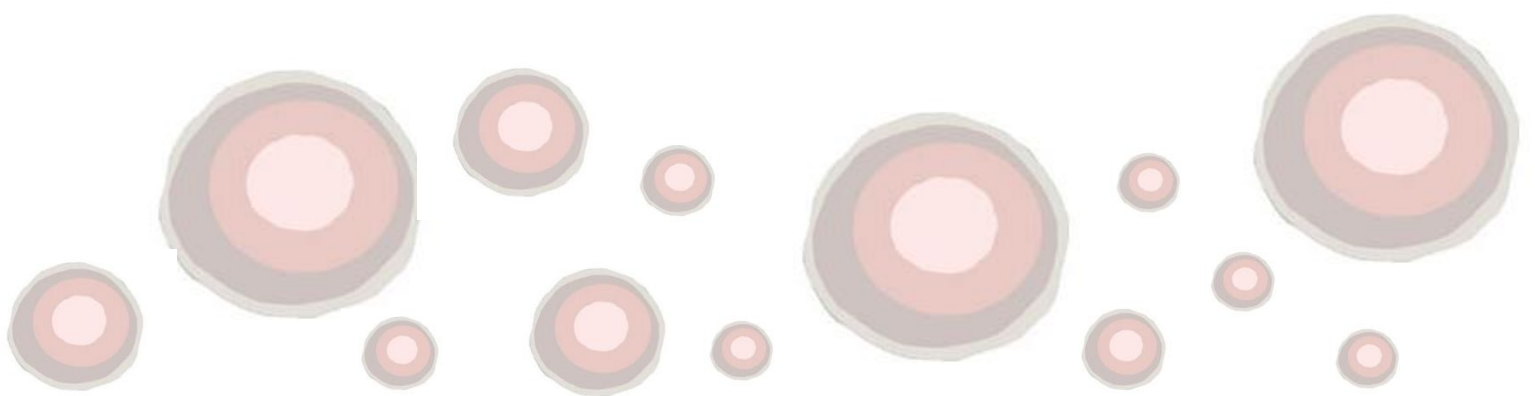
- 4.118** We note the difficulties Stolen Generation organisations have experienced in finding suitable locations to hold healing gatherings and healing weekends. We also acknowledge the importance of healing taking place in permanent, accessible and culturally safe locations – particularly locations that have been self-identified by each organisation.
- 4.119** In addition, the committee acknowledges the work done to date by the Coota Girls Corporation and Kinchela Boys’ Home Aboriginal Corporation in establishing plans for healing centres to assist former residents of the homes and their families, and notes initial discussions of a healing centre offsite for the Children of the Bomaderry Aboriginal Children’s Home Incorporated.
- 4.120** We recognise the need for further support and resources to be provided to these corporations to assist in establishing healing centres. The committee therefore recommends that the government collaborate with and provide support, both financial and non-financial, to the Coota Girls Corporation, Kinchela Boys’ Home Aboriginal Corporation and the Children of the Bomaderry Aboriginal Children’s Home Incorporated, to establish healing centres in appropriate locations to support the healing of individuals formerly institutionalised in those homes and their families and communities.

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**Recommendation 8**

That the NSW Government collaborate with and provide support, both financial and non-financial, to the Coota Girls Corporation, Kinchela Boys’ Home Aboriginal Corporation and the Children of the Bomaderry Aboriginal Children’s Home Incorporated, to establish healing centres in appropriate locations to support the healing of individuals formerly institutionalised in those homes and their families and communities.

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## Chapter 5 Acknowledgement and apology

It is an Australia-wide issue; it is not just an Aboriginal and Torres Strait Islander issue. It is Australia's issue. Everybody in Australia needs to be aware of this and acknowledge it.<sup>277</sup>

In this chapter the committee examines the significance of acknowledgements and apologies given by previous governments to those impacted by past forcible removal policies and practices. The need for further recognition of members of the Stolen Generations is also considered, particularly through the use of memorials and other forms of commemoration. This chapter also canvasses suggestions as to what should be done with the existing sites of the former Bomaderry Aboriginal Children's Home, the Kinchela Aboriginal Boys' Training Home and the Cootamundra Aboriginal Girls' Training Home.

### Government apologies

5.1 On 26 May 1997 the *Bringing them home* report was tabled in the Australian Parliament. It identified that 'the first step in any compensation and healing for victims of gross violations of human rights must be an acknowledgement of the truth and the delivery of an apology'.<sup>278</sup> The report made the following recommendations relating to acknowledgement and apology:

5a. That all Australian Parliaments

1. officially acknowledge the responsibility of their predecessors for the laws, policies and practices of forcible removal,
2. negotiate with the Aboriginal and Torres Strait Islander Commission a form of words for official apologies to Indigenous individuals, families and communities and extend those apologies with wide and culturally appropriate publicity...

5b. That State and Territory police forces, having played a prominent role in the implementation of the laws and policies of forcible removal, acknowledge that role and, in consultation with the Aboriginal and Torres Strait Islander Commission, make such formal apologies and participate in such commemorations as are determined.

6. That churches and other non-government agencies which played a role in the administration of the laws and policies under which Indigenous children were forcibly removed acknowledge that role and in consultation with the Aboriginal and Torres Strait Islander Commission make such formal apologies and participate in such commemorations as may be determined.

<sup>277</sup> Evidence, Ms Joanne Taylor, *Bringing Them Home* worker, Albury Wodonga Aboriginal Health Service, 6 November 2015, p 19.

<sup>278</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 247, < [https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

7a. That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, arrange for a national ‘Sorry Day’ to be celebrated each year to commemorate the history of forcible removals and its effects.

7b. That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, seek proposals for further commemorating the individuals, families and communities affected by forcible removal at the local and regional levels. That proposals be implemented when a widespread consensus within the Indigenous community has been reached.<sup>279</sup>

- 5.2** Following the tabling of the report, on 18 June 1997 the New South Wales Government was the first government in Australia to apologise to members of the Stolen Generations and acknowledge the wrongdoing of past government policies and practices.<sup>280</sup>
- 5.3** The apology acknowledged the State Parliament’s role in the ‘systematic separation of generations of Aboriginal children from their parents, families and communities’ that caused ‘profound grief and loss’ for Aboriginal people. The New South Wales Government also called upon all other governments to respond to the *Bringing them home* report with ‘compassion, understanding and justice’, and reaffirmed its commitment to reconciliation across New South Wales and throughout Australia.<sup>281</sup> In November 1997 this commitment was further affirmed with the issue of a Statement of Commitment on equality and justice for Aboriginal people by the New South Wales Government.<sup>282</sup>
- 5.4** Various New South Wales government agencies also acknowledged their role in past forcible removal policies and practices and made apologies to Aboriginal people, including police and justice agencies, health, community services and ageing and disability.<sup>283</sup> Both the Department of Family and Community Services and NSW Health have in place Statements of Commitment to Aboriginal people recognising the impact of the forced removal of children and providing statements of regret over these past forcible removal policies and practices.<sup>284</sup>
- 5.5** In addition, a number of churches and church-based organisations apologised for the role they played in the removal of Aboriginal children from their families and communities.<sup>285</sup>
- 5.6** On 26 August 1999 the Australian Government issued a ‘statement of deep regret’, even though the then Prime Minister, John Howard, considered that an apology from the Australian Government to members of the Stolen Generations was not necessary.<sup>286</sup>

<sup>279</sup> Recommendations 5 - 7, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 249-250 and 253-254, < [https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>280</sup> *Hansard*, NSW Legislative Assembly, 18 June 1997, pp 7-10 (Bob Carr).

<sup>281</sup> *Hansard*, NSW Legislative Assembly, 18 June 1997, pp 7-10 (Bob Carr).

<sup>282</sup> Submission 34, Department of Premier and Cabinet, p 3.

<sup>283</sup> Submission 34, Department of Premier and Cabinet, p 3.

<sup>284</sup> Submission 34, Department of Premier and Cabinet, p 3.

<sup>285</sup> Australian Human Rights Commission, *Social Justice Report 1998: Chapter 3: Church Responses*, 3 April 2003, <<https://www.humanrights.gov.au/publications/social-justice-report-1998-chapter-3-church-responses>>

<sup>286</sup> Submission 38, Civil Liberties Australia, pp 7-8.

- 5.7** In the absence of a formal apology from the Australian Government, approximately 250,000 people walked across the Sydney Harbour Bridge on 28 May 2000 in protest calling for an apology to all those impacted by past forcible removal policies and practices.<sup>287</sup>
- 5.8** On 11 March 2004, then Premier Bob Carr made a further formal apology on behalf of the New South Wales Government, specifically on the failure to repay wages and other moneys belonging to Aboriginal people, and made assurances that any money owed would be returned.<sup>288</sup> The ‘stolen wages’ matter is discussed in detail in chapter 6.
- 5.9** On 13 February 2008, a formal apology to members of the Stolen Generations on behalf of the Australian Government was finally made, by the then Prime Minister Kevin Rudd.<sup>289</sup>
- 5.10** Each year the nation commemorates the anniversary of the tabling of the *Bringing them home* report on 26 May with ‘Sorry Day’, and the Australian Government apology on 13 February. A number of events are held across Australia on both days to remember all those who have been impacted by past forcible removal policies and practices.<sup>290</sup>

## Significance of apologies

- 5.11** There were conflicting views among inquiry participants on the significance of the apologies given by the New South Wales and Australian governments to members of the Stolen Generations.
- 5.12** According to the former Premier, Mr Carr, the apology delivered by the Australian Government ‘resonated halfway around the world’. To illustrate, he told the committee about a time he was before the United Nations ambassadors of the 14 Caribbean nations to announce Australia’s support for a monument for the transatlantic slave trade, which was welcomed by the ambassadors, including the ambassador of Grenada who replied ‘we expected no less from a country which had delivered The Apology’. Mr Carr added: ‘It was capital T, capital A for The Apology, as if everyone in the room knew what that was.’ He reflected on how ‘wonderful’ it was to receive this feedback:
- It was a great honour to hear that endorsement of one’s country and its policies. It confirmed that that historic apology had resonance, especially for people of colour, around the world.<sup>291</sup>
- 5.13** ANTaR NSW reflected that the Australian Government apology acknowledged ‘the past injustices experienced as a result of forced removals’ and was seen as a day of healing for many Aboriginal and Torres Strait Islander people.<sup>292</sup>
- 5.14** Another inquiry participant, Ms Irene Doutney, emphasised how important the apology was in acknowledging the wrongdoing of past policies:

<sup>287</sup> Submission 38, Civil Liberties Australia, p 9.

<sup>288</sup> Submission 19, Herbert Smith Freehills, p 11.

<sup>289</sup> Submission 19, Herbert Smith Freehills, p 11.

<sup>290</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, p 5.

<sup>291</sup> Evidence, Mr Bob Carr, former Premier of NSW, 5 November 2015, p 31.

<sup>292</sup> Submission 21, ANTaR NSW, p 5.

The National Apology delivered by Kevin Rudd in 2008 was an important step in achieving equality and equity for our Indigenous people, as it acknowledged the hardships brought upon them by governments of the past, and of the present. It gave hope for the future possibilities of how Government would interact with the Indigenous community, with genuine consultation, and indeed with absolutely needed reparations.<sup>293</sup>

- 5.15** Aunty Shirley McGee, Director, Coota Girls Corporation, told the committee how happy and proud she felt when Prime Minister Rudd said sorry as she had ‘never heard a white person say sorry to the Aboriginal people’ before. She reflected that her world came together that day.<sup>294</sup>
- 5.16** The Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, expressed the view that the Australian Government’s apology was ‘an extraordinary day for our nation’ and spoke about her experience on that day sitting in the gallery of the Parliament of Australia, watching as both the leaders of the Government and Opposition apologised and the incredible gesture made by an Aboriginal woman at its conclusion:
- I saw the most extraordinary thing that I have ever seen in my life that day: when the apologies finished and the heads of Parliament walked around to those people an old woman stood up and gave the Prime Minister a coolamon. That is the vessel that we carried our babies in. I have never seen such generosity. It says to me that we are a nation now that can never say again we did not know.<sup>295</sup>
- 5.17** Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, who was also in Parliament on the day of the apology, highlighted how ‘there were tears of relief and emotion and stuff like that, but we were all thinking the same thing – please, don’t let this be it’.<sup>296</sup>
- 5.18** Reconciliation Australia submitted that the Australian Government’s apology was crucial in acknowledging the truth of past policies and an important first step in healing the nation, but that much still needs to be done to ‘truly reach our goal of reconciliation’.<sup>297</sup>
- 5.19** The Shoalcoast Community Legal Centre expressed a similar view, noting that an apology without any further action ‘can only serve to undermine the effectiveness and acceptance of any strategies for reparations’, and that the New South Wales Government still needs to build trust and confidence within Aboriginal communities.<sup>298</sup>
- 5.20** A different view about the apology was expressed by Mr Lance Jones, a Stolen Generation survivor, who asserted that it was not sufficient in redressing the past: ‘When Mr Rudd

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<sup>293</sup> Submission 51, Ms Irene Doutney, pp 2-3.

<sup>294</sup> Evidence, Aunty Shirley McGee, Director, Coota Girls Corporation, 6 November 2015, p 10.

<sup>295</sup> Evidence, the Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, 5 November 2015, p 45.

<sup>296</sup> Evidence, Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, 10 February 2016, p 37.

<sup>297</sup> Submission 13, Reconciliation Australia, p 1.

<sup>298</sup> Submission 42, Shoalcoast Community Legal Centre, p 8.

apologised to the Stolen Generation ... I just turned the radio off. I turned the radio off because, to me, an apology is not enough, it is not enough.<sup>299</sup>

- 5.21** Ms Sonja Ermel, another Stolen Generation survivor, had a similar opinion, stating that the apology from the Prime Minister ‘while widely accepted hasn’t had full force of meaning to many of the Stolen Generations’.<sup>300</sup>
- 5.22** In regard to the New South Wales Government apologies, some inquiry participants indicated that many people were not aware they had been made. For example, Ms Wendy Spencer, Project Manager, Dharrivaa Elders Group, told the committee that the apology by the Premier and state government agencies did not reach the people in Walgett who needed it.<sup>301</sup>
- 5.23** The Shoalcoast Community Legal Centre similarly commented that many were not aware of the New South Wales apologies and as such suggested ‘they did little in the way of reparations’. It added that the significance of the apologies would have been different for everyone and no one can speak for the views of the collective Stolen Generation survivors and Aboriginal communities, but that any benefit from the apologies ‘becomes redundant in the absence of the knowledge of the apology by those affected’.<sup>302</sup>

## Further recognition

- 5.24** A desire for further recognition and acknowledgement of past forcible removal policies and practices and their continued impact on Aboriginal communities was raised by several inquiry participants.
- 5.25** Ms Doutney commented that the Australian Government apology ‘remains empty, due to the lack of actions, the lack of empowerment given to Aboriginal Australians to date’ and suggested that the government consult with Aboriginal communities about entering a national treaty to acknowledge the invasion of land and consider changing the Australian Constitution to recognise Aboriginal and Torres Strait Islander people.<sup>303</sup>
- 5.26** Ms Elizabeth Rice, co-author of the 2015 *Bringing them home: Scorecard Report* also called for recognition in the Australian Constitution but added that ‘recognition alone is not enough; we have to work through towards self-determination and a sharing of governance in this nation’.<sup>304</sup> Self-determination is discussed further in chapter 11.
- 5.27** The Department of Premier and Cabinet advised that in September 2010 the New South Wales Constitution was amended to formally recognise Aboriginal and Torres Strait Islander people as the first people in New South Wales and the traditional custodians and occupants of the land.<sup>305</sup>

<sup>299</sup> Evidence, Mr Lance Jones, community member, 17 February 2016, p 22.

<sup>300</sup> Submission 9, Ms Sonja Ermel, p 6.

<sup>301</sup> Evidence, Ms Wendy Spencer, Project Manager, Dharrivaa Elders Group, 18 February 2016, p 5.

<sup>302</sup> Submission 42, Shoalcoast Community Legal Centre, pp 6-8.

<sup>303</sup> Submission 51, Ms Irene Doutney, pp 2-3.

<sup>304</sup> Evidence, Ms Elizabeth Rice, co-author of the 2015 *Bringing them home: Scorecard Report*, 9 February 2016, p 16.

<sup>305</sup> Submission 34, Department of Premier and Cabinet, p 3.

- 5.28** A number of inquiry participants called for the New South Wales Government to acknowledge and accept liability for the damage suffered by members of the Stolen Generations and their families and communities.<sup>306</sup> Acknowledgement of liability is addressed in more detail in chapters 6 and 7 of this report in the context of monetary compensation and a reparation framework.
- 5.29** Other stakeholders argued that a further public apology should be made.<sup>307</sup> Shoalcoast Community Legal Centre said that issuing a further apology and acknowledgement of the damage suffered by the individuals and their families that were removed under these ‘racially based policies’ would assist in building trust within Aboriginal communities and show a sincere commitment by the government in making reparations.<sup>308</sup>
- 5.30** Both Herbert Smith Freehills and Ms Doutney recommended an ongoing apology and acknowledgement as an important aspect of reparation to assist in addressing the intergenerational impacts caused by past forcible removal policies and practices.<sup>309</sup>
- 5.31** According to ANTaR NSW, ‘there remain misconceptions within the wider community about what the apology related to’. It suggested that further education on the history behind the apologies and past forcible removal policies and practices was needed.<sup>310</sup> Education about the history of past forcible removal policies and practices is considered further in chapter 9.
- 5.32** It was also suggested that the continued commemoration of both the anniversary of the tabling of the *Bringing them home* report and the national apology is important as an ongoing acknowledgement of the government’s past forcible removal policies and practices.<sup>311</sup>
- 5.33** Dr John Rule and Ms Rice, authors of the *Scorecard Report*, advised that up until a few years ago the National Sorry Day Committee was funded by the Commonwealth to host a national Sorry Day event in Canberra each year. They noted that the day is also formally recognised by the Australian Parliament as a national day and is ‘signified by the raising of the Aboriginal and Torres Strait Islander flags’.<sup>312</sup>
- 5.34** Ms Paulette Whitton, whose father is a Stolen Generations survivor, commented that last year she was unable to find a Sorry Day event and urged the committee to ensure the nation continues to commemorate this important day:

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<sup>306</sup> Submission 42, Shoalcoast Community Legal Centre, pp 8-9; Evidence, Ms Hocking, 10 February 2016, p 37; Supplementary submission 36a, Coota Girls Corporation, p 4.

<sup>307</sup> Submission 19, Herbert Smith Freehills, p 9; Submission 20, Mount Druitt and District Reconciliation Group, p 1; Submission 42, Shoalcoast Community Legal Centre, pp 8-9; Submission 11, Reconciliation for Western Sydney Inc, pp 1-2.

<sup>308</sup> Submission 42, Shoalcoast Community Legal Centre, pp 8-9.

<sup>309</sup> Submission 19, Herbert Smith Freehills, p 11; Submission 51, Ms Irene Doutney, pp 2-3.

<sup>310</sup> Submission 21, ANTaR NSW, p 5.

<sup>311</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 5, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>312</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 5, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>



Do not let 26 May, Sorry Day, die in favour of the apology in February. Sorry Day is the day that the 'Bringing them home' report was released. We need to make sure that that date is not forgotten and that we commemorate that day every year. Please make funding available.<sup>313</sup>

**5.35** There was also some discussion during the inquiry around the need for a personal apology to Stolen Generation survivors.

**5.36** The Public Interest Advocacy Centre (PIAC) advised that its proposed tribunal (examined in chapter 7) recommends that a forum and process for truth and reconciliation be provided to enable members of the Stolen Generations to tell their story and be offered a personal apology.<sup>314</sup> Mr Edward Santow, Chief Executive Officer of PIAC, noted that personalised apologies given in other jurisdictions have been an important aspect of reparations:

I am certainly aware that being treated not just as a member of a Stolen Generation but as a specific person who happens also to be a member of the Stolen Generations, and to have it reflected back to that individual that their particular situation matters, is very important.<sup>315</sup>

**5.37** Ms Spencer informed the committee that the Dharriwaa Elders Group's 'Elders want personal and local apologies made to those families'.<sup>316</sup>

**5.38** In addition, the Dharriwaa Elders Group recommended that the New South Wales Government send a letter of apology to each member of the Stolen Generations and called for a formal apology ceremony to be conducted in all affected New South Wales Aboriginal communities. It asserted that the ceremony should include:

- an apology from the New South Wales Government directly to the affected Aboriginal community
- identification and announcement of the names of all Aboriginal people stolen from each community by senior representatives of the New South Wales Government
- an apology from representatives of all government agencies that act within each affected Aboriginal community and a commitment from them in making reparations
- the dedication of a public memorial honouring the names of each stolen child.<sup>317</sup>

**5.39** Mr Michael Waterhouse, General Counsel, Department of Education, advised that during the current group action proceedings against the New South Wales Government (discussed in chapter 2), a personal apology on behalf of the state is given to each claimant that acknowledges the previous apologies given by the New South Wales and Australian governments.<sup>318</sup>

<sup>313</sup> Evidence, Ms Paulette Whitton, community member, 9 February 2016, p 51.

<sup>314</sup> Submission 16, Public Interest Advocacy Centre, p 15.

<sup>315</sup> Evidence, Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre, 22 March 2016, p 7.

<sup>316</sup> Evidence, Ms Spencer, 18 February 2016, p 2.

<sup>317</sup> Submission 29, Dharriwaa Elders Group, p 5.

<sup>318</sup> Evidence, Mr Michael Waterhouse, General Counsel, Department of Education, 5 November 2015, p 5.

***Committee comment***

- 5.40** The committee commends the New South Wales Government for being the first state to deliver an apology to all those impacted by past forcible removal policies and practices. Although long overdue, we also commend the subsequent Australian Government apology made by then Prime Minister Kevin Rudd in 2008.
- 5.41** The committee acknowledges that the apologies were an important first step in recognising the injustice of past forcible removal policies and practices; however, we agree with inquiry stakeholders that much more needs to be done. We are confident that the recommendations contained in this report will help continue to pave the way toward making amends for the damage Stolen Generation survivors have suffered, which in turn we hope will assist them in their journey to heal.
- 5.42** We note that some inquiry participants indicated that the New South Wales Government apologies had not reached everyone they were intended to reach. The committee therefore recommends that on the 20th year anniversary of the tabling of the *Bringing them home* report, the New South Wales Government acknowledge the wrongdoing of past government policies and practices, and the ongoing commitment to provide reparations to Stolen Generation survivors. This apology should be well publicised to ensure it reaches all Stolen Generation survivors, particularly those in rural, regional and remote areas.
- 5.43** Local councils also play an important role in supporting their community, therefore it is important that they too acknowledge the past and work collaboratively to provide reparations to Stolen Generation survivors and their families.
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**Recommendation 9**

That the NSW Government, on the 20th year anniversary of the tabling of the *Bringing them home* report, acknowledge the wrongdoing of past government policies and practices, and the ongoing commitment to provide reparations to Stolen Generation survivors, and that it request the Office of Local Government to encourage local governments to do the same.

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- 5.44** The committee is also of the view that the Parliament of New South Wales should acknowledge and promote the strength and importance of Aboriginal culture and heritage at the commencement of each new parliament.
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**Recommendation 10**

That the Parliament of New South Wales acknowledge and promote the strength and importance of Aboriginal culture and heritage at the commencement of each new parliament.

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- 5.45** Further, the committee supports individual apologies being made to Stolen Generation survivors, and discusses this in chapter 7 and in recommendation 2.
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## Memorials

- 5.46** The committee received requests from a number of inquiry participants for the New South Wales Government to establish and fully fund permanent memorials to acknowledge and commemorate members of the Stolen Generations and/or places of significance to survivors.
- 5.47** Ms Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, contended that the history of past forcible removal policies and practices has not been adequately told which has created a country of secrecy. She called for plaques to be erected in communities where Aboriginal children were removed from their families.<sup>319</sup>
- 5.48** Mr Jones asserted that a memorial should be established in each town as the removal of Aboriginal children happened everywhere, and suggested a lawn memorial garden or memorial near the river bank as options to enable people to gather and pay their respects.<sup>320</sup>
- 5.49** Ms Ermel encapsulated the importance of acknowledging and commemorating people like her mother, who was taken from her family and then had all her children taken from her, through a memorial:
- For those like my mother who have passed away, I would also like some personal acknowledgement made to her and in her name: a legacy of significant value to the community that reflects her courage and determination in the face of an unsophisticated irresponsible and irrational government. I want to be able to go to a place, a garden, a land or establish a bursary that bears her name so others will know her and where the government holds the responsibility to maintain her legacy in perpetuity. I want people to ask who mum was so that she is acknowledged as she ought to have been by the government who so willingly deserted her in every inhuman way.<sup>321</sup>
- 5.50** Legal Aid NSW, the Shoalcoast Community Legal Centre and PIAC all supported the establishment of permanent memorials and commemorative sites to acknowledge members of the Stolen Generations.<sup>322</sup>
- 5.51** The Kinchela Boys' Home Aboriginal Corporation identified Platform 1 on Central Station as a significant location where it would like a memorial plaque to commemorate the children who were taken by train to Central Station before being split up and taken to either Cootamundra Aboriginal Girls' Training Home or Kinchela Aboriginal Boys' Training Home.<sup>323</sup>
- 5.52** The committee heard evidence about the benefits of memorials in educating the community, especially the younger generation, on the history of past forcible removal policies and practices. For example, Ms Virginia Robinson, Secretary, Dharriwaa Elders Group, told the

<sup>319</sup> Evidence, Ms Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, 9 February 2016, p 41.

<sup>320</sup> Evidence, Mr Jones, 17 February 2016, p 27.

<sup>321</sup> Submission 9, Ms Sonja Ermel, pp 2 and 6.

<sup>322</sup> Submission 32, Legal Aid NSW, p 28; Submission 42, Shoalcoast Community Legal Centre, p 13; Submission 16, Public Interest Advocacy Centre, p 13.

<sup>323</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 19.

committee that many of the younger generation are not aware of what has happened and having something ‘physically visible with the names of people who were taken away’ will educate both Aboriginal and non-Aboriginal people.<sup>324</sup>

**5.53** Uncle George Fernando, whose mother was a member of the Stolen Generations, highlighted that it is ‘the number one priority to be sitting down with the new generation and leaving that message there’ with a monument that they can be proud of to honour their family and community.<sup>325</sup> Ms Suzanne Hall, a Stolen Generation survivor, suggested that photos should be included so that the younger generations can see what their ancestors looked like in ‘a place where they can have memories of their family before them’.<sup>326</sup>

**5.54** When questioned about the establishment of a memorial for members of the Stolen Generations at Parliament House, Mr Carr cautioned the committee to carefully consider this issue and to consult with the Aboriginal community:

The cautionary note I would add is that memorials are worth doing only if they are well done ... We cannot memorialise everything in our history. We cannot memorialise everyone who deserves it. Think about it carefully and infinitely consult Aboriginal people.<sup>327</sup>

**5.55** Other inquiry participants reflected on historical events that are already commemorated in Australia in contrast to commemorations for members of the Stolen Generations. For example, Mr Jones noted that the Australian War Memorial pays respect to the ‘soldiers that have fallen’ to argue that there should be a memorial garden or memorial wall erected somewhere to pay respect to the ‘Stolen Generation that have passed on’.<sup>328</sup> Similarly, Mr James Allen, Chairperson, Batemans Bay Local Aboriginal Land Council and Coordinator, Murra Mia Aboriginal Tenants Advisory Service, spoke about the commemoration of two different histories within Australia:

There is a statement to the Aboriginal people, ‘Forget about it and move on’. Then we talk about white man’s history here and it is ‘Lest we forget’. Why can we have one statement to forget and move on and the other one lest we forget? They are both very important issues and need to be remembered. We should lest we forget about the whole lot, not just one side of the story.<sup>329</sup>

**5.56** Ms Cecelia Anthony, Co-Chair, New South Wales Reconciliation Council, highlighted why people want the history of past forcible removal policies and practices commemorated:

As a society we are surrounded by our history and monuments of the people who arrived in Australia, and post-colonial Australia. It is not a difficult thing to understand why people would want their own memorials and the true lesson of history is to never repeat your mistakes.<sup>330</sup>

<sup>324</sup> Evidence, Ms Virginia Robinson, Secretary, Dharrivaa Elders Group, 18 February 2016, p 6.

<sup>325</sup> Evidence, Uncle George Fernando, community member, 18 February 2016, pp 24-25.

<sup>326</sup> Evidence, Ms Suzanne Hall, community member, 17 February 2016, p 27.

<sup>327</sup> Evidence, Mr Bob Carr, former Premier of NSW, 5 November 2015, p 31.

<sup>328</sup> Evidence, Mr Jones, 17 February 2016, p 27.

<sup>329</sup> Evidence, Mr James Allen, Chairperson, Batemans Bay Local Aboriginal Land Council, and Coordinator, Murra Mia Aboriginal Tenants Advisory Service, 2 March 2016, p 18.

<sup>330</sup> Evidence, Ms Cecelia Anthony, Co-Chair, NSW Reconciliation Council, 10 February 2016, p 17.

- 5.57 A number of memorials and sites commemorating members of the Stolen Generations in New South Wales have already been established or are in the process of being established.
- 5.58 For example, there is a Stolen Generations Memorial at the Australian Botanic Garden in Mount Annan, which is a journey of healing and reflection. The memorial was established by the NSW Stolen Generations Committee, the Botanic Gardens Trust and Link-Up NSW, and includes a series of boardwalks through the garden and a sculptural centrepiece that represents the damage caused by the removal of Aboriginal children from their families.<sup>331</sup>
- 5.59 There is also a memorial garden on the site of the former Bomaderry Aboriginal Children's Home, which the committee visited. Uncle Sonny Simms, founder of the memorial garden, advised that two ceremonies were held at the garden – one when the garden was first dedicated in 2001 and another on the 100th year anniversary of the home's establishment, with many people travelling from far away to attend the commemorations. To illustrate, he told the committee about one former resident of the home, who was adopted by American parents, who travelled from the United States to attend the anniversary ceremony. Uncle Sonny said that the former resident would sometimes ring up to three times a week in the lead up saying 'brother, I am coming home for that. I would not miss that for the world'.<sup>332</sup>



*The memorial plaque at the former Bomaderry Aboriginal Children's Home*

- 5.60 In 2006, two memorials were unveiled on the site of the former Cootamundra Aboriginal Girls' Training Home: a replica of a well that the children sat on with the inscription 'sitting on our wishing well, waiting for family to take us home'; and a group photograph set in polished stone that is a symbol for 'a mother coming up the driveway to take her child or children home'.<sup>333</sup>

<sup>331</sup> The Royal Botanic Garden Sydney, *Indigenous Heritage*, 13 November 2015, <<https://www.rbgsyd.nsw.gov.au/About-Us/History-and-Facts/Indigenous-Heritage>>

<sup>332</sup> Evidence, Uncle Sonny Simms, community member, 2 March 2016, p 7.

<sup>333</sup> Supplementary submission 36a, Coota Girls Corporation, p 66.



*The memorial plaque at the former Cootamundra Aboriginal Girls' Training Home*

- 5.61** The committee also saw that the Clarence Valley Aboriginal Healing Centre has commenced building a healing garden at the centre, with the assistance of local job network agencies and the wider community. The garden will include a tribute to the three nations in the Clarence Valley, including native bush medicines and bush tucker plants from each area, and a dedication to members of the Stolen Generations. On the committee's visit to the healing centre, Ms Janelle Brown, Coordinator, Clarence Valley Aboriginal Healing Centre, explained what the healing garden will provide to the community:

We see it as a fantastic opportunity to heal, to learn more about Aboriginal culture, to learn more about bush medicine and bush tucker, and also for it to be a place where we can reconcile with the non-Indigenous community.<sup>334</sup>

- 5.62** Another memorial is being established by the Albury Wodonga Aboriginal Health Service and local Aboriginal community, which have been working with the Albury City Council to build it in their local Botanic Gardens. The memorial has been designed following consultation with Aboriginal artists and members of the Stolen Generations and will include a plaque and circular pole with different elements with an important story behind it. The memorial will be located in an area of the garden that can be viewed by everyone and will be a significant commemoration for the community.<sup>335</sup>

<sup>334</sup> Evidence, Ms Janelle Brown, Coordinator, Clarence Valley Aboriginal Healing Centre, 8 December 2015, p 3.

<sup>335</sup> Evidence, Ms Joanne Taylor, Bringing Them Home worker, Albury Wodonga Aboriginal Health Service, 6 November 2015, p 19.

- 5.63** Further, the Parramatta Female Factory Precinct Memory Project, which works with those who went to the former Parramatta Girls Home, including Stolen Generation survivors, is currently working on a project to document and remember their experiences on the site to connect the past to the present. The project acknowledges the personal experiences of institutionalisation and contributes to public awareness through educational strategies, such as open days for schools and the public, to help guarantee against repetition.<sup>336</sup>

*Committee comment*

- 5.64** It is essential that members of the Stolen Generations are adequately and appropriately acknowledged and commemorated. The committee notes that there are a number of memorials already established or in the process of being established around the state; however, we consider that there should also be a memorial in Sydney and in other areas of significance for Stolen Generation survivors. We therefore recommend that the New South Wales Government, in consultation with members of the Stolen Generations, establish a memorial in a prominent location in Sydney and in other areas of significance for Stolen Generation survivors.

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**Recommendation 11**

That the NSW Government, in consultation with Stolen Generation survivors, establish a memorial to acknowledge and commemorate members of the Stolen Generations in a prominent location in Sydney.

**Recommendation 12**

That the NSW Government, in consultation with Stolen Generation survivors, establish other memorials in areas of significance for members of the Stolen Generations.

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**Keeping Places at former homes**

- 5.65** During the inquiry the committee visited the former Bomaderry Aboriginal Children's Home, the Kinchela Aboriginal Boys' Training Home and the Cootamundra Aboriginal Girls' Training Home and met with Stolen Generation survivors that had been institutionalised at those homes.
- 5.66** When visiting the sites the committee heard distressing stories about how the children in these homes were poorly treated, neglected and often psychologically, physically and sexually abused. The committee saw the tree at the former Kinchela Aboriginal Boys' Training Home where Aboriginal boys were shackled and abused. It heard stories about young Aboriginal children in the homes suddenly disappearing, with no one knowing to this day who those children were and what happened to them. It also received disturbing anecdotal evidence about Aboriginal children being buried on the properties of each of these homes.

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<sup>336</sup> Submission 52, Parramatta Female Factory Precinct Memory Project, p 3.



- 5.67** The committee spoke to survivors from these homes about what should happen to the sites to preserve history and acknowledge the experiences of those who went to the homes. One idea was that the sites should be developed into ‘Keeping Places’ – Aboriginal community managed places where cultural material is kept for safe keeping. Generally, Keeping Places are established within a facility owned or managed by an Aboriginal community group but can also be established within an Office of Environment and Heritage facility.<sup>337</sup>

### **Bomaderry Aboriginal Children’s Home**

- 5.68** The Bomaderry site is owned and maintained by the Nowra Local Aboriginal Land Council, which utilises the site for the council’s offices.<sup>338</sup> As mentioned earlier, the site contains a memorial garden dedicated to the remembrance of members of the Stolen Generations.<sup>339</sup>



- 5.69** Other uses of the site have been suggested such as a Keeping Place for educational purposes and a healing place for former residents and their families. The Chair of the Children of the Bomaderry Aboriginal Children’s Home Incorporated, Aunty Christine Blakeney, explained that a Keeping Place to hold information about the site such as records and photographs would be valuable so that past residents could ‘come in and see their stories’.<sup>340</sup> She also noted that many school kids come to visit the home, and that a Keeping Place would therefore be useful for educational purposes, giving younger generations the opportunity to learn ‘about the history ... the policies of the time, why things happened, why we were there. They need to know what happened to us afterwards. They need to know their history’.<sup>341</sup>
- 5.70** Aunty Christine highlighted the educational and healing value of having a proper place with a ‘more comprehensive display of the history’ on site:

The thing is that we need that Keeping Place, or an educational place and a healing place, for those who were in the home to come back to and to bring their families down to show them where they grew up. If you go there now you can talk and talk and talk but if you do not have evidence—all those photographs—it is hard for people to understand or comprehend what you are talking about ... It is a kind of

<sup>337</sup> Museums & Galleries NSW, *Keeping places & beyond: Building cultural futures in NSW*, <[http://mgnsw.org.au/media/uploads/files/keeping\\_places\\_and\\_beyondnew2.pdf](http://mgnsw.org.au/media/uploads/files/keeping_places_and_beyondnew2.pdf)>

<sup>338</sup> NSW Government, Office of Environment & Heritage, *Bomaderry Aboriginal Children’s Home*, 21 December 2011, <<http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5061330>>

<sup>339</sup> Monument Australia, *Stolen Generations Memorial Garden*, <<http://monumentaaustralia.org.au/themes/culture/indigenous/display/20437-stolen-generations-memorial-garden>>

<sup>340</sup> Evidence, Aunty Christine Blakeney, Chair, Children of the Bomaderry Aboriginal Children’s Home Incorporated, 2 March 2016, p 3.

<sup>341</sup> Evidence, Aunty Christine, 2 March 2016, p 3.



healing for a lot of us too ... So the Keeping Place would be really beneficial to all of us.<sup>342</sup>

- 5.71** The committee was informed that the Children of the Bomaderry Aboriginal Children's Home Incorporated is currently negotiating with the Nowra Local Aboriginal Land Council about the location and funding of a Keeping Place onsite 'for school groups, community and anyone who is interested in the history' to visit.<sup>343</sup>
- 5.72** Mr Greg Peterson, Chief Executive Officer, Nowra Local Aboriginal Land Council supported 'the dedication of a Keeping Place for the future'. However, he advised this would be a 'massive project' that is currently 'beyond our resources' and insufficient financial support, occupational health and safety issues and heritage orders have limited the organisation's plans.<sup>344</sup>

### **Kinchela Aboriginal Boys' Training Home**

- 5.73** The former site of the Kinchela Aboriginal Boys' Training Home is owned by the Kempsey Local Aboriginal Land Council and currently occupied by Belong's Haven, which runs a drug and alcohol rehabilitation centre for Aboriginal people onsite. While the values and benefits of Belong's Haven's work have been described as 'an asset' to the community, its occupation places access restrictions on the site.<sup>345</sup> It is the wish of the Kinchela Boys' Home Aboriginal Corporation to reclaim the site; however, this poses a problem to the operation of the rehabilitation centre.



- 5.74** Mr Greg Douglas, Acting Chief Executive Officer, Kempsey Local Aboriginal Land Council explained that the 'site itself has been a source of angst in the community' due to the 'memories and ideas attached to that institution ... But it deserves to be something that potentially remains available to anyone and everyone in New South Wales to have a look at. But in its current situation that is just not possible'.<sup>346</sup>
- 5.75** Dr Tiffany McComsey, Chief Executive Officer of Kinchela Boys' Home Aboriginal Corporation, advised they have been working on plans for a 'museum and truth-telling space' at the Kinchela site that would 'be shaped in the way that the home looked during the time

<sup>342</sup> Evidence, Aunty Christine, 2 March 2016, p 5.

<sup>343</sup> Answers to questions on notice, Aunty Christine Blakeney, Chair, Children of the Bomaderry Aboriginal Children's Home Incorporated, 24 March 2016, p 1.

<sup>344</sup> Correspondence from Mr Greg Peterson, Chief Executive Officer, Nowra Local Aboriginal Land Council, to Chair, 8 April 2016.

<sup>345</sup> Evidence, Mr Greg Douglas, Acting Chief Executive Officer, Kempsey Local Aboriginal Land Council, 7 December 2015, p 25.

<sup>346</sup> Evidence, Mr Douglas, 7 December 2015, p 26.

that the men were there'.<sup>347</sup> Dr McComsey said the museum would provide safe spaces where Kinchela men and their families could go through records with the support of other Kinchela family members, who had experienced that process and could help them.<sup>348</sup>

**5.76** The committee heard that it was important for the healing centre aspect of the plans to be located offsite as some of the men refuse to go back to Kinchela due to the bad memories it evokes. Dr McComsey indicated that the centre would 'have a residential component where family members and other healing programs could take place' and would be established in South West Rocks. This location is significant for the Kinchela men as they were taken there when the home used to flood and were also part of the local surf lifesaving club; therefore it evokes happy and safe memories.<sup>349</sup> Despite these plans, Ms Paulette Whitton, daughter of a Kinchela man, noted the corporation is under resourced and requires much needed funding for such plans to eventuate.<sup>350</sup>

**5.77** The Kempsey Local Aboriginal Land Council advised that it 'has an open and ongoing relationship with Kinchela Boys Home survivors and the Kinchela Boys' Home Corporation' and was sympathetic to the corporation's plans for the site.<sup>351</sup> Mr Douglas expressed in principle support for an educational memorial, healing centre and home for Kinchela men:

We have seen the pain of their memories in their eyes. We have felt the pain of their memories in their hearts. We believe in whatever can be done to assist the restitution of these stolen children to a life and a lifestyle in which they as much as possible can overcome their anxieties and fears and emotions ... of their time as Kinchela boys.<sup>352</sup>

### **Cootamundra Aboriginal Girls' Training Home**

**5.78** The Cootamundra Aboriginal Girls' Training Home and surrounding property is owned by the Young Local Aboriginal Land Council and is currently being leased to the Aboriginal Evangelical Fellowship as a Christian training centre called Bimbadeen College. In 2012, it was listed on the New South Wales Heritage Register.<sup>353</sup>



**5.79** The Coota Girls Corporation told the committee that it would like to be given control of the home and property as an acknowledgement of the suffering Stolen Generation survivors experienced and the memories held there. It was important to them, as the former residents,

<sup>347</sup> Evidence, Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 5.

<sup>348</sup> Evidence, Dr McComsey, 9 February 2016, p 54.

<sup>349</sup> Evidence, Dr McComsey, 7 December 2015, p 5.

<sup>350</sup> Evidence, Ms Whitton, 9 February 2016, p 54.

<sup>351</sup> Evidence, Mr Douglas, 7 December 2015, p 23.

<sup>352</sup> Evidence, Mr Douglas, 7 December 2015, p 23.

<sup>353</sup> NSW Government, Office of Environment & Heritage, *Cootamundra Aboriginal Girls' Training Home*, 25 May 2011, <<http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5061346>>

that people be able to see how the home was and learn about what happened there so as to better understand the past.<sup>354</sup>

- 5.80** Auntie Isabel Reid, Chair of the Coota Girls Corporation, said that the home had ‘definitely’ changed over the years, which she was displeased about as it meant no one could see how it originally was: ‘What I would like to see happen ... is get that all back to the original state of the home ... The fact is no-one really sees through our eyes how the home was’.<sup>355</sup> A priority of the corporation is to ‘be provided with the capacity to control what happens to the Coota Girls Home and how the stories of our lives in the Home are told’.<sup>356</sup>
- 5.81** Auntie Lorraine Peeters, a former resident of the Cootamundra Aboriginal Girls’ Training Home and now Director of Winangali Marumali, and Ms Shaan Hamann, Partner, Winangali Marumali, envision the former home as a Keeping Place and museum where the events of the past could be remembered and subsequent generations, Aboriginal and non-Aboriginal could learn about it.<sup>357</sup> Auntie Lorraine advised that they had ‘even approached the Jewish Museum to give us some ideas’ about how to construct an interactive environment for learning the history of such a ‘huge policy’.<sup>358</sup>
- 5.82** In addition, Auntie Lorraine disagreed with suggestions from some people that the site should be bulldozed as she felt it was important to have something to be remembered by. For example, she said ‘I always have grandchildren of former residents ask me: “What did my mum do?” You have to walk them through, but if we had the home back they could go there themselves and learn the history’.<sup>359</sup> Ms Hamann said that the history of Cootamundra Aboriginal Girls’ Training Home would not be ‘forgotten’ if the site remained, allowing schools and descendants to visit.<sup>360</sup>

*Committee comment*

- 5.83** The committee thanks the Coota Girls Corporation, Kinchela Boys’ Home Aboriginal Corporation and the Children of the Bomaderry Aboriginal Children’s Home Incorporated for allowing us to visit the sites of the former homes, and for survivors sharing the harrowing stories of their experiences in those places.
- 5.84** Although the sites hold terrible memories for those who were institutionalised in the homes, the committee acknowledges the importance of preserving each site to not only help Stolen Generation survivors and their descendants and families to heal, but to also document the history and educate the broader community and future generations about what happened in these homes.

<sup>354</sup> Evidence, Auntie Doreen Webster, Member, Coota Girls Corporation, 6 November 2015, p 3.

<sup>355</sup> Evidence, Auntie Isabel Reid, Chair, Coota Girls Corporation, 6 November 2015, p 4.

<sup>356</sup> Submission 50, Coota Girls Corporation and the Kinchela Boys’ Home Aboriginal Corporation, p 13.

<sup>357</sup> Evidence, Auntie Lorraine Peeters, Director, Winangali Marumali, 9 February 2016, p 4; Evidence, Ms Shaan Hamann, Partner, Winangali Marumali, 9 February 2016, p 4.

<sup>358</sup> Evidence, Auntie Lorraine, 9 February 2016, p 4.

<sup>359</sup> Evidence, Auntie Lorraine, 9 February 2016, p 4.

<sup>360</sup> Evidence, Ms Hamann, 9 February 2016, p 4.

- 5.85** The committee therefore recommends that the New South Wales Government, in cooperation with the Australian Government, collaborate with and support the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home incorporated to establish a Keeping Place or museum at the sites of these former homes. We encourage each organisation to work collaboratively with the relevant local land council on their plans in this regard, in acknowledgement of the fact that the sites are owned by local land councils which would need to provide consent to use all or part of the sites as Keeping Places.

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**Recommendation 13**

That the NSW Government, in cooperation with the Australian Government, collaborate with and support the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home incorporated and relevant local Aboriginal land councils to establish Keeping Places or museums at the sites of these former homes.

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- 5.86** In visiting the former Kinchela Aboriginal Boys' Training Home and the Cootamundra Aboriginal Girls' Training Home the committee members found it particularly confronting to see where Aboriginal girls and boys were abused and hear horrific stories about children who may be buried in each of these sites. During private discussions with stakeholders the committee received requests to conduct excavations at these sites and also at the site of the Bomaderry Aboriginal Children's Home. The committee heard of 'lost' 'family members' - other residents of these institutions - individuals who may not have survived as they have not come forward or been located.
- 5.87** The committee is of the view that if there are bodies buried at these sites they should be recovered, identified if at all possible, and given proper funerals. We therefore recommend that the government work with relevant organisations to investigate and search the sites of the former Cootamundra Aboriginal Girls' Training Home, Kinchela Aboriginal Boys' Training Home and the Bomaderry Aboriginal Children's Home to locate the remains of any Aboriginal children.

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**Recommendation 14**

That the NSW Government work with relevant organisations to investigate and search the sites of the former Cootamundra Aboriginal Girls' Training Home, Kinchela Aboriginal Boys' Training Home and the Bomaderry Aboriginal Children's Home to locate the remains of any Aboriginal children.

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## Funeral funds

- 5.88** A related issue raised during the inquiry concerned financial difficulties when honouring Elders and family members passed, including providing suitable gravestones and funerals.
- 5.89** For example, Ms Margaret Roberts spoke about trying to honour her deceased mother, who was a member of the Stolen Generations taken to Cootamundra Aboriginal Girls' Training Home, and preparing for the expense of her father's funeral:
- I am trying to put some money aside for my father's funeral when he passes and he is only a pensioner and also trying to save some money to put a headstone on my mother's grave as she can't be just a hole in the ground. So if there is any money to had especially for my mother and the loss of her first family and then all of her children, it would be a God send so we could finally put a tombstone on her grave and set up a funeral fund for my father.<sup>361</sup>
- 5.90** Similarly, when questioned on what reparation should be made for her grandfather's sufferings, Ms Ann Weldon, Board Member, Metro Local Aboriginal Land Council, said that she personally did not want any but that 'it would be nice for him to have a beautiful headstone'.<sup>362</sup>
- 5.91** The Coota Girls Corporation said that their members have consistently reported a need for support to pay for the cost of funerals.<sup>363</sup> The Kinchela Boys' Home Aboriginal Corporation called for the New South Government to establish a funeral fund for former residents of the homes and their immediate descendants and provide resources to assist Stolen Generation survivors attend each other's funerals.<sup>364</sup>
- 5.92** Herbert Smith Freehills advised that burials can cost anywhere between \$5,000 to \$10,000 and this is a significant expense for the families of Stolen Generation survivors. It went on to explain that it causes 'significant hurt, stress and shame' for those trying to provide their kin with an appropriate and dignified funeral and how honouring the memory of those who pass 'plays an important role in the healing process and provides a level of communal honour and recognition which was absent during their childhood as members of the Stolen Generation'.<sup>365</sup>
- 5.93** In 1991-92 a funeral fund was established under a Community Benefits Scheme for all New South Wales Aboriginal people. The fund was closed in February 1994 and those who were financial members<sup>366</sup> of the fund are currently entitled to receive financial assistance of up to \$5,000 for the cost of funerals. Any New South Wales Aboriginal person not a member of this

<sup>361</sup> Submission 46, Ms Margaret Roberts, p 5.

<sup>362</sup> Evidence, Ms Ann Weldon, Board Member, Metro Local Aboriginal Land Council, 10 February 2016, p 25.

<sup>363</sup> Supplementary submission 36a, Coota Girls Corporation, p 27.

<sup>364</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 23.

<sup>365</sup> Submission 19, Herbert Smith Freehills, pp 34-35.

<sup>366</sup> The funeral fund was open to all New South Wales Aboriginal people, who as financial members were required to pay an annual membership fee. New South Wales Aboriginal Land Council, *Funeral Assistance Grants*, <<http://www.alc.org.au/nswalc-in-the-community/funeral-fund.aspx>>

fund can still apply for financial assistance up to \$1,000 through the New South Wales Aboriginal Land Council that is then paid directly to funeral service providers.<sup>367</sup>

**5.94** Ms Dennis from the New South Wales Aboriginal Land Council, highlighted that funerals can cost a lot of money and that the land council does not receive separate funding for the purpose of giving financial assistance for funerals to those that apply for this help.<sup>368</sup>

**5.95** In addition, Herbert Smith Freehills indicated that the current sources of funding for funerals are complicated and ‘do not adequately address the needs for recognition and remembrance required by survivors of the Stolen Generations’. It urged the New South Wales Government to urgently provide funds and support to members of the Stolen Generations for funeral expenses.<sup>369</sup>

#### *Committee comment*

**5.96** It is important to be able to honour loved ones appropriately, especially those that have been through so much. Funerals can be expensive, and the committee recognises that adding financial stress to an already difficult time is an undesirable outcome.

**5.97** The committee acknowledges that the New South Wales Local Aboriginal Land Council offers some financial assistance to Aboriginal people for funerals. However, the committee sees merit in establishing a dedicated funeral fund specifically for members of the Stolen Generations.

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#### **Recommendation 15**

That the NSW Government work with the Australian Government to establish a dedicated fund to assist families with the cost of funeral expenses for members of the Stolen Generations.

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<sup>367</sup> NSW Aboriginal Affairs, *Grants*, <<http://www.aboriginalaffairs.nsw.gov.au/nsw-aboriginal-communities/grants/>>; New South Wales Aboriginal Land Council, *Funeral Assistance Grants*, <<http://www.alc.org.au/nswalc-in-the-community/funeral-fund.aspx>>

<sup>368</sup> Evidence, Ms Dennis, 9 February 2016, p 41.

<sup>369</sup> Submission 19, Herbert Smith Freehills, pp 34-35.

## Chapter 6 Monetary payments

I have been a victim and I've suffered and I'll suffer until the day I die for what I've never had and what I can never have. I just have to get on with my life but compensation would help. It doesn't take the pain away. It doesn't take the suffering away. It doesn't take the memories away. It doesn't bring my mother back. But it has to be recognised.<sup>370</sup>

A key component of reparation, which would demonstrate the acceptance of liability for the impacts of past forcible removal policies and practices, is the provision of monetary compensation to Stolen Generation survivors. While there is a current group action against the government in New South Wales, where individual cases are being settled for undisclosed amounts, there has been no broader policy action with respect to this issue since the *Bringing them home* report was released. The first part of this chapter will look at this issue, including the state's responsibility for providing monetary compensation to Stolen Generation survivors.

The second part of this chapter looks at the issue of wages and payments of Aboriginal people which were placed in trust accounts by the government up until the late 1890s but never repaid (commonly referred to as the 'stolen wages'), and discusses the repayment scheme for those monies that operated from 2004 to 2010.

### Financial compensation for Stolen Generation survivors

- 6.1** The *Bringing them home* report recommended that monetary compensation, as one component of reparation, be provided to those affected by past forcible removal policies and practices. It recommended that compensation be provided at the federal level, with the establishment of a National Compensation Fund and Board.<sup>371</sup>
- 6.2** While the Commonwealth Government responded to the *Bringing them home* report's recommendations by announcing \$63 million in practical assistance for those affected by past forcible removal policies and practices, the response did not include monetary compensation.<sup>372</sup>


<sup>370</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 241, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>371</sup> Recommendations 3 and 14 - 20, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 245 and 263-271, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>


<sup>372</sup> Media release, the Hon John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, 'Bringing them home: Commonwealth initiatives', 16 December 1997.



- 6.3 The New South Wales Government's 1999 response to the *Bringing them home* report also did not include monetary compensation, with the government stating that 'monetary compensation is a matter for the Commonwealth Government'.<sup>373</sup>
- 6.4 Since then, neither the New South Wales Government nor the Australian Government have established a reparation scheme for members of the Stolen Generations. Other jurisdictions have, however, with both South Australia and Tasmania taking action on this issue (as outlined in chapter 2).
- 6.5 Relevant to the issue of monetary compensation is the current group action against the state. As discussed in chapter 2, the New South Wales Government has been settling compensation claims from individuals involved in a current group action being pursued by Carroll & O'Dea Lawyers. However, the settlements – while positive – are distinct from a broader policy position with respect to monetary compensation.



***“The loss, grief and trauma experienced by Aboriginal people as a result of the separation laws, policies and practices can never be adequately compensated. The loss of the love and affection of children and parents cannot be compensated. The psychological, physical and sexual abuse of children, isolated among adults who viewed them as members of a ‘despised race’ cannot be adequately compensated. The trauma resulting from these events have produced lifelong effects, not only for the survivors, but for their children and their children’s children. The loss of Aboriginal identity, culture, heritage, community and spiritual connection to our Country cannot be adequately compensated”.***<sup>374</sup>



#### **A state or federal responsibility?**

- 6.6 Although the New South Wales Government stated in 1999 that monetary compensation was a federal responsibility, several stakeholders during this inquiry argued otherwise, contending that the state government indeed has responsibility for the past forcible removal policies and practices carried out in New South Wales.
- 6.7 Reflecting on the state government's position on this issue, the Public Interest Advocacy Centre (PIAC) contended that 'there is no apparent basis in principle for such a rigid approach'. It added:

Certainly, there is no constitutional reason for any such responsibility being confined to the Commonwealth. Nor is there a sound policy basis for such an approach, given the extensive role that state governments, including NSW, have had in this area.<sup>375</sup>

<sup>373</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 8, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>374</sup> Evidence, Aunty Doreen Webster, Member, Coota Girls Corporation, 6 November 2015, p 12.

<sup>375</sup> Submission 16, Public Interest Advocacy Centre, p 8.



- 6.8** PIAC challenged the notion of compensation being only a federal responsibility, when other states have implemented a state based compensation scheme and the New South Wales Government has apologised for its responsibility in implementing past forcible removal policies and practices. It acknowledged that there was preference for a national model of reparations to ‘ensure parity for victims across the country’, but in the absence of this, and given the urgency of the situation, PIAC suggested the state should take responsibility by providing monetary compensation to members of the Stolen Generations.<sup>376</sup>
- 6.9** Other stakeholders agreed that the state has responsibility for providing monetary compensation. The Indigenous Issues Committee of the Law Society of New South Wales asserted that the state bears some responsibility in terms of compensation, given the removal of Aboriginal children from their families occurred under state legislation – that is, under the *Aborigines Protection Act 1909* and *Aborigines Protection (Amendment) Act 1936*.<sup>377</sup> Furthermore, certain facilities were specifically administered by the New South Wales Government through the Aboriginal Welfare Board, namely Kinchela Aboriginal Boys’ Training Home and Cootamundra Aboriginal Girls’ Training Home.<sup>378</sup>
- 6.10** The Shoalcoast Community Legal Centre suggested that the state and federal government both have responsibility, arguing that ‘it is time both levels of government recognise their contribution to this gross violation of human rights’. It said that any attempts to avoid paying monetary compensation ‘can only serve to undermine any good intentions of Parliament towards reparations, creating an impression of words over substance...’.<sup>379</sup>

### **Support for monetary compensation**

- 6.11** There was overwhelming support by inquiry participants for financial compensation to be paid to Stolen Generation survivors. While many acknowledged that monetary compensation will never alleviate the trauma people have experienced, others felt strongly that compensation, if paid, would be a form of acknowledgement and a sign of the government’s genuine commitment towards reparation.
- 6.12** PIAC said that monetary compensation would assist in the ‘recognitions of the wrongs done’, and the healing process, although it recognised that no amount of money will truly compensate members of the Stolen Generations for the impacts and trauma they have experienced:
- PIAC acknowledges that no amount of money will ever be able to fully compensate Aboriginal and Torres Strait Islander people and their communities for the trauma of being a member of the Stolen Generations or for the on-going impact of those forced removals.<sup>380</sup>
- 6.13** Both the Coota Girls Corporation and Kinchela Boys’ Home Aboriginal Corporation also expressed support for monetary compensation to be paid to those who were forcibly removed

<sup>376</sup> Submission 16, Public Interest Advocacy Centre, p 8.

<sup>377</sup> Submission 28, Law Society of NSW, p 2.

<sup>378</sup> Evidence, the Hon Leslie Williams MP, Minister for Aboriginal Affairs, 5 November 2015, p 2.

<sup>379</sup> Submission 42, Shoalcoast Community Legal Centre, p 33.

<sup>380</sup> Submission 16, Public Interest Advocacy Centre, pp 10-11.

under past government policies and practices.<sup>381</sup> It should be noted, however, that many of the individuals who were placed in either the Cootamundra Aboriginal Girls' Training Home or Kinchela Aboriginal Boys' Training Home have, or will be likely to receive, compensation from the New South Wales Government, given most members of the current group action against the state are from these homes.<sup>382</sup>

**6.14** Many stakeholders emphasised the value of monetary payments in acknowledging the impact of past forcible removal policies and practices.

**6.15** The New South Wales Aboriginal Land Council outlined the impact compensation can have on recognition and healing, as reflected in a quote it provided from the *Bringing them home* report from Dr Jane McKendrick:

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.<sup>383</sup>

**6.16** Echoing this sentiment was the following statement from the National Sorry Day Committee's response to a discussion paper on the *Development of a renewed Aboriginal & Torres Strait Islander Social and Emotional Wellbeing framework*: 'Compensation is an important form of recognition, which all Stolen Generations survivors deserve'.<sup>384</sup>

**6.17** Pointing out the importance of monetary compensation in providing 'just outcomes' for members of the Stolen Generations, Reconciliation Australia discussed how the payment of compensation would recognise how individuals were 'deprived of community ties, culture and language, and links with their traditional lands'.<sup>385</sup>

**6.18** Similarly, Shoalcoast Community Legal Centre stated that by paying monetary compensation, the government would demonstrate it has accepted liability for the damage caused by past forcible removal policies and practices. It highlighted that in any other situation where losses are 'incurred at the hands of others', common law principles of compensation apply:

In our submission the foundation for any reparation and indeed reconciliation, must include our common law principles of compensation for losses incurred at the hands of others. Principles that apply to all other situations in the name of justice and equity. In any other matter justice will dictate that those inflicting a wrong upon others will be held accountable for their proportion of that wrong.<sup>386</sup>

**6.19** Shoalcoast Community Legal Centre submitted that the payment of monetary compensation and acceptance of liability will, in turn, assist with individual and collective healing:

<sup>381</sup> Supplementary submission 36a, Coota Girls Corporation, pp 27-28; Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 18.

<sup>382</sup> Evidence, Minister Williams, 5 November 2015, p 2.

<sup>383</sup> Submission 17, NSW Aboriginal Land Council, p 13.

<sup>384</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 2, p 9.

<sup>385</sup> Submission 13, Reconciliation Australia, p 4.

<sup>386</sup> Submission 42, Shoalcoast Community Legal Centre, p 33.

... it is imperative to both individual and collective healing that the NSW Government recognise and accept liability for the far reaching damage caused through the implementation of these racially discriminatory forced removal policies, including proportionate liability for the abuses suffered by many following removal. In doing so the Government must commit to providing monetary compensation demonstrating unreserved regret for their actions and unqualified commitment to reparation.<sup>387</sup>

**6.20** It also noted that the government's acceptance of liability and payment of compensation would 'go a long way to achieving true reparation' as it sends a 'clear and unreserved message that the government is sorry for their role ... and [for] the damage suffered by those wronged'.<sup>388</sup>

**6.21** Mr Les Farrell, a solicitor who works with the Aboriginal community on behalf of Shoalcoast Community Legal Centre, emphasised that reparations may not be possible unless monetary compensation is provided:

... none of this can be accepted as complete commitment to reparations without monetary compensation giving rise to the trust of the Aboriginal people that the New South Wales Government is demonstrating true contrition that includes acknowledgement and acceptance of the suffering from the mere fact and circumstances of removal along with recognition of their proportionate liability for the abuses suffered by many following their forced removal.<sup>389</sup>

**6.22** Inquiry participants discussed how monetary compensation would benefit Stolen Generation survivors and their families.

**6.23** Reconciliation Australia acknowledged that while it is difficult to place a monetary value on the trauma and grief people have experienced, 'for many victims, compensation can make a practical difference and improve the lives of communities and individuals'.<sup>390</sup>

**6.24** Uncle Lester Maher, who was placed in Kinchela Aboriginal Boys' Training Home after being forcibly removed from his family, told the committee how financial compensation would assist with his family's future:

We have got a life to live, we have got our kids to look after and our grandchildren and all that sort of stuff. I think that we deserve something as a compensation package to get out of this for the rest of our lives. I think all the stuff that we have been through, we will never forget what has happened to us.<sup>391</sup>

**6.25** Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, who was paid compensation under the Tasmanian compensation scheme, reflected on her mixed feelings about receiving compensation. While she said she initially did 'not feel right about taking this money', she had talked to other Elders, one of which had encouraged her to use the money to create happy memories. Ms Hocking subsequently split the money between her

<sup>387</sup> Submission 42, Shoalcoast Community Legal Centre, p 41.


<sup>388</sup> Submission 42, Shoalcoast Community Legal Centre, p 34.

<sup>389</sup> Evidence, Mr Les Farrell, Solicitor, Shoalcoast Community Legal Centre, 2 March 2016, p 13.


<sup>390</sup> Submission 13, Reconciliation Australia, p 4.

<sup>391</sup> Evidence, Uncle Lester Maher, Vice Chair, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 7.

children, telling them: ‘This is not to replace what you have lost. Buy yourself something special with this. Buy yourself a memory’.<sup>392</sup>



***“Despite the fact that most of these recommendations [from the Bringing them home report] have faded into distant memory, the moral argument for just reparations including financial compensation remains and, if ignored, will continue to have a corrosive effect on the social and emotional wellbeing of many Stolen Generations and their families”.***<sup>393</sup>



#### ***Committee comment***

- 6.27** The committee acknowledges that financial reparation can have a powerful effect in terms of acknowledging the trauma and lasting impacts of past forcible removal policies and practices. It also recognises that the provision of monetary payments may make a significant difference to someone’s life. Not only may it help members of the Stolen Generations to heal, it can also enable greater access to education and housing, which may lead to better employment opportunities, better health and less contact with the justice system – which are all currently areas of disadvantage experienced by Aboriginal people, particularly those that have been affected by past forcible removal policies and practices. (These issues of disadvantage will be examined in more detail in chapter 8).
- 6.28** While the committee understands that no amount of money could ever make up for the pain and suffering Aboriginal people have endured as a result of being forcibly removed, for the reasons outlined above it supports the provision of monetary payments to Stolen Generation survivors.
- 6.29** Although the settlement of individual cases via the current group action against the state is a positive step in the government accepting liability for the impacts of past forcible removal policies and practices, the committee is supportive of a broader policy approach with respect to redress for Stolen Generation survivors, one which would sit separately to existing legal avenues for providing compensation. This will be canvassed further in the next chapter.

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<sup>392</sup> Evidence, Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, 10 February 2016, p 33.

<sup>393</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), Appendix 2, p 9, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

## Repayment of stolen wages

**6.30** Many of the children ‘stolen’ from their families by the Aborigines Protection Board or Aborigines Welfare Board, also had their wages or payments placed in trust accounts by the government but never repaid. This money is referred to as the ‘stolen wages’ of Aboriginal people.<sup>394</sup>

**6.31** As discussed in chapter 2, the government established the Aboriginal Trust Fund Repayment Scheme in 2004, a scheme to repay stolen wages to Aboriginal people in New South Wales. The scheme operated until 2010, enabling a total of \$12.9 million to be repaid.<sup>395</sup>

**6.32** Despite the scheme being considered somewhat of a success, there were concerns about its operation and the fact that some people missed out on the opportunity to make a claim. The Kinchela Boys’ Home Aboriginal Corporation stated:

Not all members of the Stolen Generations or their descendants were aware of the Aboriginal Trust Fund Repayment Scheme, in particular the cut-off date, and therefore missed out on monies they were / might have been eligible for.<sup>396</sup>

**6.33** Ms Jacqui Williams was one person who missed out, unable to make a descendant claim on behalf of her grandmother or mother as she had no knowledge of the scheme. Ms Jacqui Williams’ mother had worked on various cattle and sheep stations but according to her daughter, was paid ‘nothing at all for all the years that she worked there’.<sup>397</sup>

**6.34** Herbert Smith Freehills also noted that some people were unaware of the existence of the scheme or were unable to make a claim due to other reasons, such as location and health issues:

We are similarly aware of potential claimants who did not make a claim under the ATFRS as they were either unaware of its existence or unable to participate within the timeframe by virtue of their remoteness, trauma related health issues and/or incarceration.<sup>398</sup>

**6.35** The committee heard that other people did not make a claim because of the mistrust they had for the government. Legal Aid NSW noted that the Aboriginal Trust Fund Repayment Scheme office was near Redfern Police station, which they believe acted as a significant deterrent to people making claims:

**“If NSW can provide reparation to those whose wages were stolen, why can’t it do the same for the children who were stolen?”**

Mr Tom Calma  
former Aboriginal and Torres  
Strait Islander Social Justice  
Commissioner

<sup>394</sup> NSW Aboriginal Trust Fund Repayment Scheme, *Information Sheet*, (accessed 8 April 2016), State Records, <<https://www.records.nsw.gov.au/state-archives/documents/indigenous/TrustFund.pdf>>

<sup>395</sup> Submission 34, Department of Premier and Cabinet, p 12.

<sup>396</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 18.

<sup>397</sup> Evidence, Ms Jacqui Williams, community member, 8 December 2015, p 41.

<sup>398</sup> Submission 19, Herbert Smith Freehills, p 22.

The mistrust of Government departments by Aboriginal communities should not be underestimated. The ATFRS [Aboriginal Trust Fund Repayment Scheme] office was near the Redfern Police station. The fact that claimants had to walk past the police station to make a claim deterred many people who were entitled to make a claim from doing so.<sup>399</sup>

**6.36** ANTaR NSW noted that the closure of the scheme has ‘disenfranchised those families who were not able to assemble a claim at that time’.<sup>400</sup>

**6.37** There were also significant concerns with the operation of the scheme, many of which were highlighted to the committee in the context of lessons learnt, and factors to be considered in the establishment of a reparations framework for members of the Stolen Generations (which will be covered in chapter 7). Legal Aid NSW pointed out the following issues:

- the name of the scheme did not resonate with Aboriginal people
- the scheme was poorly publicised
- the scheme was evidence based when in many cases proper records were not kept, lost or destroyed
- claimants were re-traumatised when they were exposed to documents they had not seen before but were provided during the course of the process
- descendants were unable to prove a claim because of a lack of identification documents.<sup>401</sup>

**6.38** Other issues relating to the operation of the scheme were outlined by Herbert Smith Freehills, including:

- the narrow scope of the scheme to repay money, when some people were more interested in the ‘fact finding and truth telling’ aspect
- claims being extinguished if a descendant died before a decision was made
- a lack of transparency around decisions, given they were not published
- inconsistencies with payments under the original guidelines (until they were revised), which heightened a sense of injustice
- the timeframe for making a claim not allowing claimants a sufficient opportunity to access or examine records, seek advice or consult with family.<sup>402</sup>

**6.39** In light of these issues, particularly the concern that individuals have missed out on making a claim, the Kinchela Boys’ Home Aboriginal Corporation recommended that the Aboriginal Trust Fund Repayment Scheme be reopened and that any lessons learnt from its previous administration be incorporated into its new operation.<sup>403</sup>

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<sup>399</sup> Submission 32, Legal Aid NSW, p 14.

<sup>400</sup> Submission 21, ANTaR NSW, p 10.

<sup>401</sup> Submission 32, Legal Aid NSW, pp 14-15.

<sup>402</sup> Submission 19, Herbert Smith Freehills, pp 21, 25 and 27-28.

<sup>403</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 18.

*Committee comment*

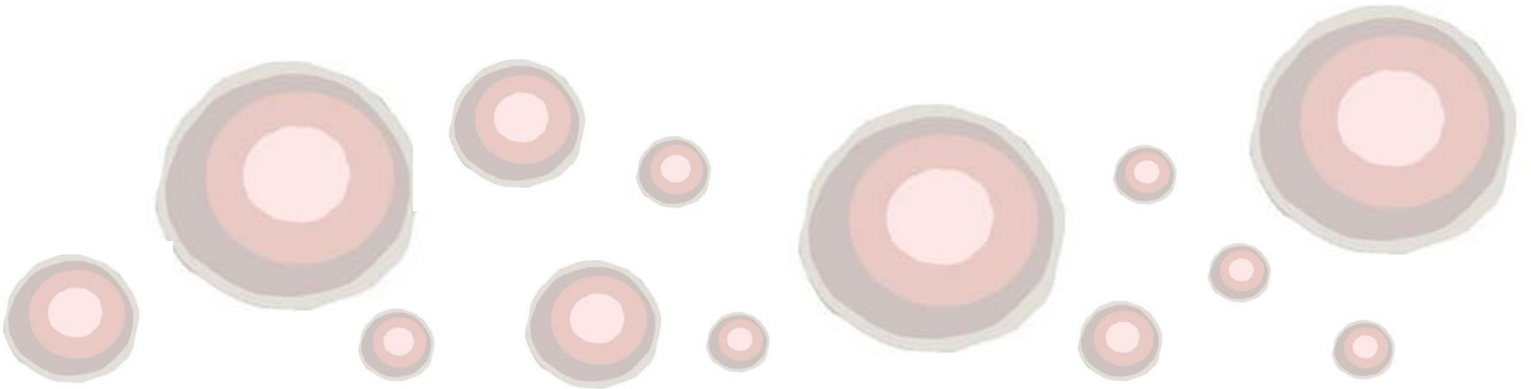
- 6.40** The repayment of stolen wages via the Aboriginal Trust Fund Repayment Scheme was an important step taken by the New South Wales Government; however the closure of the scheme resulted in some people missing out on the opportunity to claim what was rightfully owed to them or their parents.
- 6.41** The committee therefore recommends that the scheme be reinstated and that it should operate for an open ended amount of time. Due to the remoteness of potential claimants, cultural differences and mistrust for government, it can take longer for information about the scheme to reach Aboriginal communities and for people to come forward to make an application. This should be taken into account in the re-establishment of the scheme, so as to ensure the scheme is fair and accessible to everyone.
- 6.42** In re-establishing the scheme, consideration should also be given to lessons learnt from the previous operation of the scheme to see how it could be improved, especially in light of the criticisms raised during this inquiry. This might include changing the name of the scheme, having better communication strategies in place, and/or improving the guidelines so as to minimise the trauma experienced by applicants. Any changes should come about through active consultation with Aboriginal organisations and individuals. It is vital that the Aboriginal community has a voice about policies that affect them.

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**Recommendation 16**

That the NSW Government, in consultation with the Aboriginal community, re-establish the Aboriginal Trust Fund Repayment Scheme to continue repaying the ‘stolen wages’ of Aboriginal people, taking into account any lessons learnt from the previous operation of the scheme, with the scheme to operate for an open-ended period of time.

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## Chapter 7 A reparation framework

It is important that the NSW government is active in its attempt to address this legacy of trauma and begin the process of healing and reconciliation for the members of the Stolen Generations in NSW.<sup>404</sup>

This chapter focuses on what framework could be implemented to deliver reparations, particularly monetary compensation, to Stolen Generation survivors and their families in New South Wales. It considers reparation schemes and models in other jurisdictions before examining three types of approaches – an independent tribunal model, an administrative based reparation scheme, or a Truth and Reparations Commission. The chapter also discusses the key features of what any approach should include and the need for an additional form of redress alongside existing legal remedies.

### Approaches to reparations in other jurisdictions

- 7.1 Before exploring the mechanisms in which reparations can be provided to Stolen Generation survivors and others, it is important to consider the approaches taken in other jurisdictions, both within and outside of Australia.
- 7.2 Within Australia only two states, Tasmania and South Australia, have implemented a reparation scheme. The Tasmanian scheme was implemented in 2007 and focused solely on providing monetary payments to members of the Stolen Generations and their descendants. The South Australian scheme was only established this year and provides monetary payments to members of the Stolen Generations and funding for community initiatives such as healing and memorials.
- 7.3 Internationally, Canada implemented a holistic framework for reparations to address the impacts arising from the Indian Residential Schools System, where Indigenous children were forcibly removed from their families and community.
- 7.4 In South Africa, reparation was provided by the Truth and Reconciliation Commission, a body established specifically to provide monetary and non-monetary measures of reparation to victims who had experienced a gross violation of their human rights. This section will consider the advantages and disadvantages of each of these approaches.

#### The Tasmanian model

- 7.5 Tasmania was the first jurisdiction within Australia to implement a reparation scheme for Aboriginal people affected by past forcible removal policies and practices. Under the *Stolen Generations of Aboriginal Act 2006* (Tas) a \$5 million fund was established to provide payments to eligible members of the Stolen Generations and their children.<sup>405</sup>

<sup>404</sup> Submission 18, New South Wales Reconciliation Council, p 2.

<sup>405</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

- 7.6 The scheme operated for six months from 15 January 2007. In total, there were 106 claimants, of which 84 were members of the Stolen Generations and 22 were immediate descendants. In terms of how payments were assessed, 84 members of the Stolen Generations had their claims assessed first, each receiving an equal amount of \$58,333.33. The remaining balance in the fund was then allocated to descendant claims, with each immediate descendant claimant receiving either \$4,000 or \$5,000, depending on how many people were within their family group.<sup>406</sup> The claims were assessed by an independent assessor, the Hon Ray Groom, a former Premier of Tasmania and non-Indigenous man.<sup>407</sup>
- 7.7 The scheme was non-adversarial and informal, with the rules of evidence not applying. Legal Aid NSW noted that the assessor had broad powers to carry out his functions, such that he could obtain information from other agencies if required. In addition, the decisions made by the assessor were final and not subject to any form or review.<sup>408</sup>
- 7.8 While Tasmania was credited with being the first state to take action on providing payments to members of the Stolen Generations, some stakeholders criticised its narrow framework, given it focused solely on monetary payments and did not include non-monetary forms of reparation.
- 7.9 Herbert Smith Freehills noted that ‘it did not include initiatives for healing, acknowledgement or commemoration at an individual, community or national level’.<sup>409</sup> It argued, along with the New South Wales Reconciliation Council, that the New South Wales Government should consider a broader approach to reparation, consistent with the *Bringing them home* report recommendations.<sup>410</sup>
- 7.10 Herbert Smith Freehills also expressed the view that there were a range of issues with the Tasmanian scheme, including:
- difficulties experienced by the assessor when determining whether an applicant met the definition of an Aboriginal person
  - limited eligibility for descendant claims, which failed to adequately reflect kinship structures within Aboriginal communities and which may have proven difficult for claimants to meet where records were ‘absent, unreliable or inaccurate’
  - the application period was only six months
  - there was a finite fund for compensation

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<sup>406</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2, < [http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>407</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2, < [http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>408</sup> Supplementary submission 32a, Legal Aid NSW, p 7.

<sup>409</sup> Submission 19, Herbert Smith Freehills, p 9.

<sup>410</sup> Submission 19, Herbert Smith Freehills, p 8; Submission 18, New South Wales Reconciliation Council, p 5.

- there was no provision for public hearings at a local level or other means of public disclosure, which failed to accommodate the healing effect of survivors sharing their stories
- the assessor, who was non-Indigenous, may have lacked cultural legitimacy
- there was a lack of review or appeal options.<sup>411</sup>

**7.11** Despite these issues, stakeholders considered there were a number of positive features of the Tasmanian scheme, such as the burden of proof being on the state to prove its case rather than on the claimant. Reconciliation Australia said that this ‘lessened the hardship experienced by the aggrieved in justifying and retelling their stories’.<sup>412</sup>

**7.12** Another important feature of the Tasmanian scheme was a written personal apology provided by the Premier to each successful applicant. Ms Debra Hocking, the Post-graduate Program Co-ordinator at the University of Wollongong, who herself was an applicant to the scheme, explained to the committee the impact this apology had on her:

In effect his words said, ‘This is not to replace what you have lost; we cannot do that.’ The words were just so powerful. I spoke to other people who had received the same letter and we all agreed, wow, it was very powerful.<sup>413</sup>

**7.13** The assessor of the Tasmanian scheme reported positively about the legislation and process governing the scheme. The assessor, in his 2008 report, expressed the view that the legislation was well drafted and the fact that the quantum of a successful applicant’s entitlement was set by the legislation itself ‘greatly simplified the process’.<sup>414</sup>

### **The South Australian model**

**7.14** The South Australian Stolen Generations Reparation scheme commenced this year, on 31 March 2016. It was established to acknowledge the hurt experienced by members of the Stolen Generations and to assist with the process of recovery.<sup>415</sup>

**7.15** The South Australian Government established an \$11 million Stolen Generations reparations fund to operate the scheme, with up to \$6 million being allocated for the purpose of ex gratia payments for members of the Stolen Generations. Payments of up to \$50,000 will be available

<sup>411</sup> Submission 19, Herbert Smith Freehills, pp 42-47.

<sup>412</sup> Submission 13, Reconciliation Australia, p 4.

<sup>413</sup> Evidence, Ms Debra Hocking, Post-graduate Program Co-ordinator, University of Wollongong, 10 February 2016, p 33.

<sup>414</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 17, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>415</sup> Government of South Australia, *Stolen Generations Reparations Scheme – Guide for Applicants* (15 April 2016) <<http://www.statedevelopment.sa.gov.au/upload/aboriginal-affairs/stolen-generations-policy/Stolen-Generations-Guide-for-Applicants.pdf?t=1460678120998>>

to applicants, with applications being determined by an independent assessor, the Hon John Hill, a former senior government Minister.<sup>416</sup>

**7.16** The remaining \$5 million will be available for ‘whole of community reparations’, which the South Australian Minister for Aboriginal Affairs and Reconciliation has said will be ‘finalised in consultation with Aboriginal leaders and communities’. The Minister noted that this portion of the funding may go toward, for example, memorials, scholarships and programs, support services and exhibitions.<sup>417</sup>

**7.17** As the South Australian scheme commenced mid-way through this inquiry, stakeholders were unable to offer much insight into any perceived advantages or disadvantages with this model. It was noted, however, that the independent assessor is required to have his recommendations signed off by the Minister for Aboriginal Affairs and Reconciliation,<sup>418</sup> which differs to the approach in Tasmania, and was criticised by Legal Aid NSW (see paragraph 7.92).

**7.18** The Public Interest Advocacy Centre (PIAC) said that it supported in principle the South Australian Government’s decision to establish a reparations system, however, it raised a number of concerns with the scheme, including that:

- the Minister is not required to give reasons for their decision and there is a lack of a review or appeal process
- a person’s criminal history is considered in the decision making process, which could be ‘prejudicial’ to claimants as it fails to recognise that the trauma experienced by members of the Stolen Generations has led to dysfunction and increased disadvantage which is associated with criminal behaviour
- payments awarded will be subject to any outstanding state debts, which PIAC suggested is likely to ‘undermine the purpose for which the scheme was created’
- the decision making process regarding quantum of payments does not appear to be measurable and is highly discretionary
- there is no provision for descendant claims
- individuals will be given the opportunity to obtain legal advice at the time of their offer and deed of settlement, which may be too late in the process
- an acceptance of an offer appears to preclude the individual from participating in any future litigation.<sup>419</sup>

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<sup>416</sup> Government of South Australia, *Stolen Generations Reparations Scheme – Guide for Applicants* (15 April 2016), <<http://www.statedevelopment.sa.gov.au/upload/aboriginal-affairs/stolen-generations-policy/Stolen-Generations-Guide-for-Applicants.pdf?t=1460678120998>>

<sup>417</sup> Media release, the Hon Kyam Maher, Minister for Aboriginal Affairs and Reconciliation, South Australia, ‘Reparations scheme for SA’s Stolen Generations’, 19 November 2015.

<sup>418</sup> Evidence, Mr Anthony Levin, Solicitor, Human Rights Team, Civil Law Division, Legal Aid NSW, 10 February 2016, p 3.

<sup>419</sup> Answers to questions on notice, Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre, 15 April 2016, pp 1-3.

## International approaches

**7.19** This section will consider the approaches taken to reparation in two international jurisdictions – Canada and South Africa. Both countries implemented a holistic framework to deliver reparations, providing both monetary and non-monetary forms of reparations to victims.

### *Canada*

**7.20** The Indian Residential Schools System, which operated in Canada from the late 1870s to 1970s, had similarities with the past forcible removal policies and practices that applied in Australia. The system operated on child welfare assimilation policies, enabling Indigenous children to be removed from their families and communities to be placed in church operated residential schools.<sup>420</sup>

**7.21** Children placed in these schools generally experienced poor living conditions, manual labour, inadequate education and physical and sexual abuse by staff.<sup>421</sup> PIAC, in its 2002 *Restoring Identity* report, noted that ‘sexual abuse was pervasive, punishments were severe and Aboriginal languages and cultures [were] actively suppressed’.<sup>422</sup>

**7.22** Following a Royal Commission on Aboriginal Peoples, which was finalised in 1996, there was a recommendation for remedial action in relation to the Indian Residential Schools System. This led to the Canadian Government establishing an Aboriginal action plan and the Aboriginal Healing Foundation, with the latter operating for about six years.<sup>423</sup>

**7.23** There were also redress programs in response to legal claims by former residents of the schools who had experienced abuse. In 1997-98 the Canadian Government settled 220 claims, paying more than \$20 million to victims who had been sexually abused, generally in cases where employees of the schools had been convicted of abuse. In 1998-99, another \$8 million was paid to an additional 70 victims of sexual abuse, with settlements ranging from \$20,000 to \$200,000.<sup>424</sup>

**7.24** In 2003, the Assembly of First Nations, in its report on *Canada’s Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, recommended a system of ‘fair and reasonable compensation’ and for ‘truth telling, healing and public education’. This led to the Indian Residential Schools Agreement, which provided monetary compensation to victims (via an independent assessment process), the establishment of a Truth and Reconciliation Commission and funding for healing and national and community commemorative projects.<sup>425</sup>

<sup>420</sup> Submission 16, Public Interest Advocacy Centre, Appendix B, p 40.

<sup>421</sup> Submission 19, Herbert Smith Freehills, p 56.

<sup>422</sup> Public Interest Advocacy Centre, *Restoring Identity: Final report of the Moving forward consultation project* (2002), p 40, <<http://www.piac.asn.au/sites/default/files/publications/extras/restoringidentity.pdf>>

<sup>423</sup> Submission 19, Herbert Smith Freehills, pp 57-58.

<sup>424</sup> Public Interest Advocacy Centre, *Restoring Identity: Final report of the Moving forward consultation project* (2002), p 40, <<http://www.piac.asn.au/sites/default/files/publications/extras/restoringidentity.pdf>>

<sup>425</sup> Submission 19, Herbert Smith Freehills, pp 59-60.

**7.25** Overall, several stakeholders expressed the view that the Canadian Indian Residential Schools Agreement had positive features, particularly in terms of its holistic approach, given it addressed a number of key components of reparation. The University of New South Wales (UNSW) Law Society observed that the approach was broader than just money, noting that this can have a powerful effect on the reconciliation process:

By including symbolic reparations and community-based healing projects, the Agreement goes beyond monetary compensation and creates an atmosphere of dignity and respect. Recognition of harm and extra health supports enhance the positive effects of compensation, have lasting value, and are conducive to the larger reconciliation process.<sup>426</sup>

**7.26** Herbert Smith Freehills highlighted other positive factors of the Agreement: that the approach to eligibility was based simply on attendance at one of the schools; there was a truth telling process included in the scheme so that people could share their stories; and there was recognition that reparation is a long process for survivors.<sup>427</sup>

**7.27** There were, however, also some challenges with the Agreement, including its documentation requirements. Both Herbert Smith Freehills and the UNSW Law Society explained that it was difficult for applicants to prove their attendance at the schools due to the lack of records, which made it challenging for applicants to meet the eligibility requirements.<sup>428</sup>

**7.28** This led to some negative impacts for claimants, with the UNSW Law Society noting that some claimants felt like the process was ‘degrading’ and a trigger for reawakened feelings of rejection:

Survivors reported that the claims process ‘triggered an extreme emotional reaction’ leading to depression, thoughts of suicide, or self-destructive behaviours. Insensitive claims systems can further victimise survivors, rather than allowing them to feel gratified by receiving compensation in acknowledgment of past harm ... shifting the onus to the government to refute a statement of attendance would be the fairer approach.<sup>429</sup>

### *South Africa*

**7.29** The Truth and Reconciliation Commission in South Africa played an important role in providing restorative justice, reconciliation, rehabilitation and reparation in response to gross violations of human rights perpetrated between 1960 and 1994. One of the commission’s functions was to ‘determine measures of reparation to ‘rehabilitate and restore the human and civil dignity of victims’.<sup>430</sup>

**7.30** The Truth and Reconciliation Commission recognised the importance of ‘multi-layered reparations’ and as such, designed a scheme which incorporated the following five components:

<sup>426</sup> Submission 15, University of New South Wales Law Society, p 8.

<sup>427</sup> Submission 19, Herbert Smith Freehills, pp 64-65.

<sup>428</sup> Submission 15, University of New South Wales Law Society, pp 8-9; Submission 19, Herbert Smith Freehills, p 65.

<sup>429</sup> Submission 15, University of New South Wales Law Society, pp 8-9.

<sup>430</sup> Submission 15, University of New South Wales Law Society, p 10.

- interim reparation payments for victims with urgent financial needs
- individual reparation grants paid to victims or their relatives and dependents, mainly to cover the costs of medical, educational and housing needs
- symbolic, legal and administrative measures
- community rehabilitation services, including mental health services and health care, education and housing
- legal and administrative reforms of institutions to prevent future human rights abuses.<sup>431</sup>

**7.31** While many of these components helped to form a broad approach to reparation, the scheme was criticised for a number of reasons, including its delays with payments. The UNSW Law Society suggested that such delays can ‘disconnect’ the payment from other reparative measures, which has the effect of ‘reducing the symbolic sense of the reparation’. It noted that poor administration can create feelings of anger, neglect and frustration.<sup>432</sup>

**7.32** Herbert Smith Freehills highlighted others concerns with the South African Truth and Reconciliation Commission, including that it operated on a ‘closed list’ policy, which meant that monetary payments were only available to those who were on the official list, which was problematic given some people were not aware of the process or were unable to access the commission.<sup>433</sup>

#### *Committee comment*

**7.33** The committee found it valuable to consider the experiences of other jurisdictions in implementing reparation schemes. In particular, it notes that the financial reparation schemes in South Australia and Tasmania were generally well received by Stolen Generation survivors. While these schemes operated with some differences, the committee feels that they each had some positive features, such as the personal apology provided to successful applicants under the Tasmanian scheme, and the additional funding for community initiatives with the recently established South Australian scheme.

### **Is a reparation framework needed in New South Wales?**

**7.34** This section will explore the two main reasons cited by inquiry participants as to why a reparation model is necessary in New South Wales for Stolen Generation survivors. Firstly, it will consider the inadequacy of existing legal remedies, and secondly, it will examine limitations of the current group action against the state.

#### **Inadequacy of existing legal remedies**

**7.35** Evidence to this inquiry highlighted that existing legal remedies are inadequate in providing redress for members of the Stolen Generations. While individuals have the option of pursuing civil litigation against the government, it is generally a protracted, complex and costly process,

<sup>431</sup> Submission 15, University of New South Wales Law Society, pp 10-11.

<sup>432</sup> Submission 15, University of New South Wales Law Society, pp 11-12.

<sup>433</sup> Submission 19, Herbert Smith Freehills, p 74.

with claimants rarely successful. It also does not meet the distinct needs of Stolen Generation survivors.

### ***Key civil cases***

- 7.36** Before exploring these issues, it is worthwhile briefly considering the key civil cases where members of the Stolen Generations have sued the government, including the cases of *Williams v The Minister, Aboriginal Land Rights Act 1983 and Anor*,<sup>434</sup> *Cubillo v Commonwealth*,<sup>435</sup> *Collard v The State of Western Australia*<sup>436</sup> and *Trevorrow v State of South Australia*.<sup>437</sup>
- 7.37** In the New South Wales case of *Williams v The Minister, Aboriginal Land Rights Act 1983 and Anor*, Ms Joy Williams alleged that her psychiatric injury and substance abuse issues had developed as a result of her being placed by her mother under the control of the Aborigines Welfare Board not long after her birth in 1942. Ms Joy Williams was in the Bomaderry Aboriginal Children's Home until she was four and a half years old, then transferred to the Latunda Children's Home at Wentworth Falls, where she stayed until she was 18.<sup>438</sup>
- 7.38** Ms Joy Williams claimed damages for negligence, breach of fiduciary duty, breach of statutory duty and trespass. She was, however, unsuccessful in her case, with the Supreme Court finding that there was 'no duty of care, breach of duty or relevant causation established'.<sup>439</sup>
- 7.39** Shortly after the *Williams* case, Mrs Lorna Cubillo and Mr Peter Gunner sued the Commonwealth Government for wrongful imprisonment, breach of statutory duty, negligence and breach of fiduciary duty arising out of their removal from their family when they were children, and their subsequent mistreatment in mission run institutions. They claimed damages for psychiatric injuries and loss of Aboriginal culture.<sup>440</sup>
- 7.40** Mrs Cubillo was removed in 1947, aged eight, from a settlement near Tennant Creek and detained in the Aborigines Inland Mission's Retta Dixon home until she was eighteen. Mr Gunner was removed when he was seven and taken from Utopia Station in Central Australia and placed in St Mary's Hostel in Alice Springs.<sup>441</sup>
- 7.41** Justice O'Loughlin, in the Federal Court of Australia, held that Mrs Cubillo and Mr Gunner had failed to establish the requisite elements of their case. The Full Court of the Federal Court dismissed an appeal, and the applicants were denied leave to appeal to the High Court of Australia because there was no likelihood of success in overturning the lower courts' decisions.<sup>442</sup>

<sup>434</sup> [1999] NSWSC 843.

<sup>435</sup> (1999) 89 FCR (Strike out application); (2000) 103 FCR 1 (Trial); 112 FCR 455 (Appeal).

<sup>436</sup> [No 4] [2013] WASC 455 (Trial); [2015] WASC 86 (Appeal).

<sup>437</sup> [No 5] [2007] SASC 285.

<sup>438</sup> *Williams v The Minister, Aboriginal Land Rights Act 1983 and Anor* [1999] NSWSC 843.

<sup>439</sup> *Williams v The Minister, Aboriginal Land Rights Act 1983 and Anor* [1999] NSWSC 843.

<sup>440</sup> *Cubillo v Commonwealth* [No 2] 2000 103 FCR 1; *Cubillo v Commonwealth* (2001) 112 FCR 455.

<sup>441</sup> *Cubillo v Commonwealth* [No 2] 2000 103 FCR 1; *Cubillo v Commonwealth* (2001) 112 FCR 455.

<sup>442</sup> *Cubillo v Commonwealth* (2001) 112 FCR 455.



- 7.42 More recently, in Western Australia, another civil case for compensation was unsuccessful. Mr and Mrs Collard failed in their attempt to establish that the state had breached a fiduciary duty owed to them or their children. Seven of the Collard children had been committed to the care of the Child Welfare Department from 1958, spending minimal time with their parents until early adulthood.<sup>443</sup>
- 7.43 The Collards sought damages on the basis that the state had failed to properly exercise its fiduciary duty to the family, but Justice Pritchard dismissed the case, finding that no fiduciary duty between the state and family existed.<sup>444</sup>
- 7.44 The 2007 case of *Trevorrow v State of South Australia*, on the other hand, was successful, and many would argue that it was a landmark decision for members of the Stolen Generations. Mr Bruce Trevorrow, an Aboriginal man, was removed from his parents by the Aborigines Protection Board when he was 13 months old and placed with a foster family. When he was 10 years old, he returned to live with his family, however he experienced a range of emotional and physical problems as a result of the earlier separation. He remained with his family for about 14 months but was then in and out of state institutions.<sup>445</sup>
- 7.45 Mr Trevorrow sued the State of South Australia, claiming it had acted unlawfully when removing him from his family and that it had breached its fiduciary duty of care. Justice Gray agreed, finding that not only had the state breached its fiduciary duty, but there was also misfeasance of public office. In addition, the court held that Mr Trevorrow had been ‘wrongly imprisoned’.
- 7.46 The state was held to be liable, with Mr Trevorrow awarded \$450,000 compensation for personal injury and loss, exemplary damages of \$75,000 and \$250,000 in interest.<sup>446</sup> This is the largest known successful Stolen Generations compensation claim in Australia.<sup>447</sup>

#### ***Concerns with existing legal remedies***

- 7.47 PIAC pointed out that civil litigation processes are costly and time consuming and ‘rarely a viable option for this client group’ due to entrenched disadvantage and lack of access to justice:

Obstacles to access to justice are well established, particularly for marginalised and disadvantaged members of our community. Litigation is invariably an expensive and lengthy process, often ruled out completely by the imposition of limitation periods. There is also the risk of costs.<sup>448</sup>

- 7.48 The 2009 Commonwealth Attorney-General’s Access to Justice Taskforce report stated that ‘Indigenous Australians were the group most likely to take no action in response to legal

<sup>443</sup> *Collard v The State of Western Australia [No 4] [2013] WASC 455.*

<sup>444</sup> *Collard v The State of Western Australia [No 4] [2013] WASC 455.*

<sup>445</sup> *Trevorrow v State of South Australia [2007] SASC 285.*

<sup>446</sup> Submission 16, Public Interest Advocacy Centre, p 10.

<sup>447</sup> Submission 15, University of New South Wales Law Society, p 17.

<sup>448</sup> Submission 16, Public Interest Advocacy Centre, pp 9-10.

events'.<sup>449</sup> One explanation for this was the shame and humiliation victims may feel, which Legal Aid NSW argued could be a 'powerful emotional disincentive' to litigation.<sup>450</sup>

- 7.49** The UNSW Law Society said that litigation can be daunting and traumatic for Aboriginal claimants and that many may not be aware of their legal options. It also noted that people may not be aware of the New South Wales Government's Model Litigant Policy, which dictates that government lawyers are duty bound to deal with claims promptly, to pay legitimate claims without litigation and to not require the other party to prove a matter which the state or agency knows to be true.<sup>451</sup>
- 7.50** The potential costs of litigation, and the risk of an adverse cost order being made against an unsuccessful applicant, are also barriers to taking legal action through the courts. The UNSW Law Society said that the financial costs and uncertain prospects of success are but two reasons why some people choose not to pursue claims.<sup>452</sup>
- 7.51** PIAC reflected on the *Williams* case, where the plaintiff was ordered to pay the state's legal costs after losing her case. In the *Collard* case, even though the plaintiffs lost their case, Justice Pritchard held that they should not be subject to a cost order because of the public interest aspect of the case, however this decision was later overturned by the Court of Appeal.<sup>453</sup>
- 7.52** Legal Aid NSW advised that the *Collard* case has progressed to the High Court to determine the issue of costs, but at the time of writing this report, the decision had still not been handed down.<sup>454</sup>
- 7.53** In light of there being only one well known successful case to date, the *Trevorrow* case, Legal Aid NSW explained that it always advises all of their clients who are Stolen Generation survivors against the realistic possibility of compensation through civil action.<sup>455</sup> Relevant to its advice has been the approach of the courts in each of the Stolen Generations cases so far, with the application of the 'standards of the day' test – a test which applies the legislation and standards at the time the removal took place, rather than considering it against contemporary standards.
- 7.54** According to Legal Aid NSW, this test has 'limited the degree to which the Commonwealth or Government agency can be held to account', considering the removal of children at that time was recognised as serving a welfare and protective purpose and has not been found to constitute a violation of constitutional rights.<sup>456</sup>
- 7.55** Another barrier faced by members of the Stolen Generations in pursuing existing avenues for compensation is the evidentiary requirements associated with litigation, particularly when the

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<sup>449</sup> Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System: Report by the Access to Justice Taskforce*, September 2009, p 20.

<sup>450</sup> Submission 32, Legal Aid NSW, p 9.

<sup>451</sup> Submission 15, University of New South Wales Law Society, p 19.

<sup>452</sup> Submission 15, University of New South Wales Law Society, p 19.

<sup>453</sup> Submission 16, Public Interest Advocacy Centre, p 10.

<sup>454</sup> Supplementary submission 32a, Legal Aid NSW, p 9.

<sup>455</sup> Submission 32, Legal Aid NSW, p 8.

<sup>456</sup> Submission 32, Legal Aid NSW, pp 8 and 10.

onus is on a plaintiff to prove their case. In terms of evidentiary hurdles, Legal Aid NSW noted that:

- there is a lack of adequate documentary evidence to establish claims, due to a variety of factors, including poor record keeping at the time and lost or destroyed records. In addition, there may be no records to substantiate allegations such as physical or sexual abuse, given it was highly unlikely to be reported (issues with access to records are also highlighted in chapter 9).
- Aboriginal culture relies more on oral communication than on writing, which makes it difficult for applicants to meet evidentiary thresholds
- where documentary evidence exists, courts have tended to take those documents at face value, whether or not witnesses are available to test the evidence
- the reliability of evidence is also problematic, given the amount of time that has passed and the trauma people have experienced.<sup>457</sup>

**7.56** ANTaR NSW, an organisation that supports and advocates for justice and self-determination for Aboriginal people, also expressed concerns about the impact a lack of documentation can have on civil cases. It stated that ‘the process to seek compensation ... is traumatic and that outcomes are hampered by missing records’.<sup>458</sup>

**7.57** In the *Trevorrow* case, the plaintiff had an extensive amount of documentary evidence to substantiate his case, which Legal Aid NSW said was ‘rather exceptional for Stolen Generation litigants’ and accounted in part for his success.<sup>459</sup>

**7.58** Other factors which also affect the viability of existing legal options for members of the Stolen Generations include:

- statutory limitation periods, which courts may be reluctant to extend depending on witnesses and documentary evidence<sup>460</sup>
- the adversarial nature of proceedings, including the impact of cross examination on vulnerable plaintiffs<sup>461</sup>
- legislative limitations of existing statutory schemes, such as the victims compensation scheme, which was said to be ‘not tailored to the experiences of the Stolen Generations’ because of time limits, capped payments and evidence requirements.<sup>462</sup>

**7.59** Kingsford Legal Centre emphasised that individuals may find it difficult to pursue litigation particularly if they have been ‘psychologically damaged’ as a result of their removal and institutionalisation and any abuse they may have experienced. It explained that this will affect individuals ability to frame a claim under existing law:

<sup>457</sup> Submission 32, Legal Aid NSW, pp 11-12.

<sup>458</sup> Submission 21, ANTaR NSW, p 10.

<sup>459</sup> Submission 32, Legal Aid NSW, p 12.

<sup>460</sup> Submission 32, Legal Aid NSW, p 13.

<sup>461</sup> Submission 32, Legal Aid NSW, p 13.

<sup>462</sup> Submission 43, Kingsford Legal Centre, p 5.

Many claimants will not be able to frame a claim under the existing law that applies to personal injury claims because it is unlikely that a claimant could successfully frame a claim for negligence or breach of statutory or fiduciary duty.<sup>463</sup>

**7.60** Mr Edward Santow, Chief Executive Officer of PIAC, also stressed that civil litigation is ‘unwieldy’ and expensive, for both claimants and the state. He noted the emotional toll it can have on members of the Stolen Generations, particularly in terms of giving evidence:

To give evidence in a civil litigation context is very different to giving evidence in a context that is essentially focused on, I guess, a therapeutic outcome as distinct from a litigious one. That very distinct focus is really important to remember and that heightens the need for some kind of statutory scheme to sit alongside civil litigation.<sup>464</sup>

**7.61** Mr Santow also pointed out the courts’ limitations in terms of what they can order, with orders being more monetary in nature:

Thirdly, the problem with civil litigation is that the remedies that a court can order tend to be much more narrow, as you rightly adverted to in your question, so it can give monetary remedies but it is much less well placed to offer the other remedies that this committee and others have heard are absolutely central to the healing of the Stolen Generations members.<sup>465</sup>

### **Limitations of the current group action**

**7.62** While on the face of it the current group action against the state (outlined in chapter 2) may appear to negate the need for a reparations framework in New South Wales, it was argued that this is not the case, given that the action generally involves only Stolen Generation survivors from two of the many homes in which Aboriginal children were placed after they were forcibly removed.

**7.63** Mr John Williams, Public Officer for the Stolen Generations Council ACT/NSW, noted that the claim mainly involves those that were in the Kinchela Aboriginal Boys’ Training Home and Cootamundra Aboriginal Girls’ Training Home – both government controlled children’s training homes. He explained that the reason for this is because of a lack of access to files and records for children placed in other homes, which may make it more difficult for them to pursue civil litigation.<sup>466</sup>

**7.64** Despite acknowledging that the government ‘has been most cooperative’ in terms of participating in the settlement process so far, Mr John Williams emphasised that individuals placed in non-government or religious homes should not be disadvantaged in obtaining redress. He noted that they too had experienced extensive trauma:

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<sup>463</sup> Submission 43, Kingsford Legal Centre, p 4.

<sup>464</sup> Evidence, Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre, 22 March 2016, p 3.

<sup>465</sup> Evidence, Mr Santow, 22 March 2016, p 3.

<sup>466</sup> *In camera* evidence, Mr John Williams, Public Officer, Stolen Generations Council Inc NSW/ACT, 5 November 2015, p 3. Evidence published by resolution of the committee.

It is just as real to these people who may have been placed in a religious home—just because they were not placed in Kinchela, in many cases the abuse was just as bad, if not greater ... Their separation from the Aboriginal community was just as severe and damage was done to them.<sup>467</sup>

**7.65** Mr Santow highlighted that while class actions, such as the one currently underway, can be valuable, they do not necessarily provide redress for everyone who has been affected:

PIAC also runs class actions from [time] to time and we are well aware of the value of them, but they simply cannot—and I do not think the Carroll and O’Dea class action purports to— benefit everybody who has been affected by the Stolen Generations directly. The first problem is, as important as that litigation may be, it will still leave a large number of people with their problems unaddressed.<sup>468</sup>

**7.66** In response to a question on notice, Mr Santow emphasised that a reparations tribunal or scheme could ‘extend to individuals who are beyond the scope of this [current group] action’. He added that even though the action may have merit in some regards, it cannot deliver holistic justice in the way that a tribunal can:

Even assuming that the class action currently underway, and the NSW Government’s process for engaging informally with class action members, has merit from the perspective of the Stolen Generations members within this particular class, such litigation cannot deliver justice and healing for Stolen Generations members more broadly. For this reason, PIAC encourages the Committee to adopt the more holistic approach to delivering reparations ...<sup>469</sup>

**7.67** Mr John Williams made two suggestions with respect to the group action: that the ‘cut-off date not be arbitrary’ and that there be less evidentiary requirements for claimants given the lack of records.<sup>470</sup> It was, however, unclear to this committee what the ‘cut off’ date is for people in joining the group action or to what extent there needs to be less evidentiary requirements, particularly given that Mr Michael Waterhouse, General Counsel, Department of Education, advised that the process is a ‘low documentation process’ as the state ‘will accept any form of evidence that is able to be provided’.<sup>471</sup>

**7.68** The Kinchela Boys’ Home Aboriginal Corporation, which has members involved in the current group action, noted that there were some issues in the early stages of the group action which caused considerable stress to survivors and their families, including:

- confusion over who was leading the negotiations for the legal proceedings as it changed over time, and confusion over who would be responsible for collecting information from individuals on behalf of the solicitors

<sup>467</sup> *In camera* evidence, Mr John Williams, 5 November 2015, p 5. Evidence published by resolution of the committee.

<sup>468</sup> Evidence, Mr Santow, 22 March 2016, p 3.

<sup>469</sup> Answers to questions on notice, Mr Santow, 15 April 2016, p 4.

<sup>470</sup> *In camera* evidence, Mr John Williams, 5 November 2015, p 5. Evidence published by resolution of the committee.

<sup>471</sup> Evidence, Mr Michael Waterhouse, General Counsel, Department of Education, 5 November 2015, p 4.

- challenges with survivors understanding correspondence they had received, which led to ‘undue frustration, uncertainty and feelings of despair’
- limited culturally appropriate therapeutic support for survivors and family members, which in some instances led to the re-traumatising of individuals.<sup>472</sup>

**7.69** The Kinchela Boys’ Home Aboriginal Corporation made recommendations for any future proceedings, including that:

- there be a clear communication strategy
- there be plain English communications to individuals involved in proceedings, including follow-up phone calls and face-to-face meetings
- any practitioners involved in the matter have trauma-informed training
- after care support be provided to all participants, which may be more than just an offer of counselling
- qualified financial planning advice and support be provided to individuals who receive payments.<sup>473</sup>

**7.70** The Coota Girls Corporation, which also has members involved in the current legal proceedings, expressed concerns that the group action is limited to compensation for a breach of fiduciary duty within the government children’s training homes. Ms Kerrie Kelly, Network Coordinator for the organisation, explained that the settlements currently underway as part of the group action do not take into account the following:

- the forcible removal of Aboriginal children from protective parents who wished to care for them
- the race-based psychological abuse experienced by individuals in the Cootamundra Aboriginal Girls’ Training Home
- abuse experienced by children under 15 years old who were fostered by non-Aboriginal families
- abuse experienced by individuals who were indentured as domestic servants when they were aged 15 to 18 years old
- the removal of babies from individuals who were forcibly removed themselves under the legislation, if they became pregnant before they were 21 years old
- the impact on descendants of Stolen Generation survivors.<sup>474</sup>

**7.71** The Coota Girls Corporation also raised two other issues with the current group action – the absence of communication strategies that address the lack of literacy among survivors while preparing evidentiary statements and signing of legal documents, and the lack of an appeal mechanism for those who are dissatisfied with their settlements.<sup>475</sup>

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<sup>472</sup> Supplementary submission 31a, Kinchela Boys’ Home Aboriginal Corporation, p 5.


<sup>473</sup> Supplementary submission 31a, Kinchela Boys’ Home Aboriginal Corporation, pp 5-6.

<sup>474</sup> Correspondence from Ms Kerrie Kelly, Network Coordinator, Coota Girls Corporation, to Chair, 21 April 2016, p 2.


<sup>475</sup> Correspondence from Ms Kelly, to Chair, 21 April 2016, p 2.

*Committee comment*

- 7.72 The committee recognises that existing legal remedies may not be an adequate form of redress for Stolen Generation survivors. Legal action can be complex, time consuming and expensive, effectively failing to cater to the specific needs of members of the Stolen Generations.
- 7.73 While the existing group action has, overall, been a positive step towards the state taking responsibility for the impacts of past forcible removal policies and practices, it is limited to providing compensation to those who were in a government controlled home. Unfortunately, there are other Stolen Generation survivors who have also experienced the devastating impacts of past forcible removal policies and practices, including those who may have been fostered, adopted or placed in non-government controlled homes or institutions.
- 7.74 The existing group action, by virtue of it being a confidential legal proceeding, has also failed to provide a certain level of transparency about the settlement process. This is understandable given its legal nature, although it has to some extent undermined its perceived fairness and credibility. For example, the committee acknowledges that there is a lack of clarity as to whether people can still join the group action, how claims are determined and how claims might be affected if an individual is to die before their claim is determined. In light of these issues, the committee supports the need for an additional form of redress for Stolen Generation survivors.



***“The only way to know how we feel is to walk in our shoes, and that will never happen because I am me and you are you. ...We cannot do this any longer. We have talked and talked and told our stories. Now we want action”.***<sup>476</sup>




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<sup>476</sup> Evidence, Aunty Isabel Reid, Chair, Coota Girls Corporation, 6 November 2015, p 3.

## Mechanisms for reparation in New South Wales

**7.75** This section will explore three mechanisms that could be established to deliver reparations to members of the Stolen Generations in New South Wales: an independent tribunal; a reparations scheme; or a Truth and Reparations Commission.

**“How do you provide reparations or restitution to somebody that has had everything of value to them removed and separated?”**

Mr Greg Douglas  
7 December 2015

### An independent tribunal

**7.76** PIAC first proposed the establishment of a Stolen Generations Tribunal in 1997 at the national level, following extensive consultation with key stakeholders and Aboriginal and Torres Strait Islander communities.<sup>477</sup>

**7.77** This proposal was put forward again in 2008 with PIAC’s draft of a Stolen Generations Compensation Bill (attached at appendix 6). The proposal includes:

- the establishment of a Stolen Generations Tribunal, with power to determine monetary and non-monetary measures of reparation for members of the Stolen Generations, such as healing and history centres, community education programs and genealogy projects, counselling and health services, language and culture training, memorials and monetary payments
- the establishment of a Stolen Generations Fund, which would be administered by a trustee appointed by the Attorney General, with funds appropriated from Parliament and through contributions from church organisations or any other relevant organisations involved in administering past forcible removal policies and practices
- monetary compensation for individuals affected by past forcible removal policies and practices, based on clear eligibility criteria and procedures for the assessment of claims, and a matrix for assessing the amount of payments
- a lower evidentiary standard and less stringent requirements in terms of the rules of evidence, given that lack of records and documentation can be a barrier to claims, and in light of Aboriginal and Torres Strait Islander people relying principally on oral traditions
- a claim being paid to the estate of a person if they are to die after making a claim to the Tribunal but before the matter was decided.<sup>478</sup>

**7.78** It also includes a process that would allow people to tell their story, purely for a healing purpose rather than to claim a monetary payment. Mr Santow, Chief Executive Officer of PIAC, explained that this mechanism, enabled by the truth and reconciliation section of the draft bill, would allow people ‘to tell their story – often a tragic story – in a way that is healing just by telling the story’. He clarified that it would be a separate and distinct limb of the statutory scheme underpinning the tribunal process.<sup>479</sup>

<sup>477</sup> Submission 16, Public Interest Advocacy Centre, p 3.

<sup>478</sup> Submission 16, Public Interest Advocacy Centre, pp 11-16 and 39-40.

<sup>479</sup> Evidence, Mr Santow, 22 March 2016, p 7.



**7.79** PIAC advised that its statutory tribunal model seeks to ‘achieve a holistic and enduring resolution’ for members of the Stolen Generations and government, with the following benefits:

- access to compensation for those affected by past forcible removal policies and practices
- a scheme for financing a range of reparation measures
- the containment of litigation, which creates finality and certainty for all
- a mechanism for providing social justice for Aboriginal and Torres Strait Islander people.<sup>480</sup>

**7.80** It also noted that its proposal would involve active participation by members of the Stolen Generations in establishing the tribunal, so that they can help shape the ‘nature and content of reparations’.<sup>481</sup> The Coota Girls Corporation, which was not consulted on the proposal before PIAC put it forward again to this inquiry, emphasised that consultation with Stolen Generation survivors is critical ‘to ensure that the proposal is supported by those who possess the right to receive full and effective reparations from the NSW Government’.<sup>482</sup>

**7.81** While PIAC would have once preferred a national approach to reparations for members of the Stolen Generations, Mr Santow said ‘it would be a mistake to wait for that national approach’, given the urgency with which a response is needed:

This Parliament can control what is happening in this State, so the first part of the answer is for this Parliament to move expeditiously to establish a statutory scheme ... There seem to be very few true impediments to establishing the scheme. There is a wealth of research. There have been many government and non-government inquiries. The need is absolutely clear. The solution is now absolutely clear, so I think the strongest advice would be to move quickly.<sup>483</sup>

**7.82** A number of stakeholders supported the tribunal model put forward by PIAC,<sup>484</sup> particularly in terms of its holistic nature, independence, operation and impact on potential claimants.

**7.83** The Kinchela Boys’ Home Aboriginal Corporation expressed the view that the holistic approach of PIAC’s tribunal model is one of its key benefits. Noting that it was broadly supportive of the core tenets of PIAC’s proposal, the corporation stated that ‘the PIAC Bill embodies a holistic approach to reparations that includes aspects of restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition’. It noted that this approach was consistent with its own priorities, given it had identified a range of reparation measures which would benefit former Kinchela Aboriginal Boys’ Training Home residents such as healing centres, memorials and education programs.

<sup>480</sup> Submission 16, Public Interest Advocacy Centre, p 11.

<sup>481</sup> Submission 16, Public Interest Advocacy Centre, p 11.

<sup>482</sup> Correspondence from Ms Kelly to Chair, 2 April 2016, p 3.

<sup>483</sup> Submission 16, Public Interest Advocacy Centre, p 17. Evidence, Mr Santow, 22 March 2016, p 4.

<sup>484</sup> Submission 43, Kingsford Legal Centre, p 6; Submission 33, Women’s Legal Services NSW, p 2; Submission 32, Legal Aid NSW, p 3; Submission 17, New South Wales Aboriginal Land Council, p 12; Submission 18, New South Wales Reconciliation Council, p 7; Submission 21, ANTaR, pp 10-11.

- 7.84** The Kinchela Boys' Home Aboriginal Corporation was also supportive of the inclusion of a 'truth and reconciliation process' in PIAC's proposed model whereby individuals could tell their story. It reflected that 'being heard is a critical element in the healing process'.<sup>485</sup>
- 7.85** Kingsford Legal Centre considered that a specialised reparations tribunal would provide for increased transparency of decisions and less formality, with the latter minimising any trauma claimants may experience. It also argued that a tribunal model may have greater credibility with potential claimants:
- An independent specialised tribunal is more likely to have credibility with potential claimants, their families and communities, and be able to overcome concerns and anxieties that claimants are likely to have about divulging deeply personal information, or having 'to tell their story again'.<sup>486</sup>
- 7.86** Similarly, Legal Aid NSW submitted that a tribunal with inquisitorial functions and powers would help to promote integrity:
- ... a tribunal model, which includes inquisitorial functions and powers, and suspends the rules of evidence, would help to maintain public confidence in the integrity of the process and maximise a communal sense of participation and ownership.<sup>487</sup>
- 7.87** Legal Aid NSW further expressed the view that the public nature of tribunal proceedings 'will be a critical feature of their acceptance by Aboriginal communities and the community at large'.<sup>488</sup>
- 7.88** Ms Kate Halliday, the Law Reform and Policy Solicitor at Kingsford Legal Centre, suggested that a tribunal model would provide a greater 'holistic approach to people's needs', where expertise could be harnessed from people of different disciplines. For example, the tribunal could include people with appropriate cultural backgrounds and/or skills in working with people with trauma.<sup>489</sup>
- 7.89** The Deputy Chair of the New South Wales Aboriginal Land Council, Ms Anne Dennis, commented that a tribunal model 'will be able to address the unique needs of the Stolen Generation' by providing healing and other non-monetary forms of reparation, as well as compensation.<sup>490</sup>

### **A reparations scheme**

- 7.90** An alternative to an independent tribunal model for reparations would be a statutory or non-statutory reparation scheme, whereby determinations would be made by an independent

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<sup>485</sup> Correspondence from Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, to Chair, 27 April 2016, p 3.

<sup>486</sup> Submission 43, Kingsford Legal Centre, p 6.

<sup>487</sup> Supplementary submission 32a, Legal Aid NSW, p 7.

<sup>488</sup> Supplementary submission 32a, Legal Aid NSW, p 8.

<sup>489</sup> Evidence, Ms Kate Halliday, Law Reform and Policy Solicitor, Kingsford Legal Centre, 10 February 2016, p 13.

<sup>490</sup> Evidence, Ms Anne Dennis, Deputy Chair, NSW Aboriginal Land Council, 9 February 2016, p 38.

assessor or panel, rather than a tribunal member(s). This type of scheme has also been described as an ‘independent assessor model’ or an administrative based scheme, and is analogous to the schemes in Tasmania and South Australia.

**7.91** Shoalcoast Community Legal Centre expressed its support for this type of approach, suggesting that there be two types of schemes established:

- a ‘Stolen Generation Trust Fund Scheme’, which would enable Aboriginal communities and individuals to apply for grants for community projects or initiatives
- an ex gratia payment scheme which would compensate members of the Stolen Generations, with applications determined by a panel of seven representatives, comprising three members of the Stolen Generations, three independent members and one government member.<sup>491</sup>

**7.92** Under the current South Australian reparation scheme, the assessor’s decisions are recommendations only, which must then be signed off by the Minister for Aboriginal Affairs and Reconciliation. Legal Aid NSW expressed a concern with this requirement, suggesting that ‘the scheme may be susceptible to criticism because it fails to completely separate executive discretion from a quasi-judicial process’.<sup>492</sup> It maintained that the tribunal model is its preferred approach, given its inquisitorial functions and powers (discussed earlier at paragraph 7.86).

**7.93** Ms Halliday from the Kingsford Legal Centre expressed concern about the lack of transparency provided by an administrative based reparation scheme compared to a tribunal, on the basis that an administrative based scheme does not have ‘a public element of transparency’ and the assessor’s rules are not as public.<sup>493</sup>

**7.94** The UNSW Law Society suggested that an undervaluing of claims is another reason why a redress scheme may be a less favourable option, given that Stolen Generation survivors typically receive lower than what they might be entitled to if they were to successfully litigate under the common law, as demonstrated by the *Trevorrow* case<sup>494</sup> where Mr Trevorrow was awarded \$450,000 plus exemplary damages and interest.<sup>495</sup>

**7.95** The UNSW Law Society expressed the view that in light of the Model Litigant Policy, the government should be trying to settle cases rather than pursuing a redress scheme to avoid its legal obligations:

Litigation is a legitimate form of recourse that should be open to any individual holding a genuine claim against the State. Consistent with the spirit of the model litigant rules, there necessarily should be a moral onus upon the State to invite potential litigants to initiate their common law rights, with a view to informal settlement. In no way should redress be pursued by the State with a view of diversionary tactic from the availability of litigation and its legal obligations.<sup>496</sup>

<sup>491</sup> Submission 42, Shoalcoast Community Legal Centre, pp 25 and 38.

<sup>492</sup> Supplementary submission 32a, Legal Aid NSW, p 7.

<sup>493</sup> Evidence, Ms Halliday, 10 February 2016, p 13.

<sup>494</sup> *Trevorrow v State of South Australia* [No 5] [2007] SASC 285.

<sup>495</sup> Submission 15, University of New South Wales Law Society, pp 17-18.

<sup>496</sup> Submission 15, University of New South Wales Law Society, p 20.

- 7.96** Despite some criticisms of the Tasmanian and South Australian reparation schemes, positive features were also noted by stakeholders. For example, under the Tasmanian scheme, successful applicants were provided with a written personal apology from the Premier, which had a powerful impact on survivors, as noted in paragraph 7.12.<sup>497</sup> The Assessor in Tasmania also reflected positively on the scheme's simplified claim process.<sup>498</sup>
- 7.97** Another positive aspect of the Tasmanian scheme was its non-adversarial and informal assessment process. As the rules of evidence did not apply, the Assessor had more flexibility when considering oral evidence (discussed further at 7.160). The Assessor, in his final report, said that the 'emphasis was on informality and affording justice and fairness to each applicant'.<sup>499</sup>
- 7.98** If a scheme similar to Tasmania's or South Australia's is the preferred approach, Legal Aid NSW asserted that it should incorporate the following aspects:
- the assessor having broad inquisitorial powers, including the power to compel information from state government agencies
  - an informal and non-adversarial forum, without rules of evidence and with applicants having a right to representation
  - eligibility guidelines that extend to descendant, community organisation and group applications
  - decisions accompanied by written reasons.<sup>500</sup>

### **A Truth and Reparations Commission**

- 7.99** The third type of reparation model discussed during this inquiry involved the establishment of an entity, such as a Truth and Reparations Commission, to investigate and determine how reparations for members of the Stolen Generations could be implemented.
- 7.100** The Dharriwaa Elders Group proposed the establishment of a Truth and Reparations Commission, which could 'investigate how the state can adequately redress its unfinished business' regarding past forcible removal policies and practices in New South Wales. It suggested that the commission's role would include:
- a research component, to identify members of the Stolen Generations and relevant policies, legislation and practices
  - investigative powers, so that it could investigate past human rights violations and the financial and economic implications of children being removed from their families

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<sup>497</sup> Evidence, Ms Hocking, 10 February 2016, p 33.

<sup>498</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 200), p 17, < [http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>499</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 200), p 9, < [http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>500</sup> Supplementary submission 32a, Legal Aid NSW, p 8.

- the provision of pro-bono legal advice, counselling and resources for members of the Stolen Generations
- the making of recommendations to the New South Wales Government on reparation, rehabilitation and healing actions for members of the Stolen Generations.<sup>501</sup>

**7.101** The Dharrivaa Elders Group further submitted that the commission should then be involved in administering money from a proposed Stolen Generations Reparation Fund, with payments being allocated towards things such as health care, compensation, interest free loans and education programs.<sup>502</sup>

*Committee comment*

**7.102** The committee notes the different options canvassed during the inquiry for a reparation mechanism, and notes that each option has various advantages and disadvantages. Before determining which option would provide the best mechanism for New South Wales, the committee will first examine the key factors to consider in the development of a reparations framework.

## Key considerations in the development of a reparations framework

**7.103** Regardless of what reparation model is adopted, stakeholders emphasised particular issues that should be taken into account in the development of a reparations framework. While some of these considerations relate to how the model itself is developed and established, others focus on the process in which reparations should be dispersed to members of the Stolen Generations and/or their descendants.

### The need to act quickly

**7.104** An important message emphasised during this inquiry was the need for the New South Wales Government to act urgently in providing reparations to members of the Stolen Generations, as not only are survivors vulnerable and ageing, but urgent action is needed to help address the intergenerational impacts ingrained in Aboriginal communities.

**“You know enough now  
and have for many years.  
You need to act and to act  
very quickly”**

Ms Elizabeth Rice  
9 February 2016

**7.105** The sense of urgency around these issues was captured by Mr Santow when he said:

... members of the Stolen Generations are getting older and they are dying. It is truly unjust to expect them to continue to wait decades to have these terrible wrongs addressed.<sup>503</sup>

<sup>501</sup> Submission 29, Dharrivaa Elders Group, pp 4-5.

<sup>502</sup> Submission 29, Dharrivaa Elders Group, p 6.

<sup>503</sup> Evidence, Mr Santow, 22 March 2016, p 2.

- 7.106** The New South Wales Reconciliation Council echoed this sentiment, stating that the New South Wales Government needs to act ‘as a matter of urgency given that many members of the Stolen Generations are in the later years of their lives’.<sup>504</sup>
- 7.107** The authors of the 2015 *Bringing them home: Scorecard Report*, Ms Elizabeth Rice and Dr John Rule, agreed that the time has come for action in providing reparations to members of the Stolen Generations. Dr Rule, in arguing that progress in responding to the recommendations of the *Bringing them home* report has been inadequate, declared that the ‘testimonies have been long heard and through fast and quick resource allocation decision[s] the[y] should be addressed’.<sup>505</sup>
- 7.108** Considering the passage of time that has passed since the *Bringing the home* report and its recommendations, Mr Santow expressed concern that this inquiry may not lead to the action that is so urgently needed in New South Wales, which would thereby let down members of the Stolen Generations once again:

Over the past two decades there have been countless calls for action and the time for words has clearly passed. If all that this committee produces is another report recommending further action and that report gathers dust, waiting many more years for implementation, then I fear the Parliament and the New South Wales Government will have let down members of the Stolen Generations yet again.<sup>506</sup>

### **Aboriginal engagement in the design and implementation**

- 7.109** Critical to the success of any reparation model or scheme is the engagement of Aboriginal people in its development and implementation. This was emphasised to the committee by a number of stakeholders, including the UNSW Law Society, ANTaR, PIAC and the Indigenous Issues Committee of the New South Wales Law Society.
- 7.110** The UNSW Law Society explained the importance of community consultation with respect to reparation, including how measures would be implemented. It noted that the South African approach lacked such consultation, which resulted in feelings of bitterness and betrayal. The society stressed that ‘such alienation has the potential to heighten discord between victims and the state, rather than promote healing and reconciliation’.<sup>507</sup>
- 7.111** Further, the UNSW Law Society suggested that consultation can help to build trust between Aboriginal people and the government:

... reparations schemes will only be effective if they are implemented in consultation with the Indigenous population and are supported by political commitment and leadership. Otherwise, suspicion and mistrust may develop between Indigenous populations and the government, undermining the reconciliatory benefits of the reparations scheme.<sup>508</sup>

<sup>504</sup> Submission 18, New South Wales Reconciliation Council, p 2.

<sup>505</sup> Evidence, Dr John Rule, Conjoint Associate Lecturer, School of Public Health and Community Medicine, University of New South Wales, 9 February 2016, 9 February 2016, p 9.

<sup>506</sup> Evidence, Mr Santow, 22 March 2016, p 2.

<sup>507</sup> Submission 15, University of New South Wales Law Society, p 12.

<sup>508</sup> Submission 15, University of New South Wales Law Society, p 16.

- 7.112** The society also stressed that implementation of a reparation scheme must be ‘sensitive’ for ‘meaningful reparations to be achieved’.<sup>509</sup>
- 7.113** The Indigenous Issues Committee of the New South Wales Law Society echoed this view, stating that as a general principle, members of the Stolen Generations must be actively involved in the development of any reparations framework that the New South Wales Government implements and that consultation must be meaningful, sensitive and culturally appropriate.<sup>510</sup>
- 7.114** Herbert Smith Freehills agreed, insisting that meaningful consultation with Stolen Generation survivors, their families and communities will help to empower them and establish a positive experience:

Detailed consultation, preferably using an outreach model, with stakeholder groups and the organisations which support them is necessary to adequately address the question of reparations. Stolen Generations survivors, their families and communities should be given an opportunity to participate in a meaningful way to the design of any reparations framework. This is an important element of healing, rehabilitation and empowerment and draws on the positive experiences of overseas models where this occurred.<sup>511</sup>

- 7.115** In addition to consultation with the Aboriginal community, PIAC noted the importance of the government collaborating with key stakeholders on the implementation of reparations. Reflecting on the Aboriginal Trust Fund Repayment Scheme (discussed in chapter 6), Mr Santow stressed that a collaborative approach is crucial for the reparation process to be effective:

One of the experiences that the PIAC had with the Aboriginal Trust Fund Repayment Scheme was that its success partly depended on a level of openness on the part of the State Government to work collaboratively with non-government organisations such as ours. I think that will be absolutely crucial in ensuring that any scheme like this would achieve its objectives. It would be a double tragedy if the state committed significant resources to a scheme such as this but you ended up with many people who did not know about it and/or many people who felt unhappy about the process.<sup>512</sup>

### **Inclusion of Aboriginal members in decision making**

- 7.116** Another important factor with the development of a reparation model or scheme is the inclusion of Aboriginal members in the decision making process, for example, by having Aboriginal leaders as members of the tribunal or as part of a panel assessing applications.
- 7.117** If a Stolen Generations Tribunal were to be established based on the proposal put forward by PIAC, at least half of the tribunal members would need to be Aboriginal or Torres Strait Islander, as outlined in section 5 of the draft bill.<sup>513</sup>

<sup>509</sup> Submission 15, University of New South Wales Law Society, pp 9-10.

<sup>510</sup> Submission 28, Law Society of NSW, p 2.

<sup>511</sup> Submission 19, Herbert Smith Freehills, p 6.

<sup>512</sup> Evidence, Mr Santow, 22 March 2016, p 8.

<sup>513</sup> Submission 16, Public Interest Advocacy Centre, p 34.

- 7.118** The New South Wales Aboriginal Land Council and New South Wales Reconciliation Council supported this requirement for the tribunal to have Aboriginal members.<sup>514</sup> Ms Dennis explained that this would assist to help build trust in the community, so that people will step forward to engage with the process.<sup>515</sup>
- 7.119** Also recognising the importance of Aboriginal involvement in decision making, Shoalcoast Community Legal Centre suggested that if a panel were to be responsible for making decisions, it should be comprised of a range of representatives including members of the Stolen Generations, independent members and a government representative (as outlined earlier at paragraph 7.91). Like Ms Dennis, the legal centre suggested that this will help ‘to establish trust and legitimacy’.<sup>516</sup>
- 7.120** Herbert Smith Freehills noted that Aboriginal leadership and engagement was a key aspect of the Aboriginal Trust Fund Repayment Scheme, as the panel had both Indigenous members and staff. It said that ‘this was a key element in the accessibility of the scheme and helped claimants to feel more at ease throughout the process’. It added that it also ‘gave decisions of the ATFRS a sense of cultural legitimacy’.<sup>517</sup>
- 7.121** Interestingly, despite both assessors in the Tasmanian and South Australian reparation schemes being non-Indigenous, this was generally not criticised by stakeholders during this inquiry.<sup>518</sup>

### **Promotion and community engagement**

- 7.122** Another important consideration is how a reparation mechanism for members of the Stolen Generations will be promoted, given a key objective to its success is effective individual and community engagement.
- 7.123** Legal Aid NSW recommended that there be a specific communications and community engagement strategy, including the employment of Aboriginal Community Engagement Officers to help to engage and educate communities and assist with lodgement of claims.<sup>519</sup>
- 7.124** Based on Legal Aid NSW’s experience with the Aboriginal Trust Fund Repayment Scheme, it felt that this level of engagement was necessary to ensure the success of any reparation model. If however, this is not possible, Legal Aid NSW suggested that it was ‘uniquely placed’ to provide such support, given its outreach services, use of Aboriginal Field Officers and experience in the area.<sup>520</sup>

<sup>514</sup> Evidence, Ms Dennis, 9 February 2016, p 38; Evidence, Ms Cecelia Anthony, Co-Chair, NSW Reconciliation Council, 10 February 2016, p 22.

<sup>515</sup> Evidence, Ms Dennis, 9 February 2016, p 41.

<sup>516</sup> Submission 42, Shoalcoast Community Legal Centre, p 38.

<sup>517</sup> Submission 19, Herbert Smith Freehills, p 21.

<sup>518</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2; Media release, Government of South Australia, *Reparations scheme for SA’s Stolen Generations*, 19 November 2015, <<http://www.statedevelopment.sa.gov.au/news-releases/all-news-updates/reparations-scheme-for-sas-stolen-generations>>

<sup>519</sup> Submission 32, Legal Aid NSW, p 30.

<sup>520</sup> Submission 32, Legal Aid NSW, p 30.



- 7.125** PIAC noted that the ‘success of any reparations tribunal will depend in part on how comprehensively its function and role are publicised and promoted’. Consistent with Legal Aid NSW’s position, it agreed that a specific communications strategy is vital, and that community sector organisations should be funded appropriately to help promote the reparations scheme.<sup>521</sup>
- 7.126** Herbert Smith Freehills noted that active promotion, outreach and awareness strategies will contribute to the effectiveness of any reparations framework. It said that there must be a communications strategy that involves targeted outreach to known stakeholder groups and organisations, community meetings, radio and television advertising, articles and advertisements in newspapers. It further added that there needs to be outreach work and engagement with Aboriginal communities and more specifically, Stolen Generation survivors.<sup>522</sup>
- 7.127** Shoalcoast Community Legal Centre concurred, stating there should be extensive advertising programs and community information sessions to avoid a lack of awareness about the process.<sup>523</sup>

### **Funding**

- 7.128** The funding of a reparations model is an important consideration, influenced largely by the number of potential applicants and quantum of claims. Given the lack of data and records to identify clearly how many members of the Stolen Generations are alive today, it was challenging for the committee to determine the level of funding required for a reparations scheme or tribunal.
- 7.129** In the *Bringing them home* report it was recommended that a National Compensation Fund be established to fund compensation claims, with major church organisations encouraged to contribute to this fund for their role in accommodating children who were forcibly removed from their family.<sup>524</sup>
- 7.130** Consistent with this approach is PIAC’s proposed model for a Stolen Generations Tribunal, where church organisations or other relevant organisations would be encouraged to contribute to a Stolen Generations Fund. PIAC said this would ‘provide ring fenced funding’ that would ensure the longevity of the Tribunal’s work as there would be sufficient funds to adequately compensate claimants.<sup>525</sup>
- 7.131** PIAC noted that this approach was also consistent with recent recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, which recommended that

<sup>521</sup> Submission 16, Public Interest Advocacy Centre, p 18.

<sup>522</sup> Submission 19, Herbert Smith Freehills, p 22.

<sup>523</sup> Submission 42, Shoalcoast Community Legal Centre, p 39.

<sup>524</sup> Recommendation 15, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 266-268, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>525</sup> Submission 16, Public Interest Advocacy Centre, p 12.

non-government institutions contribute to the funding of a redress scheme for victims of child sexual abuse.<sup>526</sup>

**7.132** As to how much government funding may be required in New South Wales, the funding of the Tasmanian and South Australian schemes could be used as a guide, although it is worth noting that New South Wales had a higher number of Aboriginal children forcibly removed (as discussed in chapter 2).

**7.133** As noted earlier, in Tasmania, the government established a \$5 million fund for the purpose of providing monetary payments,<sup>527</sup> whereas in South Australia the government established an \$11 million fund, of which \$6 million has been allocated for ex gratia payments.<sup>528</sup>

**7.134** Ms Cecelia Anthony, Co-Chair of the New South Wales Reconciliation Council, explained that the funding required for a New South Wales reparation model or scheme would likely surpass the Tasmanian and South Australian experiences, given the high number of removals that took place in New South Wales and potential for descendant claims:

The Tasmanian and South Australian models are based, obviously, on the amount their State Governments allocated for their funds and the number of claimants they were expecting. A New South Wales model would have to rely on the amount allocated, the expected number of claimants and it is also worthwhile remembering that New South Wales has the largest Aboriginal population of any State or Territory in New South Wales, so you are dealing with a big population, none of whom have escaped the Stolen Generations. There is not one individual Aboriginal family member or community in the State that has not been affected in one way or the other by the legacy of the Stolen Generations.<sup>529</sup>

**7.135** Mr Santow suggested that the costs of the Aboriginal Trust Fund Repayment Scheme may also provide a helpful guide to how much a tribunal would cost, although he noted that this guide would be ‘useful, though by no means perfect’. For example, he pointed out that there are likely to be a higher number of claimants seeking reparation under a Stolen Generations Tribunal when compared with stolen wages.<sup>530</sup>

**7.136** With this limitation in mind, Mr Santow informed the committee that the total of ex gratia payments made as part of the Aboriginal Trust Fund Repayment Scheme amounted to approximately \$6,075,712, which he noted was below the budgeted amount of \$6,799,000.<sup>531</sup>

**7.137** Mr Santow added that consideration should also be given to the costs of legal assistance and how this would be incorporated into the funding of the tribunal or scheme. He noted that the

<sup>526</sup> Submission 16, Public Interest Advocacy Centre, p 12.

<sup>527</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>528</sup> Media release, Government of South Australia, *Reparations scheme for SA's Stolen Generations*, 19 November 2015, <<http://www.statedevelopment.sa.gov.au/news-releases/all-news-updates/reparations-scheme-for-sas-stolen-generations>>

<sup>529</sup> Evidence, Ms Anthony, 10 February 2016, pp 16-17.

<sup>530</sup> Correspondence from Mr Edward Santow, Chief Executive Office, Public Interest Advocacy Centre, to Chair, 26 April 2016, p 1.

<sup>531</sup> Correspondence from Mr Santow to Chair, 26 April 2016, pp 1-2.

Aboriginal Trust Fund Repayment Scheme allocated \$100,000 for ‘practical assistance funding’, of which 50 per cent was provided to Link-Up NSW’s counselling program, and that this amount was inadequate.<sup>532</sup>

### Application period

- 7.138** An important consideration for a reparation tribunal or scheme is the period of time in which applicants would have to lodge an application. Several stakeholders emphasised the importance of having an extended application window, given the vulnerability of potential claimants.
- 7.139** In its proposal for a Stolen Generations Tribunal, PIAC suggested that there be a 10 year deadline for the making of claims, with the possibility of extension.<sup>533</sup> This was supported by the Kinchela Boys’ Home Aboriginal Corporation, who said that ‘the 10 year time limit for the making of applications accommodates a number of difficulties that may arise in relation to the tribunal process’, such as individuals being suspicious or mistrusting of the tribunal or affected by mental health or drug and alcohol issues. It also noted that some individuals live in remote areas and may have to travel long distances to access the process.<sup>534</sup>
- 7.140** Mr Santow said that one of the biggest problems with a statutory scheme that ‘has a very narrow time period’ is that it does not cater to the needs of Stolen Generation survivors, given they are vulnerable and less connected to mainstream media:

The individuals affected are some of the most vulnerable, some of the least connected to the sorts of media and other information delivery type forms that government would usually rely on.<sup>535</sup>

- 7.141** In light of this, Mr Santow argued that it would be good for the process to be open-ended, pointing out that one weakness of the Aboriginal Trust Fund Repayment Scheme was that it closed before everyone was able to submit their claim or were even aware of the scheme. While Mr Santow recognised that an open-ended process may be a concern for Treasury, he suggested that the government should be able to deal with this issue effectively:

There are ways in which government can make provision for an open-ended process, as time goes on, in a very accurate way that would satisfy the real concerns of Treasury, and that is, in seeing how many people apply over the course of time it becomes much easier to predict the total cost of the scheme. So I think some of the arguments against having an open-ended scheme can be addressed very effectively.<sup>536</sup>

- 7.142** The idea of having an open-ended process would also be consistent with recent recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. PIAC noted that the Royal Commission, in its final report into redress and civil

<sup>532</sup> Correspondence from Mr Santow to Chair, 26 April 2016, pp 1-2.

<sup>533</sup> Submission 16, Public Interest Advocacy Centre, p 14.

<sup>534</sup> Correspondence from Dr McComsey to Chair, 27 April 2016, p 3.

<sup>535</sup> Evidence, Mr Santow, 22 March 2016, p 6.

<sup>536</sup> Evidence, Mr Santow, 22 March 2016, p 6.

litigation, stated that a redress scheme for victims of child sexual abuse ‘should not have a fixed closing date’.<sup>537</sup>

- 7.143** If an open-ended process, however, is not possible, Mr Santow argued that the period of time should at least be over 12 months, which is the period of time in which potential claimants can apply to the South Australian reparations scheme.<sup>538</sup> The Tasmanian scheme only provided an application period of six months.<sup>539</sup>
- 7.144** Legal Aid NSW agreed that a tribunal or scheme should operate for a lengthy period of time, however, it suggested that this be a period of six years.<sup>540</sup>
- 7.145** Mr Anthony Levin, a civil solicitor with Legal Aid NSW, reflected on the reparation schemes in other Australian jurisdictions noting the length of time in which each operated, however, he argued that a longer period of time is needed, particularly given the experience of the Aboriginal Trust Fund Repayment Scheme, where inquiries about the scheme continue to arise despite its closure six years ago, in June 2010.<sup>541</sup>
- 7.146** Similarly, Mr Levin’s colleague, Ms Melissa O’Donnell, supported an operation time of longer than 12 months, noting that the Aboriginal Trust Fund Repayment Scheme had to be extended several times and that it was difficult for them to ‘get word out’ to the communities.<sup>542</sup>
- 7.147** Regardless of how long the tribunal or scheme operates, Mr Levin was of the view that the process should be extendable:

We are of the view that it would be helpful to keep open the possibility of a scheme that was extendable at the very least. If the government and this committee were minded to be more conservative in setting the time frame for the scheme, perhaps it would be appropriate for there to be a clause or a provision that allowed the scheme to be extended based on the number of inquiries that continue to flow in, either to the responsible department or other key stakeholder agencies.<sup>543</sup>

### **Eligibility for reparations**

- 7.148** A key issue to determine with a reparation tribunal or scheme is the eligibility criteria for people to make a claim. Relevant considerations are who can apply, whether descendants are

<sup>537</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015) p 38; Submission 16, Public Interest Advocacy Centre, p 14.

<sup>538</sup> Evidence, Mr Santow, 22 March 2016, p 6.

<sup>539</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>540</sup> Submission 32, Legal Aid NSW, p 29.

<sup>541</sup> Evidence, Mr Levin, 10 February 2016, p 4.

<sup>542</sup> Evidence, Ms Melissa O’Donnell, Solicitor, Civil Law Division, Legal Aid NSW, 10 February 2016, pp 3-4.

<sup>543</sup> Evidence, Mr Levin, 10 February 2016, p 4.

able to make a claim and whether claimants would be precluded if they have already received some other form of legal remedy such as compensation through civil litigation.

**7.149** In terms of who can apply, it may be necessary to set clear parameters setting out eligibility criteria. In South Australia, the committee understands that a person will be eligible to make an application to the reparation scheme if they:

- are an Aboriginal person
- were removed from their family as a child prior to December 1975 without a court order
- were a resident of South Australia at the time of removal or were removed by South Australian authorities.<sup>544</sup>

**7.150** In Tasmania, a person was eligible to a monetary payment if they were Aboriginal and fell within one of the following three categories outlined in the legislation:

- category 1 – Aboriginal persons who were removed from their families between 1935 and 1975 under the *Tasmanian Infants Welfare Act 1935* or the *Child Welfare Act 1960* (Tas)
- category 2 – Aboriginal people who were living as at 16 October 2006 and who were removed while under the age of 18 years from their family between 1935 and 1975 as a result of the ‘active intervention of a State Government agency’
- category 3 – living biological children of a deceased Aboriginal person who would have been eligible to make a claim under category 1 or 2.<sup>545</sup>

**7.151** While under the Tasmanian scheme immediate descendants were entitled to make a claim, PIAC noted that the South Australian reparation scheme is limited to those individuals who were removed from their family as a child prior to 31 December 1975 without a court order. It did not extend to living descendants, relatives or family members of a person who was forcibly removed.<sup>546</sup>

**7.152** Given the intergenerational impacts of past forcible removal policies and practices, it was argued that descendants should be entitled to make a claim for reparation. While most stakeholders expressed this view in relation to claims for monetary payments, it was also emphasised in relation to applying for other forms of reparation.

**7.153** Herbert Smith Freehills asserted that there is a need for a reparations framework to extend to descendants in all facets, including truth telling processes and monetary compensation. It stated that if it is limited only to Stolen Generation survivors, ‘the disadvantage will continue to be compounded and perpetuated through subsequent generations’.<sup>547</sup>

<sup>544</sup> Government of South Australia, *Stolen Generations Reparations Scheme* (2016) <<http://www.statedevelopment.sa.gov.au/upload/aboriginal-affairs/stolen-generations-policy/Stolen-Generations-Guide-for-Applicants.pdf?t=1460679849139>>

<sup>545</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 7, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>546</sup> Answers to questions on notice, Mr Santow, 15 April 2016, p 3.

<sup>547</sup> Submission 19, Herbert Smith Freehills, p 20.

- 7.154** With PIAC's proposed Stolen Generations Tribunal, eligible claimants would extend to include 'a relative, family member or descendant' of a person who was forcibly removed, although the claimant in these circumstances would need to establish that they had experienced harm or suffering as a result of the person in their family being removed as a child.<sup>548</sup>
- 7.155** Legal Aid NSW agreed with PIAC's position on this issue, adding support for a flexible interpretation of the term 'descendant' so as to 'account for the complexity and cultural specificity of familial and kinship relations'.<sup>549</sup>
- 7.156** In addition to allowing descendant claims, PIAC argued that the eligibility guidelines should not preclude individuals who have received monetary compensation elsewhere from applying.<sup>550</sup>
- 7.157** Mr Santow clarified that under the tribunal model proposed by PIAC, an individual should still be able to apply for reparation even if they have pursued civil litigation, although he explained that this would be a consideration that the tribunal could take into account. Mr Santow emphasised that eligibility should not be restricted in this way because the tribunal can award non-monetary forms of reparation, which claimants would not be able to access through civil litigation:
- ... if they receive some kind of monetary award then clearly that is something that should be considered by the statutory scheme but that should not preclude them from going to the statutory scheme if the award is simply a nominal amount because of the evidentiary difficulties, for example, involved in pursuing civil litigation, or if the individual wants some other kind of remedy beyond the monetary one. I know the question is the monetary remedy, but I cannot emphasise enough how that is only a part of the remedial action.<sup>551</sup>
- 7.158** Reflecting on the current legal action underway, the Kinchela Boys' Home Aboriginal Corporation highlighted the importance of individuals who may have been involved in civil proceedings not being precluded from applying to a reparations tribunal as 'a tribunal process may provide a more accessible forum for many members of the Stolen Generations and their descendants to seek reparations and tell their stories'.<sup>552</sup>
- 7.159** The Kinchela Boys' Home Aboriginal Corporation recognised that the eligibility guidelines may be framed so that claimants cannot recover twice for the same loss, however, it suggested that 'past remedies should not prevent the tribunal from awarding reparations to address present needs'. As an example, it explained that if funding had been previously provided for counselling, this should not include a tribunal from providing further funding for counselling if the need has continued.<sup>553</sup>

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<sup>548</sup> Submission 16, Public Interest Advocacy Centre, p 36, Appendix A, s 10(4).

<sup>549</sup> Submission 32, Legal Aid NSW, p 32.

<sup>550</sup> Submission 16, Public Interest Advocacy Centre, p 18.

<sup>551</sup> Evidence, Mr Santow, 22 March 2016, p 3.

<sup>552</sup> Correspondence from Dr McComsey, 27 April 2016, p 4.

<sup>553</sup> Correspondence from Dr McComsey, 27 April 2016, p 4.

### Evidentiary requirements and formality

- 7.160** Key to ensuring a reparations framework is accessible, fair and less likely to cause further trauma are two elements: less stringent evidentiary requirements and less formality. The importance of these elements were stressed by stakeholders, given problems with records and written documentation, and the risk of re-traumatising claimants if the process is overly onerous or formal.
- 7.161** There was a strong consensus by stakeholders that oral evidence be allowed with any type of process and that the weight of this evidence not be minimised when compared with written evidence. Herbert Smith Freehills illustrated the need for this approach given problems with records for members of the Stolen Generations:
- In light of deficiencies in the official contemporaneous written records, undue weight should not be given to documentary evidence. In some instances written records were not created when they ought to have been. Other records have been destroyed, lost or falsified, whether by Government agents or third parties.<sup>554</sup>
- 7.162** PIAC also emphasised this issue, arguing that evidentiary requirements should be less stringent than those applied in civil litigation. It noted that a limitation of the Aboriginal Trust Fund Repayment Scheme was its reliance on documentary evidence when compared to oral or circumstantial evidence.<sup>555</sup>
- 7.163** By comparison, both PIAC and Ms Hocking noted the admissibility of oral evidence in the Tasmanian scheme, which they asserted was a real strength of that system.<sup>556</sup>
- 7.164** The Queensland Redress Scheme for stolen wages was also highlighted to be effective for this reason. Redfern Legal Centre advised that the Queensland Government was active in supporting, gathering and producing copies of personal records for claimants and that there were less stringent requirements in terms of documentation when compared with civil claims.<sup>557</sup>
- 7.165** The need for oral evidence and less formality in any reparation mechanism was also stressed to the committee by the New South Wales Reconciliations Council, which insisted that it is vital that the process of claiming reparations ‘does not disempower the claimants or cause any more trauma to the victims’. Use of oral evidence to substantiate claims is necessary, it argued, ‘due to the prevalence of missing written records’.<sup>558</sup>
- 7.166** Shoalcoast Community Legal Centre agreed with this view, stating that the rules of evidence should not apply and that the primary evidence relied on should be the evidence of applicants themselves.<sup>559</sup>

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<sup>554</sup> Submission 19, Herbert Smith Freehills, p 20.

<sup>555</sup> Submission 16, Public Interest Advocacy Centre, p 15.

<sup>556</sup> Evidence, Ms Hocking, 10 February 2016, p 35.

<sup>557</sup> Submission 30, Redfern Legal Centre, p 5.

<sup>558</sup> Submission 18, NSW Reconciliation Council, p 6.

<sup>559</sup> Submission 42, Shoalcoast Community Legal Centre, p 38.

- 7.167** To minimise the burden on applicants in proving their claim, both PIAC and the New South Wales Reconciliation Council asserted that the onus of proof should not be placed on claimants. PIAC submitted that if a tribunal model was established, the tribunal should be able to conduct preliminary investigations itself, so that applicants do not have the burden of proving their claim.<sup>560</sup>
- 7.168** Under the current South Australian reparation scheme, the independent assessor has the power to seek any further information that would assist with a person's application, including information from witnesses and records from government departments, churches or other institutions.<sup>561</sup>
- 7.169** The assessor in Tasmania had similar powers. After an initial assessment of the application, the assessor sought reports and information from government agencies to help inform his assessment of each application. The assessor, in his final report, noted that the assessment process in Tasmania was informal and non-adversarial, with the rules of evidence not applied and no formal hearings. The assessor said the 'emphasis was on informality and affording justice to each applicant'.<sup>562</sup>
- 7.170** The New South Wales Reconciliation Council also expressed the view that the state has a responsibility in lessening the onus of proof for claimants, reinforcing that the 'process should be easily accessible' for claimants'.<sup>563</sup>
- 7.171** Shoalcoast Community Legal Centre said that the process should function with as little formality as possible and that the burden of proof should be the balance of probabilities, given the traumatic nature of these claims and lack of material evidence. It maintained that this would help promote greater engagement in the process, as people may apply in the knowledge that they may have some 'hope of success'.<sup>564</sup>

### Assessment and quantum of monetary payments

- 7.172** A number of issues were raised in relation to monetary payments and the methods that may be used to assess the quantum of claims
- 7.173** On this issue, it is important to note that in Tasmania each of the 84 successful applicants who were members of the Stolen Generations were awarded around \$58,000. Descendants were also given consistent amounts, either \$4,000 or \$5,000 depending on how many people were within the particular

**“...inadequate reparations run the risk of being seen as a political gesture, rather than a concerted effort to remedy injustices”**

University of NSW Law Society  
Submission 15

<sup>560</sup> Submission 16, Public Interest Advocacy Centre, p 15.

<sup>561</sup> Government of South Australia, *Stolen Generations Reparations Scheme* (2016) <<http://www.statedevelopment.sa.gov.au/upload/aboriginal-affairs/stolen-generations-policy/Stolen-Generations-Guide-for-Applicants.pdf?t=1460679849139>>

<sup>562</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 9, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>563</sup> Submission 18, NSW Reconciliation Council, p 6.

<sup>564</sup> Submission 42, Shoalcoast Community Legal Centre, p 40.



family group.<sup>565</sup> As explained at paragraph 7.6, these amounts were determined by dividing set funds equally between eligible applicants.

**7.174** The approach in South Australia may be different. According to the *Guide for Applicants*, published to help claimants navigate their way through the application form, the assessor will provide a recommendation to the Minister about a person's eligibility and the level of harm they experienced.<sup>566</sup> This suggests that individual payments may vary depending on a person's history and circumstances.

**7.175** As to whether claimants should get equal or differing amounts, Ms Hocking from the University of Wollongong, who assisted with the Tasmanian scheme, suggested that the awarding of unequal amounts could create a division in the Aboriginal community:

What you do not want to do is start dividing. Oh, they got more than what I got and I should have got more because of this and that. We did have a bit of that ... I think the best way to do it is to provide everybody with the same amount of money regardless. If it was declared that they were a Stolen Generations survivor and they had been taken by the Tasmanian Government, everybody gets the same ...<sup>567</sup>

**7.176** Other stakeholders had a different view, proposing that payments should reflect a person's individual circumstances. Redfern Legal Centre argued that there should be clear compensation criteria, not necessarily a 'schedule of maims', but clear categories reflecting different issues: such as the amount of time spent in institutional care, abuse and disability.<sup>568</sup>

**7.177** Similarly, Legal Aid NSW submitted that monetary compensation should be awarded in a manner consistent with the recommendations in the *Bringing them home* report, which would require that payments reflect 'additional and individualised harms under particular heads of damage'.<sup>569</sup>

**7.178** Herbert Smith Freehills suggested that payments of equal amounts, as occurred under the Tasmanian scheme, instead of an amount that reflects a person's individual experience, may be inconsistent with the United Nations Basic Principles which state that reparations are to be 'proportionate to the gravity of the violation of the harm suffered'.<sup>570</sup>

**7.179** Legal Aid NSW proposed that these heads of damage would encompass factors like racial discrimination, pain and suffering, abuse, disruption of family life and economic loss.<sup>571</sup> Such an approach was also supported by the Shoalcoast Community Legal Centre.<sup>572</sup>

<sup>565</sup> Tasmanian Department of Premier and Cabinet, *Report of the Stolen Generations Assessor*, (February 2008), p 2, <[http://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>566</sup> Government of South Australia, *Stolen Generations Reparations Scheme – Guide for Applicants* (2016) <<http://www.statedevelopment.sa.gov.au/upload/aboriginal-affairs/stolen-generations-policy/Stolen-Generations-Guide-for-Applicants.pdf?t=1460678120998>>

<sup>567</sup> Evidence, Ms Hocking, 10 February 2016, p 36.

<sup>568</sup> Submission 30, Redfern Legal Centre, p 10.

<sup>569</sup> Submission 32, Legal Aid NSW, p 5.

<sup>570</sup> Submission 19, Herbert Smith Freehills, p 42.

<sup>571</sup> Submission 32, Legal Aid NSW, p 31.

<sup>572</sup> Submission 42, Shoalcoast Community Legal Centre, p 34.

- 7.180** On the issue of how claims should be assessed, PIAC expressed its support for a sliding scale approach to the assessment of claims,<sup>573</sup> consistent with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. It noted that the Royal Commission's scale has a maximum of \$200,000 and an average of \$65,000 for successful claimants. Essentially this scale allows for a number of factors to be taken into account, for example, severity of abuse or aggravating circumstances.<sup>574</sup>
- 7.181** While quantifying financial loss in these circumstances can be challenging, Mr Santow advised that it is common practice in the legal system:
- The ordinary approach in 90 per cent of human endeavour is you seek to quantify monetarily the loss and go from there. It is far more difficult to quantify financial loss in a situation like this. But I do want to emphasise that it happens every day of the week. For centuries we have had defamation law that seeks to quantify the loss to reputation, which is almost impossible to quantify, and yet we find a way to do it that is common sense, and accords with our values as a liberal democracy.<sup>575</sup>
- 7.182** Also stressed to the committee was the need for payments to be fair. The UNSW Law Society highlighted how an 'undervaluation' of claims can aggravate and heighten the sense of disrespect claimants may already experience :
- Undoubtedly, financial reparation can never restore a survivor for irreparable injustices suffered by them. Nevertheless, the dignity of a survivor should not be eroded further by their preclusion from their legitimate common law entitlements.<sup>576</sup>
- 7.183** Capturing the importance of payments being perceived to be fair, Mr Richard Weston, Chief Executive Officer from the Healing Foundation commented that they need 'to be seen to have substance but it does not have to go over the top'.<sup>577</sup>
- 7.184** The UNSW Law Society similarly noted that it is important for compensatory measures to be adequate, as 'inadequate reparations run the risk of being seen as a political gesture, rather than a concerted effort to remedy injustices'.<sup>578</sup>
- 7.185** ANTaR NSW agreed with this view, noting that inadequate compensation can have a profound impact on those involved. It observed that this was an issue with the Aboriginal Trust Fund Repayment Scheme, where families were left feeling disenfranchised.<sup>579</sup>
- 7.186** In terms of how the monetary payment should be described, PIAC preferred that the payment be 'characterised as a "monetary payment" in recognition of the abuse suffered', rather than as

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<sup>573</sup> Answers to questions on notice, Mr Santow, 15 April 2016, p 3.

<sup>574</sup> Submission 16, Public Interest Advocacy Centre, p 16.

<sup>575</sup> Evidence, Mr Santow, 22 March 2016, p 5.

<sup>576</sup> Submission 15, University of New South Wales Law Society, p 18.

<sup>577</sup> Evidence, Mr Richard Weston, Chief Executive Officer, Healing Foundation, 9 February 2016, pp 20-21.

<sup>578</sup> Submission 15, University of New South Wales Law Society, p 6.

<sup>579</sup> Submission 21, ANTaR NSW, p 10.

‘compensation’. It was of the view that this would make it clearer to applicants that the payments are different to the damages that could be awarded through civil litigation.<sup>580</sup>

- 7.187** Legal Aid NSW raised a concern with the term ‘ex gratia’, if it were to be used, as it said ‘ex gratia payments are made where there is no legal liability’, which would be ‘contrary to the spirit of making reparations’. It preferred the term ‘recognition payment’ for its symbolic value:

Legal Aid NSW prefers the term ‘recognition payment’, both for its symbolic value to the Aboriginal community in redressing historical injustice and in more accurately describing one of the legal remedies made available.<sup>581</sup>

### **Review of decisions**

- 7.188** Several stakeholders emphasised the need for applicants to be able to apply for a review or appeal of a decision if they are not satisfied with how their claim is determined.
- 7.189** This would be possible under PIAC’s Stolen General Tribunal model, as its draft bill provides for determinations to be reviewed on their merits by the New South Wales Civil and Administrative Tribunal. PIAC said that this review option is ‘vital for procedural fairness, as well as community confidence in the Tribunal’.<sup>582</sup>
- 7.190** PIAC noted that assessments of the Aboriginal Trust Fund Repayment Scheme were not reviewable and that this was a ‘heavy counterweight to the advantages of the ATFRS as an administrative scheme’.<sup>583</sup> It also noted that this is an issue with the current South Australian reparations scheme, as claimants are unable to obtain reasons for decisions or to apply for a review of appeal.<sup>584</sup>
- 7.191** Herbert Smith Freehills suggested that the lack of a review option with the Tasmanian scheme was problematic, given that ‘in a Stolen Generations context difficult and complex distinctions sometimes need to be drawn on the basis of eligibility’.<sup>585</sup>

### **Legal representation for claimants**

- 7.192** A number of stakeholders pointed to the importance of legal representation and assistance being provided to claimants.
- 7.193** PIAC suggested that ‘independent legal advice and information should be provided at all stages for potential complainants’. It said that the experience of the Aboriginal Trust Fund Repayment Service shows that legal representation and assistance ‘made a real difference to

<sup>580</sup> Submission 16, Public Interest Advocacy Centre, pp 16-17.

<sup>581</sup> Submission 32, Legal Aid NSW, p 31.

<sup>582</sup> Submission 16, Public Interest Advocacy Centre, p 14.

<sup>583</sup> Submission 16, Public Interest Advocacy Centre, p 14.

<sup>584</sup> Answers to questions on notice, Mr Santow, 15 April 2016, p 2.

<sup>585</sup> Submission 19, Herbert Smith Freehills, p 46.

the outcome of the process'. In particular, it noted that legal assistance led to the following benefits:

- the average final payment increasing significantly every time an interim assessment was reviewed
- practical and emotional support being provided to claimants
- claimants deciding to make claims, when in the absence of assistance they were unlikely to pursue the matter.<sup>586</sup>

**7.194** To ensure legal assistance is provided, PIAC proposed that funding be built into the reparation model, with funding provided to a body with experience in the area:

This would involve government providing funding to a body – such as PIAC, a public interest law clearing house or another community legal centre – to be the overarching coordinator of legal assistance and representation to survivor applicants. PIAC has experience in doing just this via the ATFRS.<sup>587</sup>

**7.195** Reflecting on the current reparations scheme in South Australia, PIAC noted that the guidelines for the scheme indicate that individuals will be given the opportunity of obtaining legal advice in relation to their offer and deed of settlement, however, it argued that this is 'too late in the process to be of greatest assistance'. Given an individual has one opportunity to present information to the assessor, and there is no opportunity for a review, appeal or reasons for a decision given, PIAC claimed that legal assistance should be obtained at an earlier stage when claimants are compiling their documentation.<sup>588</sup>

**7.196** Legal Aid NSW expressed a similar view, arguing that funding of legal representation before a tribunal or other mechanism must be considered. It stated that 'people who are represented tend to have a better chance of achieving a successful outcome' because they are assisted in collating evidence and articulating their claim.<sup>589</sup>

### **Transparency**

**7.197** The transparency of the process was also highlighted as an important consideration in the implementation of a reparation framework.

**7.198** If a tribunal was to be established, PIAC submitted that all of its decisions should be made public. According to PIAC, this will ensure 'that the decision making processes [are] as transparent as possible', which will in turn promote to claimants and the public that the process is just and fair.<sup>590</sup>

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<sup>586</sup> Submission 16, Public Interest Advocacy Centre, p 19.

<sup>587</sup> Submission 16, Public Interest Advocacy Centre, p 19.

<sup>588</sup> Answers to questions on notice, Mr Santow, 15 April 2016, p 3.

<sup>589</sup> Submission 32, Legal Aid NSW, p 30.

<sup>590</sup> Submission 16, Public Interest Advocacy Centre, p 16.

- 7.199** While acknowledging that there will be some matters which require privacy, PIAC maintained that as much as possible ‘there should be transparency regarding how a decision is made to award a particular monetary payment and/or other forms of redress’.<sup>591</sup>
- 7.200** In addition to transparency of guidelines and decisions, PIAC insisted that all decisions should be accompanied by clear and specific reasons.<sup>592</sup>

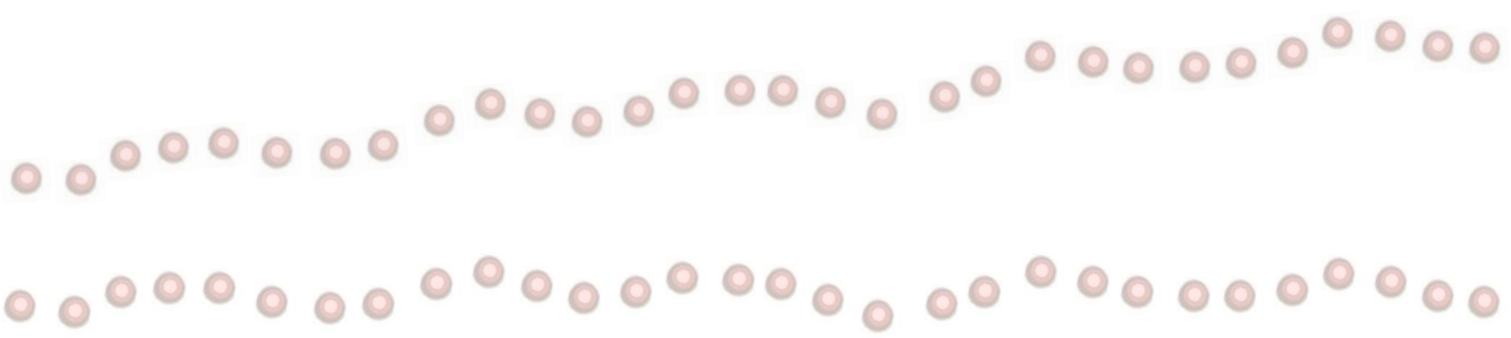
*Committee comment*

- 7.201** The committee has taken into careful consideration the options for a reparation mechanism in New South Wales. Taking into account the need to act urgently and the need to implement a process that avoids doing further harm or re-traumatisation of Stolen Generation survivors, the committee believes that the implementation of a financial reparations scheme, similar to that established in other states, is the best option (as outlined in recommendation 2).
- 7.202** While we acknowledge that numerous stakeholders preferred the establishment of a reparations tribunal, the committee feels that that option would involve more time and costs to implement, which would detract from the overwhelming need to do something now, considering many Stolen Generation survivors are ageing or in poor health. The committee would also prefer that as much money as possible is allocated towards monetary payments for Stolen Generation survivors directly, rather than a significant portion of funding being used on infrastructure costs associated with establishing a tribunal.
- 7.203** The committee acknowledges that one of the benefits of the tribunal model is its holistic nature; however, there is no reason that a financial based reparations scheme could not be implemented in conjunction with a range of other measures to still provide holistic reparations to Stolen Generation survivors and their descendants. Indeed, many of these measures have been recommended throughout the other chapters of this report. The committee sees all of these measures as complementary, regardless of whether they all fall under a structured reparation framework or not.
- 7.204** In terms of whether members of the existing group action are eligible to apply to the scheme, the committee believes that they should not be precluded from making an application, although any existing payment an individual has received should be taken into account in the determination of any further financial reparation.
- 7.205** An administrative based financial reparation scheme should be designed and implemented in a manner that meets the needs of Stolen Generation survivors. It can and should be a low documentation process, one that is accessible, efficient and transparent to all. We would also expect that the New South Wales scheme is designed and implemented in a manner that takes into account the lessons learnt in Tasmania and South Australia. Much can be learnt from the experiences in these jurisdictions, for example, the value of an individual apology provided to successful applicants in the Tasmanian scheme, and the importance of having a right of appeal for unsatisfied applicants, given the lack of this option in the Tasmanian and South Australian schemes were criticised.

<sup>591</sup> Submission 16, Public Interest Advocacy Centre, p 16.

<sup>592</sup> Submission 16, Public Interest Advocacy Centre, p 16.

- 7.206** In the interest of self-determination, it is essential that the reparation scheme be developed in close consultation with Stolen Generation survivors. This means more than a one off discussion – it should include ongoing genuine engagement in all aspects of the scheme’s operation. Not only is it important that members of the Stolen Generations have a voice in how this scheme works, it will ultimately be vital to its success.
- 7.207** The committee would also ideally like to see Aboriginal involvement in the decision making process for applications to the scheme. This could be achieved in a number of ways, such as the appointment of an independent Aboriginal assessor, Aboriginal representation on a panel assessing applications, or through the assessor consulting with a reference group including Aboriginal members. Regardless of the approach, Aboriginal representation with this aspect of the process will also help to instil confidence, integrity and credibility in the operation of the scheme.
- 7.208** The committee notes the limited culturally appropriate therapeutic support that was offered to claimants within the current group action, resulting in some claimants feeling re-traumatised. It also recognises the importance of claimants being provided with legal and financial assistance regarding their claims. We strongly encourage the government to include these important measures in the establishment of a financial based reparations scheme.
- 7.209** The committee therefore recommends, as outlined in recommendation 2, that the New South Wales Government establish a financial based reparations scheme for Stolen Generation survivors that incorporates all of these factors, and that complements the current group action against the state.



## Chapter 8 Overcoming disadvantage

... Aboriginal children who were forcibly removed from their families and raised in non-Indigenous settings did not end up healthier, better educated or more likely to get jobs than those who were raised in Aboriginal communities. Rather, forcible removal led to a cycle of poverty, ill-health, discrimination and incarceration.

As a result, the Stolen Generations are one of the most disadvantaged groups within the broader Aboriginal and Torres Strait Islander population.<sup>593</sup>

Indigenous disadvantage in Australia is well documented, with clear evidence of the gap and inequality between Indigenous and non-Indigenous Australians. For Stolen Generation survivors and their families, this disadvantage is even more deep-rooted, heightened by the isolation and disconnection individuals have experienced from their community, Country and culture.

This chapter will look at what can be done to overcome the disadvantage experienced by members of the Stolen Generations and their descendants, particularly in the areas of health, education, employment, housing and justice. It will also consider how services in these areas can be tailored to meet the specific needs of Stolen Generation survivors.

### Tracing disadvantage back to past forcible removal policies and practices

- 8.1** The committee received evidence about the clear disadvantage seen across social and economic outcomes, including education, employment, housing, health and the criminal justice system, for Aboriginal and Torres Strait Islander people, particularly Stolen Generation survivors and their families.<sup>594</sup>
- 8.2** Ms Cecelia Anthony, Co-Chair, New South Wales Reconciliation Council, expressed the view that past forcible removal policies and practices continue to have a significant effect on the disadvantage of Aboriginal people, commenting that '[t]he incarceration rates of Aboriginal people, the rates of Aboriginal children in out-of-home care, the educational levels, the health statistics all feed in.'<sup>595</sup>
- 8.3** The Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, referred to this disadvantage as the 'cycle of poverty', where poor educational outcomes lead to poor employment opportunities, which in turn lead to poor housing and health – not only for individuals but across whole families and communities. Ms Burney stated that this disadvantage 'can be traced back to removal'.<sup>596</sup>

<sup>593</sup> Submission 36a, Coota Girls Corporation, p 19.

<sup>594</sup> Submission 32, Legal Aid NSW, p 9; Submission 37, Mr Duncan Marshall, p 1; Evidence, Mr James Allen, Chairperson, Batemans Bay Local Aboriginal Land Council, and Coordinator, Murra Mia Aboriginal Tenants Advisory Service, 2 March 2016, pp 15-16; Evidence, Mr James Smith, Member, Metropolitan Local Aboriginal Land Council, 10 February 2016, p 25.

<sup>595</sup> Evidence, Ms Cecelia Anthony, Co-Chair, NSW Reconciliation Council, 10 February 2016, p 19.

<sup>596</sup> Evidence, the Hon Linda Burney MP, Shadow Minister for Aboriginal Affairs, 5 November 2015, p 48.

- 8.4 Mr Les Farrell, Solicitor, Shoalcoast Community Legal Centre, suggested that past forcible removal policies and practices have not only affected Aboriginal people who were forcibly removed but have fragmented generations of Aboriginal families who are now experiencing ‘a bleak outlook on life as suffering turned to anger and disconnection’ which has led to ‘disproportionate incarceration rates, unemployment and homelessness’.<sup>597</sup>
- 8.5 Similarly, Legal Aid NSW noted that the level of disadvantage experienced by Aboriginal people is ‘high, multifaceted and complex’ and submitted that while socioeconomic disadvantage cannot be directly linked to past forcible removal policies and practices, it has undoubtedly had a significant impact on the mental health of members of the Stolen Generations.<sup>598</sup>

## Closing the Gap

- 8.6 In an attempt to address the socioeconomic disadvantage experienced by Aboriginal and Torres Strait Islander people, the Council of Australian Governments (COAG) established a framework following the 2008 national apology to Stolen Generation survivors, which set out six long-term targets to close or reduce the gap in relation to life expectancy, child mortality rates, and education and employment outcomes.<sup>599</sup>
- 8.7 The *Closing the Gap* targets, which are set out in the National Indigenous Reform Agreement, are to:
- close the gap in life expectancy within a generation (by 2031)
  - halve the gap in mortality rates for Indigenous children under five by 2018
  - ensure access to early childhood education for all Indigenous four year olds in remote communities by 2013
  - halve the gap in reading, writing and numeracy achievements for children by 2018
  - halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020
  - halve the gap in employment outcomes between Indigenous and other Australians by 2018.<sup>600</sup>
- 8.8 The recent *Closing The Gap Prime Minister’s Report 2016* documented the current progress to date in meeting these COAG targets, finding that:
- Indigenous child death rates have declined by 33 per cent and the gap narrowed by 34 per cent between 1998-2014

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<sup>597</sup> Evidence, Mr Les Farrell, Solicitor, Shoalcoast Community Legal Centre, 2 March 2016, p 12.

<sup>598</sup> Submission 32, Legal Aid NSW, p 16.

<sup>599</sup> Council of Australian Governments, *Closing the Gap in Indigenous Disadvantage*, <[https://www.coag.gov.au/closing\\_the\\_gap\\_in\\_indigenous\\_disadvantage](https://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage)>

<sup>600</sup> Council of Australian Governments, *Closing the Gap in Indigenous Disadvantage*, <[https://www.coag.gov.au/closing\\_the\\_gap\\_in\\_indigenous\\_disadvantage](https://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage)>



- in remote areas, 85 per cent of four year old Indigenous children were enrolled in preschool in 2013 compared to the 95 per cent target
- in 2015 the school attendance rate for Indigenous students (83.7 per cent) was more than 9 per cent lower than non-Indigenous students (93.1 per cent)
- between 2008 to 2015 there has been improvement across Years 3, 5 and 7 reading and Years 5 and 9 numeracy for Indigenous school students, however, no improvements have been seen across Year 9 reading and Years 3 and 7 numeracy
- since 2008 the proportion of Indigenous 20-24 year olds who have achieved a Year 12 or equivalent level of education has increased from 45.4 per cent to 58.5 per cent, closing the gap by 11.6 per cent compared to non-Indigenous Australians
- the Indigenous employment rate has not improved with a decline from 53.8 per cent in 2008 to 47.5 per cent in 2012-13
- the health of Indigenous people is slowly improving but at the current rate will not meet the target of closing the gap in life expectancy between Indigenous and non-Indigenous people by 2031.<sup>601</sup>

**8.9** Dr John Rule and Ms Elizabeth Rice, authors of the 2015 *Bringing them home: Scorecard Report*, expressed concern that even though COAG and the Prime Minister report annually on the progress of meeting the *Closing the Gap* targets between Indigenous and non-Indigenous Australians, ‘Stolen Generations do not feature in this reporting’.<sup>602</sup>

***Committee comment***

**8.10** The committee notes that many of the targets set by the Australian Government under the *Closing the Gap* framework are on track, although we note that Stolen Generations do not feature specifically in this reporting. The committee is, however, disappointed with the lack of progress in regard to the employment rate for Aboriginal people and the target of closing the gap in life expectancy. We also note that the reporting does not specifically address targets to reduce the incarceration rate and current removal of children.

**8.11** The committee supports the Australian Government’s commitment to continue focusing on closing the gap between Indigenous and non-Indigenous people, as it is critical that the disparities are addressed to ensure all Australians are provided with equal opportunities.

## **Education**

**8.12** Past forcible removal policies and practices have had an adverse impact on the education levels of people who were removed, and have contributed to the cycle of socioeconomic disadvantage evident in Aboriginal communities.

<sup>601</sup> Australian Government, Department of the Prime Minister and Cabinet, *Closing The Gap Prime Minister’s Report 2016*, 2016, <[http://closingthegap.dpmc.gov.au/assets/pdfs/closing\\_the\\_gap\\_report\\_2016.pdf](http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf)>

<sup>602</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, p 4.

- 8.13** The *Bringing them home* report documented instances in which removed children were exposed to substandard living conditions, neglect, abuse, and poor or truncated education, particularly for those who were placed in institutions. The psychological and emotional damage many individuals experienced impaired their ability to develop social skills and access educational opportunities later in life.<sup>603</sup>
- 8.14** This was confirmed by the Coota Girls Corporation which referred to findings from the 2008 National Aboriginal and Torres Strait Islander Survey showing that individuals who had identified as being removed under past forcible removal policies and practices had lower educational outcomes, with 63 per cent not receiving education beyond Year 9, compared to 50 per cent of those not removed.<sup>604</sup>
- 8.15** To address this issue, a number of inquiry participants urged the committee to make reparations in relation to educational opportunities for members of the Stolen Generations and their families. For example, Reconciliation for Western Sydney Inc. recommended that ‘cost-free education, literacy, numeracy and/or vocational training’ be provided to Stolen Generation survivors who wish to learn new skills.<sup>605</sup>
- 8.16** Civil Liberties Australia suggested that the New South Wales Government should provide \$30,000 to every Aboriginal family unit impacted by past forcible removal policies and practices ‘to be accessible over the next 20 years as specific funding to provide further education, beyond high school, with the educational choice of use of the funds at the discretion of each family’.<sup>606</sup>
- 8.17** The Shoalcoast Community Legal Centre called for the establishment of a Stolen Generation Scholarship Scheme ‘to provide opportunity and access to advancement for young Aboriginals, while at the same time serving as a remembrance of the Stolen Generations through its title and existence’. It asserted that the scholarship scheme would need to be developed by members of the Stolen Generations and have ongoing, bi-partisan support from government.<sup>607</sup>
- 8.18** Mr Farrell from the Shoalcoast Community Legal Centre emphasised that this option needs to be combined with other education opportunities, as ‘there is no one approach that can fix this’.<sup>608</sup>
- 8.19** The committee sought information from the NSW Department of Education as to whether there are any current scholarships or support programs available for Aboriginal students who have been affected by past forcible removal policies and practices. The department advised that it is not aware of any scholarship that is specifically available to descendants of the Stolen Generations and that it does not collect data relating to this cohort of students. It did,

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<sup>603</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 148, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>604</sup> Submission 36a, Coota Girls Corporation, p 18.

<sup>605</sup> Submission 11, Reconciliation for Western Sydney Inc., p 2.

<sup>606</sup> Submission 38, Civil Liberties Australia, p 9.

<sup>607</sup> Submission 42, Shoalcoast Community Legal Centre, pp 17-18.

<sup>608</sup> Evidence, Mr Farrell, 2 March 2016, p 17.

however, provide information about a number of scholarships and support programs available generally to Aboriginal students, for example, to access study and apprenticeships and pay for educational, relocation and accommodation costs.<sup>609</sup>

- 8.20** The Minister for Skills, the Hon John Barilaro MP, also informed the committee about a number of strategies and programs that support Aboriginal students to develop skills for the workforce, including the Way Ahead Mentoring Program, which provides mentoring supports for Aboriginal people undertaking an apprenticeship or traineeship, and the New Careers for Aboriginal people program, which can assist school leavers, among others, to access employment or training opportunities so as to enhance their prospects of permanent employment.<sup>610</sup>

*Committee comment*

- 8.21** The committee recognises that past forcible removal policies and practices have contributed to poor educational outcomes for those removed and their descendants. It notes that many Stolen Generation survivors have poor literacy and numeracy skills, and that many removed individuals were unable to complete schooling beyond year 9. Given there was an assumption at the time that removed children would in fact have a better education, it is troubling to see that the opposite has in fact occurred.
- 8.22** The committee acknowledges that poor education can have a domino effect on employment and housing opportunities, and can lead to higher rates of contact with the criminal justice system.
- 8.23** It is vitally important that specific measures are put in place to help address this educational disadvantage, particularly for descendants of Stolen Generation survivors, given the impacts of intergenerational trauma and the need to end the cycle of Aboriginal poverty.
- 8.24** The committee therefore supports the suggestion from the Shoalcoast Community Legal Centre for a Stolen Generations Scholarship Scheme, as outlined in recommendation 4. We believe this will go some way to assist those impacted by past forcible removal policies and practices, specifically descendants who are second or third generation of a person who was removed (as defined in chapter 1). We encourage the New South Wales Government to include support for costs related to study materials, relocation, accommodation and transport under this scheme.
- 8.25** We would also encourage the government to work in partnership with business and other organisations to establish other scholarships for employment, training and sporting opportunities for descendants of members of the Stolen Generations.

## Employment

- 8.26** Similar to poorer educational outcomes, the committee received evidence that there is a widening employment gap between Aboriginal and non-Aboriginal Australians, which is worse

<sup>609</sup> Correspondence from Mr Peter Riordan, Acting Secretary, NSW Department of Education, to Chair, 27 April 2016.

<sup>610</sup> Correspondence from the Hon John Barilaro MP, Minister for Skills, to Chair, 16 May 2016.

for Stolen Generation survivors and their descendants. The Coota Girls Corporation referred to findings of the 2008 National Aboriginal and Torres Strait Islander Survey which found those who had been forcibly removed from their family experience a higher unemployment rate, being twice that of those who were not removed (14 per cent compared to 7 per cent).<sup>611</sup>

- 8.27** The Clontarf Foundation commented that ‘despite the good intentions and best endeavours of all involved’, most of the *Closing the Gap* initiatives relating to employment have failed or fallen short of expectations. It indicated that the main reasons for this include a shortage of Aboriginal people who are ready to fill created roles, a high proportion of Aboriginal people who have already been unemployed for a considerable amount of time, and the high number of young Aboriginal people leaving school who are also not ready to work.<sup>612</sup>
- 8.28** To address the disadvantage experienced by Aboriginal people in the employment sector, the New South Wales Government established the Aboriginal Employment Strategy, which commenced in 2014, aiming to attract and retain Aboriginal people within the New South Wales public service and support career development and progression.<sup>613</sup>
- 8.29** In addition, the state’s Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) strategy (discussed in chapter 2) includes a strong focus on supporting Aboriginal students to remain in school and continue on to sustainable employment, through the establishment of opportunity hubs, industry-based agreements and public sector employment opportunities.<sup>614</sup>
- 8.30** The Coota Girls Corporation argued that Stolen Generation survivors and their descendants should be given priority under the OCHRE strategy in an effort to change ‘the entrenched disadvantage experience by survivors’.<sup>615</sup>
- 8.31** A non-government initiative that has had a high rate of success is the Clontarf Foundation’s program which works in partnerships with schools ‘in attracting Aboriginal boys back to school, keeping them there and when they graduate, in finding them jobs and helping them stay employed’. The foundation utilises the boys’ passion for football to initially attract them into school and improve attendance, and then works on building their motivation, self-confidence and life skills to support future employment opportunities.<sup>616</sup>
- 8.32** Although there are a range of other programs available to assist Aboriginal people gain employment through government and non-government initiatives, it was highlighted during the inquiry that Stolen Generation survivors can have some difficulty accessing these programs due to proof of Aboriginality requirements. Ms Nicole Moore, Managing Director,

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<sup>611</sup> Submission 36a, Coota Girls Corporation, p 18.

<sup>612</sup> Submission 26, Clontarf Foundation, p 2, to the 2016 inquiry into economic development in Aboriginal communities, Standing Committee on State Development, NSW Legislative Council.

<sup>613</sup> Submission 34, Department of Premier and Cabinet, pp 9-10.

<sup>614</sup> NSW Government, Department of Education, Aboriginal Affairs NSW, *OCHRE: Two years on*, 2015, <[http://aboriginalaffairs.nsw.gov.au/wp-content/uploads/2015/10/AA\\_OCHRE\\_2\\_FINAL1.pdf](http://aboriginalaffairs.nsw.gov.au/wp-content/uploads/2015/10/AA_OCHRE_2_FINAL1.pdf)>

<sup>615</sup> Submission 36a, Coota Girls Corporation, p 47.

<sup>616</sup> Submission 26, Clontarf Foundation, p 3, to the 2016 inquiry into economic development in Aboriginal communities, Standing Committee on State Development, NSW Legislative Council.

Habitat Personnel, suggested that members of the Stolen Generations and descendants who are unable to provide proof of Aboriginality can experience issues in accessing employment assistance programs:

The three-part test about Aboriginality is about being able to prove Aboriginal descent. So they are reliant on the record keeping, which was not done for the Stolen Generations.<sup>617</sup>

- 8.33** Aunty Isabel Reid, a member of the Stolen Generations and Chair of the Coota Girls Corporation, told the committee that ‘not all of us are comfortable with having to explain our stories in order to gain verification of our Aboriginality’ or to gain access to Aboriginal specific services and assistance.<sup>618</sup> This issue is not only relevant to employment programs, but to all programs and services.
- 8.34** Mr Barry Williams, Chairperson, Grafton Ngerrie Local Aboriginal Land Council, advised that to access services, such as employment related services, Aboriginal people need a letter confirming Aboriginality, and that Aboriginal land councils are the main organisations providing this ‘magic letter’. Mr Barry Williams went on to highlight that the land councils are not funded to provide letters of Aboriginality and that ‘it is a drain on [their] time and resources’.<sup>619</sup>

*Committee comment*

- 8.35** Like education, access to employment opportunities can have a significant impact on an individual’s life. Unfortunately though, for many Stolen Generation survivors and their descendants, these opportunities have been more difficult to access, culminating in higher rates of unemployment, and in turn poorer socioeconomic outcomes.
- 8.36** The committee is encouraged by the New South Wales Government’s work under OCHRE and the Aboriginal Employment Strategy. Both of these programs provide a strong foundation for the government to address the disadvantage experienced by Aboriginal people, including Stolen Generation survivors, in this important area.
- 8.37** The committee notes the evidence received regarding difficulties associated with obtaining proof of Aboriginality, and the subsequent impact this can have on a person’s access to services, including employment related programs. To identify improvements that could be made in this area, the committee recommends that the New South Wales Government, in consultation with Stolen Generation survivors and the New South Wales Aboriginal Land Council, review the requirements and costs involved for survivors and their descendants (as defined in chapter 1) to verify their Aboriginality, to ensure these stakeholders are not disadvantaged in obtaining proof of Aboriginality letters due to record keeping issues.

<sup>617</sup> Evidence, Ms Nicole Moore, Managing Director, Habitat Personnel, 2 March 2016, pp 31-32.

<sup>618</sup> Evidence, Aunty Isabel Reid, Chair, Coota Girls Corporation, 6 November 2015, p 9.

<sup>619</sup> Evidence, Mr Barry Williams, Chairperson, Grafton Ngerrie Local Aboriginal Land Council, 8 December 2015, p 28.

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**Recommendation 17**

That the NSW Government, in consultation with Stolen Generation survivors and the NSW Aboriginal Land Council, review the requirements and costs involved for survivors and their descendants to verify their Aboriginality, to ensure these stakeholders are not disadvantaged in obtaining proof of Aboriginality letters due to record keeping issues.

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**Housing**

**8.38** Housing is another area in which Stolen Generation survivors and their families are disadvantaged. Although the wider Aboriginal community is also affected by a shortage of housing, and homelessness,<sup>620</sup> members of the Stolen Generations have increased difficulties in accessing social, public and affordable housing due to the more complex needs acquired as a result of the trauma they have experienced after being forcibly removed.

**8.39** Mr Anthony Levin, a solicitor from Legal Aid NSW, advised that clients who were forcibly removed under past forcible removal policies and practices frequently encounter difficulties when trying to obtain housing assistance, such as establishing Aboriginality (as just discussed) and getting on to housing priority lists.<sup>621</sup>

**8.40** Mr James Allen, Chairperson, Batemans Bay Local Aboriginal Land Council and Coordinator, Murra Mia Aboriginal Tenants Advisory Service, indicated there is a 'high rate of turnover in Aboriginal tenancy' that can be attributed to issues caused by the history of past forcible removal policies and practices, which is destabilising Aboriginal families and leading to intergenerational poverty.<sup>622</sup> Mr Allen went on to explain his own experience in home ownership:

I know that when I look back and understand that I will be probably the first in my family to pass a house—a home—on when I die. When my wife and I pass on, my two children and six grandchildren will have some benefit from that, but I will be the first. So it has taken 200 years in my direct lineage to have some intergenerational wealth be transferred. Prior to that there has been none—no land transfer, no education transfer. It has just been poverty for generation after generation after generation.<sup>623</sup>

**8.41** Legal Aid NSW asserted that more 'support, policies and resources to increase the economic participation of members of the Stolen Generations and their descendants' is needed and made the following suggestions to assist in this area:

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<sup>620</sup> Evidence, Ms Wendy Spencer, Project Manager, Dharriwaa Elders Group, 18 February 2016, p 3; Evidence, Ms Julie Perkins, Chairperson, Gurehlgam Corporation Limited, 8 December 2015, pp 3-4; Evidence, Mr Dale Tonkin, Manager, Community Restorative Centre: 17 February 2016, p 15; Submission 32, Legal Aid NSW, pp 27-28; Evidence, Mr Ken Dickson, Chairperson, Kempsey Aboriginal Land Council, 7 December 2015, p 21.

<sup>621</sup> Evidence, Mr Anthony Levin, Solicitor, Human Rights Team, Civil Law Division, Central Sydney Office, Legal Aid NSW, 10 February 2016, p 7.

<sup>622</sup> Evidence, Mr Allen, 2 March 2016, p 15.

<sup>623</sup> Evidence, Mr Allen, 2 March 2016, p 13.

- schemes to help members of Stolen Generations (and descendants) get out of the social housing market
- priority housing options for Stolen Generations clients to reconnect them with family and Country. This may mean increased rental assistance to allow prompt transfer into private market until Aboriginal Housing Office (AHO) housing becomes available
- equal priority for Aboriginal people who have married into a non-Aboriginal family, and
- changes to Native Title legislation to recognise the rights of land for Aboriginal people removed from their families.<sup>624</sup>

**8.42** A number of other suggestions to assist Stolen Generation survivors with housing were put forward by inquiry participants. For example, Mr Dominic WY Kanak, inquiry participant, proposed that Stolen Generation survivors should receive special housing assistance to obtain a home and that connection to Country and priority levels be looked at for any housing restitution measure.<sup>625</sup>

**8.43** Civil Liberties Australia recommended that \$10,000 over a five year period be made available to every Aboriginal family unit impacted by past forcible removal policies and practices for housing and/or home infrastructure improvement.<sup>626</sup>

**8.44** The Dharriwaa Elders Group suggested that interest-free loans be offered to Stolen Generation survivors for home and land assets 'in recognition of the impediments that have prevented them from accruing intergenerational wealth and assets'.<sup>627</sup>

**8.45** The committee heard that the Kinchela Boys' Home Aboriginal Corporation has commenced providing housing support and assistance to Stolen Generation survivors with the help of the New South Wales Aboriginal Housing Office and Wentworth Housing. The corporation has successfully established a Community House in Western Sydney for the Kinchela men and will be looking at developing more houses across New South Wales and becoming a registered Aboriginal Community Housing provider.<sup>628</sup>

### *Committee comment*

**8.46** The committee recognises that Stolen Generation survivors may experience additional difficulties in accessing housing, particularly against the backdrop of an ever increasing shortage of homes and high rates of homelessness for Aboriginal people.

**8.47** Secure and stable housing can have such a fundamental impact on one's life. The fact that members of the Stolen Generations are finding it difficult to obtain this most basic right, the right to a roof over one's head, is truly sad. The committee believes that Stolen Generation survivors, by virtue of their specific needs which have arisen due to past forcible removal policies and practices, should be considered as a priority for the allocation of social, public and affordable housing.

<sup>624</sup> Submission 32, Legal Aid NSW, p 28.

<sup>625</sup> Submission 1, Mr Dominic WY Kanak, p 1.

<sup>626</sup> Submission 38, Civil Liberties Australia, p 9.

<sup>627</sup> Submission 29, Dharriwaa Elders Group, p 6.

<sup>628</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 12.

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### Recommendation 18

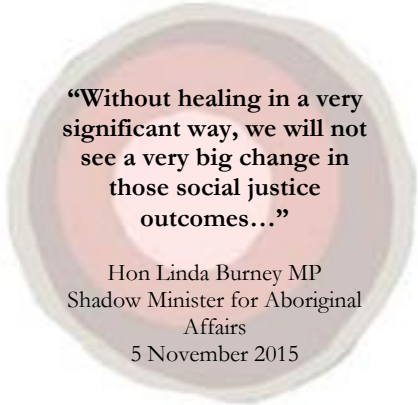
That the NSW Government ensure that Stolen Generation survivors have priority access to social, public and affordable housing.

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## Health

**8.48** Numerous inquiry participants provided evidence about the detrimental impacts past forcible removal policies and practices have had on the health of Stolen Generation survivors and their descendants.

**8.49** Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health, informed the committee that ‘there are significant disparities in health outcomes for Aboriginal and non-Aboriginal people’, and that part of this is due to the ‘significant level of intergenerational trauma’ caused by forcible removal policies and practices.<sup>629</sup>



**“Without healing in a very significant way, we will not see a very big change in those social justice outcomes...”**

Hon Linda Burney MP  
Shadow Minister for Aboriginal  
Affairs  
5 November 2015

**8.50** The Coota Girls Corporation noted that data from the National Aboriginal and Torres Strait Islander Survey showed that members of the Stolen Generations have poorer health outcomes, with 77 per cent reporting a long-term health condition compared to 66 per cent of Indigenous people not removed, and 46 per cent reporting fair or poor health compared to 36 per cent of those not removed. The survey also found that Stolen Generation survivors are more likely to engage in the following health risk behaviours:

- higher rates of smoking: almost half (49%) smoked cigarettes, compared to 40% of those not removed
- higher rates of use of illicit substances: 22% reported use of illicit substances, compared to 13% of those not removed
- despite consuming alcohol at rates similar to those who were not removed, a higher proportion (13.6%) reported they or their family and/or friends were affected by alcohol-related problems, compared to those who were not removed (6%).<sup>630</sup>

**8.51** The Kinchela Boys’ Home Aboriginal Corporation explained that the abuse experienced in the homes and the high levels of discrimination and disadvantage experienced by members of the Stolen Generations have had adverse impacts on their health.<sup>631</sup>

**8.52** In addition, the Coota Girls Corporation referred to a ten year study into the life-long impacts of childhood adversities and trauma in children’s homes, which found ‘a significantly higher risk of adult onset of chronic disease, such as cardiovascular disease, cancer, chronic lung

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<sup>629</sup> Evidence, Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health, 5 November 2015, pp 10-11.

<sup>630</sup> Submission 36a, Coota Girls Corporation, p 18.

<sup>631</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 22.



disease, and diabetes; a four to twelve-fold increase in risk for alcoholism, drug abuse, depression, and suicide attempt; and a two to four-fold increase in smoking'.<sup>632</sup>

- 8.53** When questioned on the key health issues facing members of the Stolen Generations, Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation, advised that chronic disease is a major issue, with drugs and alcohol also having a significant impact on health.<sup>633</sup>
- 8.54** Mental health was also raised as a significant issue. Aunty Lorraine Peeters, Director, Winangali Marumali, said that currently 'the country is overwhelmed by the state of the mental health of the Stolen Generations', which has impacted subsequent generations.<sup>634</sup> Ms Irene Doutney, inquiry participant, quoted from *Beyond Blue* to note that Aboriginal and Torres Strait Islander people are one of the most likely groups to suffer from poorer mental health, due to the 'impacts of the Stolen Generations and removal of children'.<sup>635</sup>
- 8.55** Mr Kershaw noted a recent government announcement regarding significant funding for mental health services, and requested that part of this funding be allocated to developing 'strong' mental health and social and emotional wellbeing programs for Stolen Generation survivors and their families.<sup>636</sup>
- 8.56** In general, a number of inquiry participants called for greater support and funding for health care and rehabilitation for members of the Stolen Generations.<sup>637</sup>
- 8.57** For example, the National Sorry Day Committee's response to a discussion paper on the *Development of a Renewed Aboriginal & Torres Strait Islander Social and Emotional Wellbeing Framework* highlighted that there are a limited number of appropriately trained psychology and allied health providers and Aboriginal practitioners and services available to members of the Stolen Generations, and made a number of recommendations to improve the health of Stolen Generation survivors and their families, including:
- acknowledgement of the high rate of complex health needs of members of the Stolen Generations
  - development of fully supported care pathways to respond to the complex needs, including access and support for alcohol and drug related care
  - unlimited free access to psychology and allied health services
  - attention to the link between past forcible removal policies and practices and the work on addressing chronic disease

<sup>632</sup> Submission 36a, Coota Girls Corporation, p 19.

<sup>633</sup> Evidence, Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation, 8 December 2015, pp 9-10.

<sup>634</sup> Evidence, Aunty Lorraine Peeters, Director, Winangali Marumali, 9 February 2016, p 2.

<sup>635</sup> Submission 51, Ms Irene Doutney, p 1.

<sup>636</sup> Evidence, Mr Kershaw, 8 December 2015, p 9.

<sup>637</sup> Submission 36a, Coota Girls Corporation, p 27; Submission 51, Ms Irene Doutney, p 5; Evidence, Ms Spencer, 18 February 2016, p 2; Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 2, pp 9-10.

- a comprehensive primary health care response involving Aboriginal community controlled services and others, such as justice health settings.<sup>638</sup>

**8.58** The limited number of appropriate services was also raised by Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Service, who highlighted the difficulties faced by regional and remote communities in responding to the complex needs of Stolen Generation survivors. Ms Hull said that specialist Aboriginal services such as rehabilitation, mental health and counselling are just not available, even though they ‘are integral to the future health and wellbeing of the Aboriginal and Torres Strait Islander community’.<sup>639</sup>

**8.59** Some participants suggested that there should be a health care card, similar to the Department of Veterans Affairs Health Care Card, to help members of the Stolen Generations access appropriate health services and assist with the cost of medication and gap fees charged under Medicare.<sup>640</sup> The Dharriwaa Elders Group said that a Stolen Generations health care card would recognise the ‘suffering and sacrifice’ endured by those forcibly removed and provide a mechanism to alleviate that suffering.<sup>641</sup>

#### ***Committee comment***

**8.60** It is clear from the evidence that the trauma and abuse experienced by Stolen Generation survivors as a result of past forcible removal policies and practices have had a detrimental impact on their physical and mental health and wellbeing. It has also had a significant impact on subsequent generations, with the legacy of trauma taking a toll on the health and wellbeing of descendants of Stolen Generation survivors. The committee is extremely concerned about the high rates of chronic disease, substance abuse and mental health issues prevalent across Stolen Generation survivors.

**8.61** The committee acknowledges concerns from inquiry participants that psychologists and allied health providers may not be fully equipped to deliver trauma informed services to members of the Stolen Generations and their families. We are hopeful that our earlier recommendation in chapter 4 regarding a strategy for a trauma-informed workforce (recommendation 6) will go some way to address these concerns.

**8.62** The committee sees merit in the suggestion for a health care card for Stolen Generation survivors, so as to ensure they can access appropriate health services as needed. We therefore recommend that the New South Wales Government seek the support of the Australian Government to create such a card similar to other Commonwealth health care cards, that will provide Stolen Generation survivors with better access to medical services (including mental health services) and reduced costs of medication and gap fees payable under Medicare (as outlined in recommendation 5).

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<sup>638</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), Appendix 2, pp 10-12, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>639</sup> Evidence, Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Service, 17 February 2016, p 3.

<sup>640</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 22; Submission 50, Coota Girls Corporation and the Kinchela Boys’ Home Aboriginal Corporation, p 15; Submission 29, Dharriwaa Elders Group, p 6; Evidence, Ms Spencer, 18 February 2016, p 2.

<sup>641</sup> Submission 29, Dharriwaa Elders Group, pp 5-6.

- 8.63** If the Australian Government is unable to provide a health care card, we would encourage the New South Wales Government to consider establishing a similar card for Stolen Generation survivors to access state services, such as housing and transport.

### **Aged care**

- 8.64** In addition to the need for improved health care strategies and rehabilitation, several inquiry participants also called for culturally appropriate aged care facilities and support to be provided to members of the Stolen Generations.
- 8.65** Aunty Christine Blakeney, Chair, Children of the Bomaderry Aboriginal Children's Home Incorporated, told the committee that 'nobody is getting any younger' and that aged care support is one of the many services that Stolen Generation survivors need.<sup>642</sup>
- 8.66** Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, highlighted that for those who were institutionalised 'going into residential care is quite scary', and many do not have children who could provide assistance and support as they age.<sup>643</sup>
- 8.67** Ms Paulette Whitton, the daughter of a Stolen Generation survivor, noted that Aboriginal aged care facilities have been established in Kempsey and Nowra but said she could not find one in Sydney, which has the biggest Aboriginal population, for her elderly father. She recommended the establishment of a culturally appropriate Aboriginal retirement village or nursing home in the Sydney metropolitan region.<sup>644</sup>
- 8.68** In addition, the Kinchela Boys' Home Aboriginal Corporation recommended a joint aged care facility be established for former residents of the Kinchela Aboriginal Boys' Training Home and Cootamundra Aboriginal Girls' Training Home.<sup>645</sup> This was supported by Aunty Doreen Webster, Member, Coota Girls Corporation, who explained why a joint aged care facility would be valuable to former residents of the homes:

And also the nursing home thing—the home for when we get older—where we can be there. We are family; we are our family here. All the girls are family. We are sisters to the Kinchela boys. They are brothers to us. And there is a closeness. That is our family. We never had a mum and dad, but that is our family.<sup>646</sup>

- 8.69** Alternatively, Mr Greg Douglas, Acting Chief Executive Officer, Kempsey Aboriginal Land Council, supported a Kinchela Boys' Home specific aged care facility as 'a place in which they can safely age, a place where they can be supportive of each other and a place in which their

<sup>642</sup> Evidence, Aunty Christine Blakeney, Chair, Children of the Bomaderry Aboriginal Children's Home Incorporated, 2 March 2016, pp 2-3.

<sup>643</sup> Evidence, Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 5.

<sup>644</sup> Evidence, Ms Paulette Whitton, community member, 9 February 2016, p 50.

<sup>645</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 22.

<sup>646</sup> Evidence, Aunty Doreen Webster, Member, Coota Girls Corporation, 6 November 2015, p 3.

life in the Macleay Valley can be a more positive experience'. He indicated that it would also add economic value to the community through potential future employment and training.<sup>647</sup>

- 8.70** The Kinchela Boys' Home Aboriginal Corporation advised that it has been delivering aged care and disability services to the former residents of the home and other Aboriginal community members. The corporation has entered a partnership with Annecto Western Sydney to provide home care packages to eligible Kinchela Boys' Home Aboriginal Corporation members and with Annecto's support is providing assistance under the Aboriginal Ability Links program<sup>648</sup> to both its members and Aboriginal community members with disabilities.<sup>649</sup>
- 8.71** Uncle Richard Campbell, Secretary, Kinchela Boys' Home Aboriginal Corporation, told the committee that the aged care packages provided to the uncles have enabled them to 'live comfortably at home and continue to maintain an independent lifestyle'.<sup>650</sup>

*Committee comment*

- 8.72** The committee recognises that for many Stolen Generation survivors, appropriate aged care facilities are important, given the trauma they have experienced as a result of being removed when they were younger, disconnected from their family, communities and culture.
- 8.73** The committee acknowledges that many members of the Stolen Generations consider those they grew up with as family, such that it would be of comfort to those individuals to be placed together in culturally appropriate aged care facilities when the time arose.
- 8.74** The work the Kinchela Boys' Home Aboriginal Corporation has done in this area is very impressive, as it helps former residents with aged care packages, allowing them to stay independent yet connected, not only to each other but also to their community. The committee supports innovative strategies such as this, and would like to see more of these opportunities rolled out across the state. As the Australian Government has responsibility with respect to aged care, the committee recommends that the New South Government partner with the Australian Government to identify and deliver innovative and culturally appropriate aged care services for Stolen Generation survivors.

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<sup>647</sup> Evidence, Mr Greg Douglas, Acting Chief Executive Officer, Kempsey Aboriginal Land Council, 7 December 2015, p 22.

<sup>648</sup> The Aboriginal Ability Links Program is part of the New South Wales Government's contribution to the National Disability Insurance Scheme that provides a locally based first point of contact for Aboriginal people with disability, their families and carers to improve access and engagement in disability services and assists with the social and economic inclusion of people within their community. Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 12.

<sup>649</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 12.

<sup>650</sup> Evidence, Uncle Richard Campbell, Secretary, Kinchela Boys' Home Aboriginal Corporation, 7 December 2015, p 2.

**Recommendation 19**

That the NSW Government, in consultation with Stolen Generation survivors, partner with the Australian Government to identify and deliver innovative and culturally appropriate aged care services for Stolen Generation survivors.

- 8.75** In terms of improving Stolen Generation survivors' access to existing aged care facilities, the committee believes it would be helpful for a certain number of places in aged care facilities to be allocated to members of the Stolen Generations, particularly in locations where survivors would feel better connected to their family, community and culture. The committee recommends that the New South Wales Government explore such opportunities.

**Recommendation 20**

That the NSW Government explore opportunities for Stolen Generation survivors to better access existing aged care facilities.

**Justice**

- 8.76** In addition to the disadvantage Aboriginal people experience in the areas of education, employment and health, they are also overrepresented in the criminal justice system.<sup>651</sup> This too can be traced back to the cycle of disadvantage and poverty experienced in Aboriginal families, influenced largely by the effects of past forcible removal policies and practices.
- 8.77** Legal Aid NSW advised that in New South Wales, Aboriginal people are incarcerated at a rate of 1699.7 prisoners per 100,000, compared to a rate of 150.7 prisoners per 100,000 for non-Aboriginal persons. It attributed this in part 'to issues of dispossession, state violence and the effects of the Stolen Generations'.<sup>652</sup>
- 8.78** The Coota Girls Corporation reported on the findings of the 2008 National Aboriginal and Torres Strait Islander Survey, which showed members of the Stolen Generations are significantly more likely to come into contact with the criminal justice system. Almost half of all respondents who identified as a member of the Stolen Generations had reported contact with the police, compared with 35 percent of all other survey respondents. Additionally, 25 per cent of those who were forcibly removed had been incarcerated at some point in their lives, which was double the rate when compared with other survey respondents.<sup>653</sup>
- 8.79** The correlation between past forcible removal policies and practices, the high rate of children in out-of-home care (discussed in detail in chapter 10) and the high rates of incarceration was

<sup>651</sup> Submission 34, Department of Premier and Cabinet, p 10; Submission 16, Public Interest Advocacy Centre, pp 24-25; Evidence, Ms Elizabeth Rice, Principal Consultant, Rice Consulting, 9 February 2016, p 9; Submission 32, Legal Aid NSW, pp 19-20.

<sup>652</sup> Submission 32, Legal Aid NSW, pp 19-20.

<sup>653</sup> Submission 36a, Coota Girls Corporation, p 18.

also noted.<sup>654</sup> Associate Professor Anna Cody, Director, Kingsford Legal Centre, University of New South Wales, traced the cause of this association back to the intergenerational impacts of past forcible removal policies and practices:

It steps through. It is not just at the beginning; it is relevant to children and to Aboriginal people who become involved in the criminal law system. It all links back to the intergenerational impact of lack of parenting and breakdown in community.<sup>655</sup>

**8.80** Recognising these impacts, the *Bringing them home* report made a number of recommendations aimed at addressing the high rates of contact the Aboriginal and Torres Strait Islander community have with the criminal justice system, including:

- adequate funding for preventative mental health programs in prisons and detention centres
- the development and implementation of a social justice package for Indigenous families and children
- implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody
- establishment of minimum standards (national standards legislation) of treatment for all Indigenous children or young people, including their contact with the justice system, which incorporated rules relating to warnings, summons', attendance notices, notifications, consultations, interrogation, cautions, withdrawal of consent, recordings, bail, detention in police cells and sentencing.<sup>656</sup>

**8.81** Dr Rule and Ms Rice stated that the Australian Government has failed to implement the above recommendations, with evidence showing 'Australia wide, Aboriginal children are 31 times more likely to be incarcerated'.<sup>657</sup>

**8.82** Related to this issue is bail laws, which the Public Interest Advocacy Centre (PIAC) noted were a particular concern for young Aboriginal people. It explained that the bail conditions strictly imposed by the courts or police are often extremely difficult for alleged offenders to satisfy, due to 'requirements for stable accommodation and attendance at education or employment'. PIAC also highlighted the increase in the policing of bail conditions, which it suggested is contributing to the increase in contact of Aboriginal people with the criminal

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<sup>654</sup> Submission 19, Herbert Smith Freehill, p 22; Evidence, Mr Kershaw, 8 December 2015, p 12; Submission 21, ANTaR NSW, p 6; Submission 26, Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), Appendix 2, p 4, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>655</sup> Evidence, Associate Professor Anna Cody, Director, Kingsford Legal Centre, University of New South Wales, 10 February 2016, pp 13-14.

<sup>656</sup> Recommendations 37, 42, 45, 53, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 350, 491, 512 and 520, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>657</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), pp 8-11, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

justice system. PIAC recommended a review and amendment of the bail legislation to recognise the disadvantages faced by young Aboriginal people.<sup>658</sup>

- 8.83** The New South Wales Government, in its 1999 response to the *Bringing them home* report, also noted that at that time two bail hostels had been established by the Department of Juvenile Justice in recognition that Aboriginal young offenders were often refused bail due to a lack of suitable accommodation.<sup>659</sup>
- 8.84** When questioned on how much work is done for young people in providing appropriate bail houses, Mr Kevin Harris, Director, Operational Standards and Compliance, Juvenile Justice, Department of Justice, advised that the bail houses ‘did not work as well as the programs that we have today’. He added that there are ‘bail staff at every court’ and that the agency offers a Bail Assistance Line and Family and Community Services after-hours line ‘to provide assistance to police so that young people are not taken into custody’. Mr Harris added that the bail laws have changed where ‘if a young person has bail granted but is in custody a report has to be done every two days’ and Juvenile Justice works closely with Family and Community Services to ‘get those young people out of custody’.<sup>660</sup>

### **Repatriation Stolen Generation survivors from overseas prisons**

- 8.85** A separate but related justice issue raised during the inquiry concerned the repatriation of Stolen Generation survivors from overseas prisons. The Indigenous Issues Committee of the Law Society of New South Wales understood there to be ‘members of the Stolen Generations (or their direct descendants) currently incarcerated overseas’.<sup>661</sup>
- 8.86** One example it gave is the case of Russell Moore, also known by his adoptive name of James Savage. Mr Moore was taken from his mother as a baby in 1962 and moved to the United States with his adopted parents at the age of seven.<sup>662</sup> In 1989, Mr Moore was convicted of murder and sentenced to a 25 year minimum life sentence in a Florida prison.<sup>663</sup>
- 8.87** In 2007, the United States rejected Mr Moore’s application to be transferred to Australia to serve the rest of his life sentence closer to his mother, whom he had not seen for over 20 years.<sup>664</sup> In 2010, Mr Moore reapplied but was again rejected.<sup>665</sup> Despite having completed his 25 year minimum sentence in 2014, Mr Moore remains incarcerated in Florida.

<sup>658</sup> Submission 16, Public Interest Advocacy Centre, pp 24-30.

<sup>659</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 25, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>660</sup> Evidence, Mr Kevin Harris, Director, Operational Standards and Compliance, Juvenile Justice, Department of Justice, 5 November 2015, p 28.

<sup>661</sup> Submission 28, Law Society of NSW, p 4.

<sup>662</sup> Bernard Lagan, ‘Bring me home: killer’s plea’, *Sydney Morning Herald*, 29 November 2010, <<http://www.smh.com.au/world/bring-me-home-killers-plea-20101128-18cfa.html>>

<sup>663</sup> Bernard Lagan, ‘Bring me home: killer’s plea’, *Sydney Morning Herald*, 29 November 2010, <<http://www.smh.com.au/world/bring-me-home-killers-plea-20101128-18cfa.html>>

<sup>664</sup> Bernard Lagan, ‘Bring me home: killer’s plea’, *Sydney Morning Herald*, 29 November 2010, <<http://www.smh.com.au/world/bring-me-home-killers-plea-20101128-18cfa.html>>

- 8.88** The Indigenous Issues Committee and Kinchela Boys' Home Aboriginal Corporation referred to the *Bringing them home* report which recommended that individuals forcibly removed and incarcerated overseas be returned to Australia, by recommending that the 'Commonwealth take measures to ensure the prompt implementation of the International Transfer of Prisoners Bill 1996'.<sup>666</sup>
- 8.89** Both organisations also recommended that the New South Wales Government take action regarding the repatriation of Stolen Generation survivors incarcerated overseas, and suggested that the state government take this issue to COAG.<sup>667</sup>

***Committee comment***

- 8.90** The committee is concerned about the overrepresentation of Aboriginal people in the criminal justice system, and recognises that this is a significant ongoing issue that has plagued governments across Australia for decades. It acknowledges that members of the Stolen Generations in particular, through the traumatic experience of being forcibly removed and disconnected from their family and community, could find themselves in situations where they have experienced increased contact with the criminal justice system.
- 8.91** The committee recognises the distrust and suspicion that Stolen Generation survivors, and more broadly the Aboriginal community, have for the justice system and government services. We understand that this may act as a barrier to people accessing legal services and getting culturally appropriate help at the time they need it and believe that the government needs to continue building stronger relationships with the Aboriginal community in order to help overcome these barriers for future generations.
- 8.92** The high rates of contact young Aboriginal people have with the criminal justice system is also particularly concerning. While the committee believes that more needs to be done to address this issue, we do not feel that we are in a position to make recommendations in this regard, given the lack of evidence submitted on this matter during the inquiry. We would, however, expect that any previous commitments the government made in its response to the *Bringing them home* report, for example, on the issue of bail houses, should be reviewed.
- 8.93** The committee is also concerned that there may be some Stolen Generation survivors incarcerated overseas. While we understand that the nature of these issues is quite complex and involves more matters than what were presented to the committee during this inquiry, we recommend that the New South Wales Government encourage the Australian Government to negotiate the return of incarcerated Stolen Generation survivors from overseas jurisdictions. The injustice of being forcibly removed, and the trauma this has caused individuals, should be taken into account during these negotiations.

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<sup>665</sup> Minelle Creed, 'Please, bring my son home', the story of Beverley and Russell Moore', *SBS*, 19 August 2015, <<http://www.sbs.com.au/radio/article/2015/07/10/please-bring-my-son-home-story-beverley-and-russell-moore>>

<sup>666</sup> Recommendations 31c, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 321, < [https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>667</sup> Submission 28, Law Society of NSW, p 5; Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 18.



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### Recommendation 21

That the NSW Government encourage the Australian Government to negotiate the return of incarcerated Stolen Generation survivors from overseas jurisdictions.

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## Tailoring services to Stolen Generation survivors

- 8.94** The 2015 *Bringing them home: Scorecard Report* identified the importance of services being responsive to the needs of Stolen Generation survivors. It suggested that management and staff in service delivery agencies be provided with specialist training on issues relating to members of the Stolen Generations, which would encompass more than just general cultural training on Aboriginal issues. The report proposed that such training should focus on the specific trauma, loss and grief experienced by members of the Stolen Generations, and the ways in which this can impact their access to services.<sup>668</sup> The impact of trauma on Stolen Generation survivors was discussed in chapter 3 and the need for a trauma-informed workforce was discussed in chapter 4.
- 8.95** The 2015 *Scorecard Report* also suggested that service delivery agencies should have an informed awareness of the barriers members of the Stolen Generations encounter when accessing services. It referred to a number of these barriers, including lack of knowledge about the types of services available, distance and transport issues and trust issues.<sup>669</sup>
- 8.96** In addition, the 2015 *Scorecard Report* recommended an ‘immediate increase in funding for specific services addressing the needs of the Stolen Generations’ noting that there is an ‘unmet demand’ for such services amongst a population which has experienced high rates of disadvantage.<sup>670</sup>
- 8.97** The lack of trust for ‘the system’, including government agencies, was raised by several stakeholders during this inquiry, particularly in relation to child protection services. As will be highlighted in chapter 10, past forcible removal policies and practices have contributed to widespread ‘fear and distrust’ towards government services intended to support children and families.<sup>671</sup>
- 8.98** Legal Aid NSW indicated that Aboriginal people who utilise their services are evidently experiencing mental health issues and distrust of the system, and would benefit from more support in accessing such services:

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<sup>668</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), pp 38-41, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>669</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), pp 38-41, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>670</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 40, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>671</sup> Submission 14, Aboriginal Child, Family and Community State Secretariat, p 1.

People from the Stolen Generations seeking assistance are experiencing extreme anger, grief and loss at the denial of their Aboriginal heritage, deep distrust of governments and government departments, and trauma as a result of abuse within institutions and adoptive families.<sup>672</sup>

- 8.99** The National Sorry Day Committee's response to a discussion paper on the *Development of a renewed Aboriginal & Torres Strait Islander Social and Emotional Wellbeing framework* highlighted that trust is a barrier to Aboriginal peoples' engagement with agencies, including government, non-government and church based agencies:

This lack of trust does not necessarily apply only to individual agencies (government, non-government and church-based) who were involved in the forcible separations but can also apply to any agency today that has the power to affect the life of a Stolen Generations survivor or their family.

The result is that for many Stolen Generations survivors, approaching, or accepting a referral to, non-Aboriginal services (government or non-government or church-based) is simply not an option.<sup>673</sup>

- 8.100** PIAC's 2002 *Restoring Identity* report also noted the lack of trust many Aboriginal people have of government agencies. During the focus group meetings that PIAC held prior to formulating the report, the 'pervasive sense of distrust of government agencies' was identified as a common theme in discussions with Stolen Generation survivors and service providers.<sup>674</sup>

### **Capturing information about Stolen Generation survivors**

- 8.101** One idea canvassed during the inquiry was whether it is possible for service delivery agencies to capture information about Stolen Generation survivors, to not only collect data, but more importantly, to be able to tailor services to individuals accordingly.
- 8.102** Inquiry participants expressed differing views as to whether this would be appropriate. For example, when questioned whether it would be advantageous and appropriate for people to be asked if they are a Stolen Generation survivor or were affected by it, Ms Shaan Hamann, Partner at Winangali Marumali commented 'there is a mixed view on that ... Some people would feel offended if they were asked that'.<sup>675</sup>
- 8.103** Auntie Lorraine considered it would be worthwhile asking people fronting up to service providers if they were affected by past forcible removal policies and practices in some way as it would mean that the type of assistance provided could be tailored with their past experiences in mind,<sup>676</sup> however, she emphasised the importance of how the question is framed:

<sup>672</sup> Submission 32, Legal Aid NSW, p 16.

<sup>673</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), Appendix 2, p 13, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>674</sup> Submission 16, Public Interest Advocacy Centre, Appendix B, p 72.

<sup>675</sup> Evidence, Ms Shaan Hamann, Partner, Winangali Marumali, 9 February 2016, p 6.

<sup>676</sup> Evidence, Auntie Lorraine, 9 February 2016, p 6.

The question to ask anybody is not “What happened to you?” but “How can I help you?” They are two different things.<sup>677</sup>

- 8.104** Dr Chant from NSW Health noted it was particularly important for health workers to understand that past experiences and trauma have impacted on individual’s willingness to ‘engage in care’ and that workers need to ‘modify the care plan taking into account strategies that might need to be put in place based on concerns about past experiences.’<sup>678</sup> Thus in her view, capturing information about members of the Stolen Generations and intergenerational experiences would be advantageous in order to provide the necessary care and understanding to an individual’s needs.
- 8.105** On the other hand, Dr Jennifer Bell, Medical Director at the Riverina Medical and Dental Aboriginal Corporation, thought that asking clients if they were a member of the Stolen Generations or if they had family members affected by past forcible removal policies and practices would be ‘insensitive and intrusive’.<sup>679</sup> While she considered that theoretically the idea of capturing information about Stolen Generation survivors made sense, she noted that it would be difficult to ascertain accurate information as ‘[m]any people are not able to talk about it. They keep it to themselves ... There is shame attached to it and there are trust issues’.<sup>680</sup>
- 8.106** Dr Bell explained that even if staff were aware that a patient was affected by past trauma, directly or indirectly, such information tended to ‘go in progress notes’ getting lost in the paperwork.<sup>681</sup> She therefore thought it was necessary to first look at how to formalise the process of recording information and then ensure that it became a standard practice for all workers in the field:

I can certainly reel off a list of names of first generation, second generation, or third generation people. However, we have not actually taken the step of putting them in a little box. The other issue, as always, is educating anyone who has clinical contact or who is part of the social, emotional, wellbeing and family health team to record that data. That is a real organisational cultural thing, not an Aboriginal cultural thing.<sup>682</sup>

- 8.107** Ms Hull from Warra Warra Legal Service was reserved in her response as to whether such questions should be asked of Aboriginal people when dealing with government agencies such as the police and Department of Family and Community Services. Ms Hull noted that Warra Warra Legal Service does gather such information indirectly through its intake form, and expressed the view that it ‘would be amazing to be able to capture those statistics’ on a broader level;<sup>683</sup> however, she was unsure if such a question was appropriate to ask on a wider scale and recommended that the Aboriginal community be consulted first.<sup>684</sup>

<sup>677</sup> Evidence, Aunty Lorraine, 9 February 2016, p 6.

<sup>678</sup> Evidence, Dr Chant, 5 November 2015, p 15.

<sup>679</sup> Evidence, Dr Jennifer Bell, Medical Director, Riverina Medical and Dental Aboriginal Corporation, 6 November 2015, p 14.

<sup>680</sup> Evidence, Dr Bell, 6 November 2015, p 14.

<sup>681</sup> Evidence, Dr Bell, 6 November 2015, p 20.

<sup>682</sup> Evidence, Dr Bell, 6 November 2015, p 20.

<sup>683</sup> Evidence, Ms Hull, 17 February 2016, p 9.

<sup>684</sup> Evidence, Ms Hull, 17 February 2016, p 9.

***Committee comment***

- 8.108** It is important to the committee that services delivered to members of the Stolen Generations and their descendants are appropriate and trauma-informed, as highlighted by our recommendation 6.
- 8.109** It may also be helpful for service delivery agencies to implement mechanisms to identify and capture whether clients are members of the Stolen Generations or whether they have been affected by past forcible removal policies and practices. The committee believes that this would be helpful for services as it would enable them to tailor their approach to meet the specific and complex needs of survivors and their descendants.
- 8.110** We note the sensitivities and difficulties associated with requesting such information, and the challenges associated with implementing this process across the government sector. That aside, we believe it would be helpful for this data to be captured, as it may also help to inform future services and programs for these clients.
- 8.111** As such, we encourage the New South Wales Government to explore options for government agencies to identify and capture the needs of Stolen Generation survivors and their descendants (as defined in chapter 1), for the purpose of ensuring services are tailored appropriately.
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**Recommendation 22**

That the NSW Government, in consultation with Stolen Generation survivors, explore options for government agencies to identify and capture the needs of survivors and their descendants, for the purpose of ensuring services are tailored appropriately.

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- 8.112** As covered in other chapters of this report, we recognise that the distrust and suspicion Aboriginal people have for government agencies may operate as a barrier to their access to services. The committee acknowledges that this is linked to past forcible removal policies and practices.
- 8.113** Given we heard that individuals may be reluctant to access services, or have found ‘the system’ difficult to navigate, we believe it may be of some benefit to establish a helpline, where Aboriginal employed workers could provide assistance to members of the Stolen Generations and their descendants to access appropriate government services. If individuals are experiencing a problem and need help from a government service, any service, they could contact this helpline for specialised assistance.
- 8.114** Therefore, the committee recommends that the New South Wales Government establish a direct point of contact to assist Stolen Generation survivors and their descendants to navigate the service system, by providing information and referrals where appropriate.
- 8.115** To establish trust and rapport, and deliver culturally appropriate services, the point of contact should be staffed by people who have had trauma-informed training, and a strong knowledge of the needs of Stolen Generation survivors and their descendants. They should also
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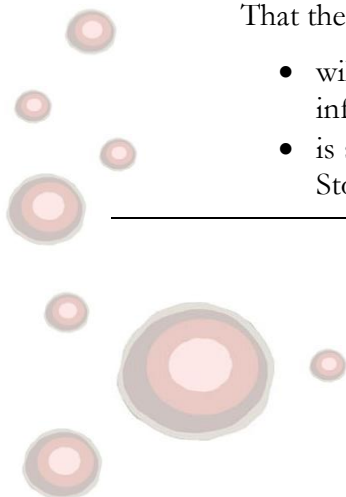
preferably be Aboriginal or Torres Strait Islander. Further, we would encourage this service to be promoted throughout outreach work in regional and remote communities.

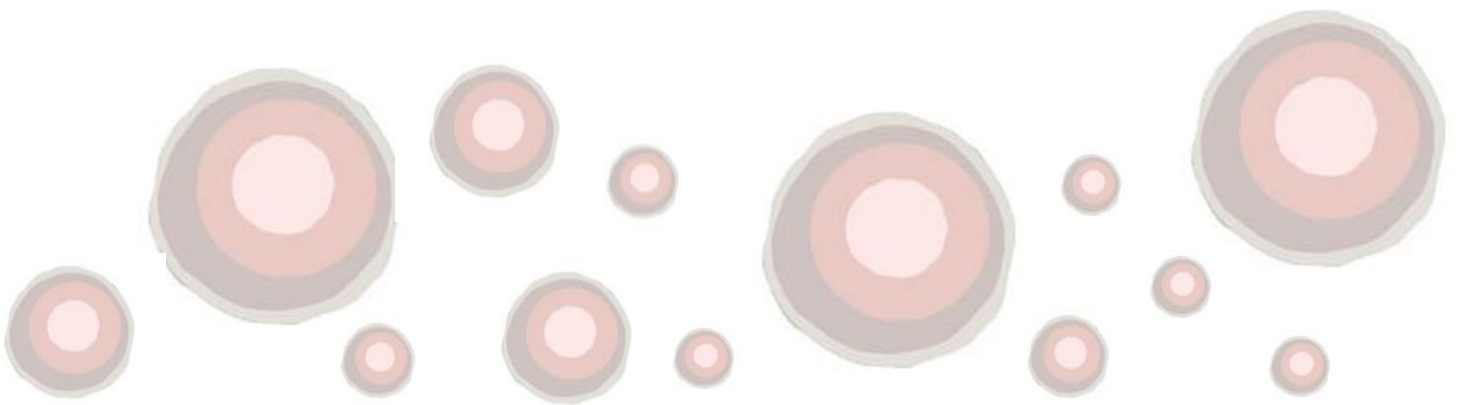
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**Recommendation 23**

That the NSW Government establish a direct point of contact that:

- will assist Stolen Generation survivors to navigate the service system by providing information and making referrals to appropriate services
- is staffed by people who are trauma-informed and have specialist knowledge about the Stolen Generations, and who are preferably Aboriginal or Torres Strait Islander.





## Chapter 9 Culture, language and identity

... my language makes me strong, my culture makes me strong, my people make me strong and my family makes me strong.<sup>685</sup>

This chapter begins by examining the preservation and invigoration of Aboriginal culture, language and identity. It considers a number of initiatives that are revitalising language and culture, including the Language and Culture Nests established under the New South Wales Government's Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) strategy.

It then examines the preservation of records pertaining to members of the Stolen Generations, including issues with accessing and amending records, as well as the need to record the testimonies of Stolen Generation survivors. The committee also considers the reunification services that are tracing family and establishing identity, in particular the services provided by Link-Up NSW.

The chapter concludes with a discussion on the need for further education on the history of past forcible removal policies and practices within the school curriculum, and the importance of genuine cultural awareness and cultural sensitivity for public sector staff working closely with Aboriginal clients.

### Language and cultural initiatives

**9.1** The committee was informed about a number of programs and initiatives by both government and non-government organisations that aim to preserve and revitalise Aboriginal language and culture.

**9.2** The *Bringing them home* report made three recommendations in regards to language, culture and history centres:

12a. That the Commonwealth expand the funding of Indigenous language, culture and history centres to ensure national coverage at regional level.

12b. That where the Indigenous community so determines, the regional language, culture and history centre be funded to record and maintain local Indigenous languages and to teach those languages, especially to people whose forcible removal deprived them of opportunities to learn and maintain their language and to their descendants

...

38a. That every church and other non-government agency which played a role in the placement and care of Indigenous children forcibly removed from their families, at the request of an Indigenous language, culture and history centre, transfer historical and cultural information it holds relating to the community or communities represented by the centre.<sup>686</sup>

<sup>685</sup> Evidence, Ms Rhonda Ashby, Gamilaraay/Yuwaalaraay/Yuwaalayaay Language and Culture Nest, 18 February 2016, p 31.

<sup>686</sup> Recommendations 12 and 38a, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from*

- 9.3** The New South Wales Government's response to the *Bringing them home* report stated that 'the establishment of cultural and language centres is a Commonwealth responsibility', but indicated that it would continue to support initiatives that promote and protect Aboriginal culture, language and history. These initiatives included:
- working with Aboriginal Elders to record history and languages
  - providing language programs to public schools and supporting language summits
  - establishing an Indigenous Arts Reference Group and Indigenous Art Fund
  - supporting New South Wales museums and cultural centres on Stolen Generation specific exhibitions.<sup>687</sup>
- 9.4** The committee sought information from Aboriginal Affairs NSW on the progress to date on the initiatives documented in the New South Wales Government's response to the *Bringing them home* report. The department advised that it has provided funding to support community led language projects through 'Our Languages, Our Way'<sup>688</sup> grants and funding to the Kinchela Boys' Home Aboriginal Corporation for its video testimonies project in 2013-14. The department also advised that the government is supporting Aboriginal language and culture through its OCHRE strategy, which will be discussed in the following section.<sup>689</sup>
- 9.5** In addition, the Department of Premier and Cabinet advised that Aboriginal languages will be made available as a course in 2016 for New South Wales students completing their High School Certificate, stating that 'this course demonstrates a commitment to supporting the reclamation and revitalisation of language in Aboriginal Communities'.<sup>690</sup>
- 9.6** Dr John Rule and Ms Elizabeth Rice, authors of the 2015 *Bringing them home: Scorecard Report*, reviewed the implementation of the *Bringing them home* report recommendations and documented that some progress has been made in relation to national language, culture and history centres, including the Mura online catalogue,<sup>691</sup> and audio-visual archive through the Australian Institute of Aboriginal and Torres Strait Islander Studies and the recognition of the Australian Indigenous Languages Collection on the Memory of the World register.<sup>692</sup> However, they noted that regional initiatives have not been so forthcoming:

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*their Families*, 1997, pp 260 and 360, < [https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>687</sup> NSW Government, *NSW Government Response, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, pp 10-11, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>688</sup> The 'Our Languages, Our Way' grant program enables Aboriginal community based organisations to apply for one off funding to develop and deliver community owned language projects in New South Wales. NSW Government, Education Aboriginal Affairs, *'Our Languages, Our Way' Language Grant Program*, <<http://www.aboriginalaffairs.nsw.gov.au/nsw-aboriginal-communities/our-Languages-our-way-grants/>>

<sup>689</sup> Confidential correspondence from the Hon Leslie Williams, Minister for Aboriginal Affairs, to Chair, 4 November 2015 Evidence published by resolution of the committee.

<sup>690</sup> Submission 34, Department of Premier and Cabinet, p 8.

<sup>691</sup> The Mura online catalogue provides search access to a large collection of Aboriginal and Torres Strait Islander culture and history.

<sup>692</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, p 8.



Mechanisms such as regional local Indigenous language, culture and history centres have not been established. These centres are necessary to ensure that relevant church and non-government agencies transfer the relevant historical and cultural information to communities. Where there have been some local initiatives they have continued to struggle for support.<sup>693</sup>

### Aboriginal Language and Culture Nests

- 9.7** Under the New South Wales Government's OCHRE strategy (outlined in chapter 2), five Aboriginal Language and Culture Nests have been established across the state 'to enable Aboriginal people and communities to reclaim, revitalise and maintain their traditional Aboriginal languages'.<sup>694</sup> The nests operate within participating schools and connect with the wider community to provide Aboriginal students and their families the opportunity to learn Aboriginal language from preschool through to university.<sup>695</sup>
- 9.8** The Hon Leslie Williams MP, Minister for Aboriginal Affairs, commented that the Language and Culture Nests are vital to the healing process of Aboriginal people impacted by past forcible removal policies and practices.<sup>696</sup> The Minister advised that positive feedback has been received from the communities involved in the initiative, which is 'working effectively on the ground', and that many people have called for more nests to be rolled out in the future.<sup>697</sup>
- 9.9** Ms Rhonda Ashby, a teacher at Gamilaraay/Yuwaalaraay/Yuwaalayaay Language and Culture Nest in Lightning Ridge, advised the committee that the work they do on revitalising language and culture within the school is very important in connecting back to identity:

I think it is a part of our identity; it is a part of our soul. Language is a part of culture, culture is a part of language—the two are married. If we do not know where we come from, we do not know where we are going. It is like a tree without roots; it won't grow. We have lost our identity. That is why this language journey we are on is important.<sup>698</sup>

- 9.10** Ms Virginia Robinson, Secretary, Dharriwaa Elders Group, also highlighted to the committee how 'language is your identity' and how she is very proud to be speaking her language: 'That makes me very assured, it makes me very bold, I know who I am and where I come from, I know my language'.<sup>699</sup>

<sup>693</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 9, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>694</sup> Submission 34, Department of Premier and Cabinet, p 4.

<sup>695</sup> Aboriginal Affairs NSW, *Aboriginal Language and Culture Nests*, <<http://www.aboriginalaffairs.nsw.gov.au/aboriginal-language-and-culture-nests/>>

<sup>696</sup> Evidence, Hon. Leslie Williams MP, Minister for Aboriginal Affairs, 5 November 2015, p 2.

<sup>697</sup> Evidence, Minister Williams, 5 November 2015, p 8.

<sup>698</sup> Evidence, Ms Ashby, 18 February 2016, pp 29 and 33.

<sup>699</sup> Evidence, Ms Virginia Robinson, Secretary, Dharriwaa Elders Group, 18 February 2016, p 9.

### Other initiatives

- 9.11** A clear message voiced by several inquiry participants is that more support and investment is needed for local cultural activities and programs that rejuvenate and preserve Aboriginal language, culture and history and look to connect and engage Aboriginal communities.<sup>700</sup>
- 9.12** Both the Mount Druitt and District Reconciliation Group and the Dharriwaa Elders Group emphasised that these cultural activities and programs need to be led by Aboriginal Elders within the community.<sup>701</sup>
- 9.13** Professor Norman Sheehan, Director, Gnibi College of Indigenous Australian Peoples, informed the committee that the Gnibi College currently works with Elders to create educational programs based on narrative therapy and the sharing of stories. Professor Sheehan advised that the college also hosts the Language and Culture Nest for the Bundjalung nation, although he stated that more funding is needed for this work.<sup>702</sup>
- 9.14** Ms Suzanne Hall, a member of the Stolen Generations, informed the committee that the Elders group in Menindee takes people on to Country to cook traditional foods. She suggested more funding and encouragement of involvement from the younger generation in activities such as this would be beneficial.<sup>703</sup>
- 9.15** Similarly, the committee heard from Ms Robyne Bancroft, Elder and Cultural Heritage Officer, who takes school children and teachers out on Country to show them Aboriginal sites, which she said 'is reinforcing the pride in the younger generation'.<sup>704</sup>
- 9.16** Ms Wendy Spencer, Project Manager at the Dharriwaa Elders Group, advised that their group has been working on reviving language and culture for a number of years and that they keep a cultural values database that includes recordings from Elders talking about the significance of places and why they want future generations to know about them and look after them. She added: 'We need to pass that on now to Elders in the future and in school programs and to future generations'.<sup>705</sup>
- 9.17** Ms Joanne Taylor, a Bringing Them Home worker at the Albury Wodonga Aboriginal Health Service, told the committee about another initiative, involving a Stolen Generations support group that meets each week and holds cultural activities such as basket weaving, cultural workshops, Aboriginal movies and dancing. Ms Taylor said that the group provides a

<sup>700</sup> Submission 51, Ms Irene Doutney, p 5; Submission 32, Legal Aid NSW, p 28; Evidence, Aunty Lindy Lawler, community member, 2 March 2016, p 27; Submission 29, Dharriwaa Elders Group, p 7; Evidence, Ms Joanne Taylor, Bringing Them Home worker, Albury Wodonga Aboriginal Health Service, 6 November 2015, p 17; Submission 11, Reconciliation for Western Sydney Inc, p 2.

<sup>701</sup> Submission 20, Mount Druitt and District Reconciliation Group, p 2; Submission 29, Dharriwaa Elders Group, p 7.

<sup>702</sup> Evidence, Professor Norman Sheehan, Director, Gnibi College of Indigenous Australian Peoples, 9 February 2016, p 31.

<sup>703</sup> Evidence, Ms Suzanne Hall, community member, 17 February 2016, p 25.

<sup>704</sup> Evidence, Ms Robyne Bancroft, Elder, Cultural Heritage Officer, 8 December 2015, p 42.

<sup>705</sup> Evidence, Ms Wendy Spencer, Project Manager, Dharriwaa Elders Group, 18 February 2016, p 2.

comfortable environment for people to talk about identity, different Aboriginal tribes and what it is like to be an Aboriginal person.<sup>706</sup>

- 9.18** The Kinchela Boys' Home Aboriginal Corporation include cultural renewal in their programs that strengthen identity and reconnect with community through 'language, art, dance, singing, yarnning circles, Elder support groups and leadership programs'. The corporation has found that these programs that reconnect culture and traditions have been successful in the healing process and have also achieved improved outcomes in other social and community related issues.<sup>707</sup>
- 9.19** The New South Wales Aboriginal Land Council highlighted how art can play an important role in building culture and improving social cohesion in local communities and urged the State Government to 'continue to invest in Aboriginal arts programs to support Aboriginal peoples continued cultural connections and traditions'.<sup>708</sup>
- 9.20** The Deputy Chair of the New South Wales Aboriginal Land Council, Ms Anne Dennis, further emphasised the importance of connecting and strengthening identity through language and cultural activities:

So being able to run programs and engage local people on Country and to also share that experience across the community and establish and build a cultural identity of people knowing where we come from, why we are here, why we have got so many issues, because when we are looking at the Stolen Generation it was a period of time but today we have also got the social issues of housing, alcohol and drugs and it all seems to be intertwined into everything. Those kinds of programs of getting Elders utilising their knowledge, their experiences, to be able to share that I think is really important.<sup>709</sup>

### *Committee comment*

- 9.21** The committee received a clear message from inquiry participants on the importance of language in restoring identity, connecting with culture and assisting with healing in Aboriginal communities.
- 9.22** The committee acknowledges the good work non-government organisations are doing in providing cultural activities and programs to preserve Aboriginal culture, language and identity. We also acknowledge and support the government's five Language and Culture Nests established under OCHRE, and are pleased to hear they have received positive feedback from the community.
- 9.23** The committee recognises the benefits to communities through these initiatives and believes they should be made available across all regions of New South Wales. We therefore recommend that the New South Wales Government consider increasing the number of Aboriginal Language and Culture Nests under its OCHRE strategy. We would also encourage

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<sup>706</sup> Evidence, Ms Taylor, 6 November 2015, p 16.

<sup>707</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 11.

<sup>708</sup> Submission 17, NSW Aboriginal Land Council, p 11.

<sup>709</sup> Evidence, Ms Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, 9 February 2016, p 39.

priority access to the nests to be given to descendants of members of the Stolen Generations, given the loss of identity and culture they have personally experienced.

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### Recommendation 24

That the NSW Government consider increasing the number of Aboriginal Language and Culture Nests under its OCHRE strategy.

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## Record preservation, management and access

- 9.24** For members of the Stolen Generations and their families, access to personal and family records is also extremely important. As noted by the Public Interest Advocacy Centre (PIAC) in its 2002 *Restoring Identity* report, ‘the search for records is often the first step in tracing family and therefore identity’.<sup>710</sup>
- 9.25** Recognising this importance, the *Bringing them home* report made a number of recommendations in relation to record preservation, management and access. One recommendation was for a prohibition on the destruction of records related to past forcible removal policies and practices. It was also recommended that government agencies be urgently funded to preserve and index these records.<sup>711</sup>
- 9.26** The *Bringing them home* report also recommended that the Commonwealth and state and territory governments establish and fund a records taskforce to advise government, churches and other agencies in relation to record preservation and access. The role of the proposed taskforce was also to develop common access guidelines for records which would ensure that every individual who was forcibly removed could access information about themselves.<sup>712</sup> However, according to Ms Rice and Dr Rule, no records taskforce was ever established at the national level.<sup>713</sup>
- 9.27** On the other hand, in New South Wales, during the State Government’s apology in Parliament on 18 June 1997, the then Premier announced that Aboriginal Affairs NSW would

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<sup>710</sup> Submission 16, Public Interest Advocacy Centre, Appendix B, p 32.

<sup>711</sup> Recommendations 21- 22, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 300-301, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>712</sup> Recommendations 23-25, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 301-304, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>713</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 9, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

convene a records working group to analyse the recommendations from the *Bringing them home* report and develop a strategy for improving access to records in the state.<sup>714</sup>

**9.28** The New South Wales Government's response to the *Bringing them home* report also included a moratorium on the destructions of records relating to past forcible removal policies and practices, and the establishment of common access guidelines which were designed to make it easier for Aboriginal people who have been separated from their families to access records. A 'Connecting Kin' resource was also launched, which was developed to help people trace records relevant to themselves.<sup>715</sup>

**9.29** The State Records Authority advised the committee that since the *Bringing them home* report, it has implemented a number of strategies to improve access to records relating to members of the Stolen Generations, including:

- publication in 1998 of a guide to archives relating to Aboriginal people on its website
- development of online finding aids and resources
- development of protocols for staff working with Aboriginal people
- management of the indexing and digitisation of records relating to stolen wages, which assisted the Aboriginal Trust Fund Repayment Scheme
- curation of the exhibition 'Living Memory' from 2007-2012, which tells the stories of the past forcible removal policies and practices through the photographs of the Aborigines Welfare Board
- working collaboratively with other states and territories under the peak body of the Council of Australasian Archives and Records Authorities.<sup>716</sup>

### **Management and custody of records**

**9.30** To better understand where records relating to past forcible removal policies and practices are held in New South Wales, the committee wrote to a number of agencies to clarify their role in relation to record possession, management and access.

**9.31** The Secretary of the Department of Finance, Services and Innovation, Mr Martin Hoffman, who is responsible for the State Records Authority, advised the committee that State Records holds the surviving original records of the Aborigines Protection Board and the Aborigines Welfare Board, including 'surviving records of the Kinchela Boys Home and Cootamundra Girls Home'. State Records also has in its possession records relating to adoptions and placements in the Parramatta Girls Training Home and the Hay Institution for Girls.<sup>717</sup>

<sup>714</sup> NSW Government, *NSW Government Response, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 15, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>715</sup> NSW Government, *NSW Government Response, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 15, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>716</sup> Correspondence from Mr Martin Hoffman, Secretary, Department of Finance, Services and Innovation, to Chair, 4 April 2016, pp 1-2.

<sup>717</sup> Correspondence from Mr Hoffman to Chair, 4 April 2016, p 1.

- 9.32** However, despite State Records having physical possession of these documents, access to the documents is determined by the responsible government agency, which in this instance is Aboriginal Affairs NSW.<sup>718</sup>
- 9.33** In addition to State Records possessing many documents relating to members of the Stolen Generations, the committee was informed that the Department of Family and Community Services also holds a ‘substantial set of records’.<sup>719</sup> In particular, the department indicated that it has files for Aboriginal children who were taken into care under provisions of the *Child Welfare Act 1923* and *Child Welfare Act 1939*, usually for cases where children were ‘deemed by the Children’s Court to be neglected, uncontrollable or exposed to moral danger’, or where they had committed a criminal offence.<sup>720</sup>
- 9.34** However, many of these files may not have specifically recorded whether the ‘wards’ were in fact Aboriginal. The Department of Family and Community Services stated that a manual review of about 50,000 surviving ward files up to 1970 would only identify some, but not all, Aboriginal wards. The department also advised that adoption files prior to 1955 were routinely destroyed, resulting in significant gaps in adoption records.<sup>721</sup>
- 9.35** Highlighting the ongoing challenges associated with record management and access, the department advised that it has 130,000 boxes of other types of records in its possession which were previously not accessible because they were not properly indexed and/or described when they were sent to storage. The department is, however, in the progress of prioritising, indexing and digitising records as part of its Family and Community Services Historic Records Project, which would include records about former clients and the operation of 100 children’s homes run by it.<sup>722</sup>

### **Access to records**

- 9.36** The Family Records Unit within Aboriginal Affairs NSW was established in 2002. It provides access to records from the Aborigines Welfare Board and Aborigines Protection Board.<sup>723</sup>
- 9.37** Individuals who wish to access these records can complete a ‘Finding your Mob’ personal family history research application. There are no costs to make this application. As all of the records are digitised, staff in the unit can access the records directly and provide copies to those who make an application.<sup>724</sup>
- 9.38** For access to records of ‘wards’ held by the Department of Family and Community Services, applications can be made via the department’s Community Service centres or via a

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<sup>718</sup> Correspondence from Mr Hoffman to Chair, 4 April 2016, p 1.

<sup>719</sup> Correspondence from Mr Hoffman to Chair, 4 April 2016, p 1.

<sup>720</sup> Correspondence from Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, to Chair, 17 May 2016, p 1.

<sup>721</sup> Correspondence from Mr Coutts-Trotter, 17 May 2016, p 1.

<sup>722</sup> Correspondence from Mr Coutts-Trotter, 17 May 2016, p 2.

<sup>723</sup> Evidence, Minister Williams, 5 November 2015, p 1.

<sup>724</sup> Correspondence from Mr Jason Ardler, Head, Aboriginal Affairs NSW, to Chair, 6 April 2016, p 2.

non-government support service. The department advised that a caseworker would then release records in a face to face meeting, or at least provide telephone support.<sup>725</sup>

- 9.39** Since 2011, there have been approximately 1,100 personal family history research applications made to the Family Records Unit.<sup>726</sup> During 2014 and 2015 the unit processed 407 applications.<sup>727</sup> The Head of Aboriginal Affairs NSW, Mr Jason Ardler, advised the committee that the unit has one ongoing full time senior archivist, although a project officer recently assisted the unit on a part time basis between mid-2015 to February 2016.<sup>728</sup> ANTaR NSW expressed a concern that the Family Records Unit may be under resourced and that the service may be experiencing chronic high workloads.<sup>729</sup>
- 9.40** The Kinchela Boys' Home Aboriginal Corporation acknowledged the 'great work' of the Family Records Unit in simplifying the process to access records, however stated that 'there are still many challenges encountered in trying to find individual and family records'. It noted that the Family Records Unit does not hold all records pertaining to members of the Stolen Generations and that there does not appear to be a process in place for record sharing across departments.<sup>730</sup>
- 9.41** As an example, it explained that it would be more difficult for individuals to access records if they were sent to other institutions or placed in foster care after the closure of the Kinchela Aboriginal Boys' Training Home. It outlined how this can be challenging for individuals to access their records, as it can become 'quite onerous trying to identify where records may be'.<sup>731</sup>
- 9.42** The Kinchela Boys' Home Aboriginal Corporation suggested that it would be beneficial if records from the different agencies could be brought together so that they are held by only one agency, such as the Family Records Unit. It recommended that a Stolen Generation records taskforce be established urgently to address this issue.
- 9.43** Another issue affecting the ability of individuals to access records is the potential costs involved in making an application for access to the relevant agency. While there is no fee to make an application to the Family Records Unit for access to records of the Aborigines Welfare Board or Aborigines Protection Board, there may be fees associated with obtaining documents from other organisations. Dr Tiffany McComsey, Chief Executive Officer of the Kinchela Boys' Home Aboriginal Corporation, explained:

There is not a cost with family records and Aboriginal Affairs. A person can apply for that free of cost but that only has the welfare protection records so any other information, a person has to search for those and there can be a cost associated with those documents.<sup>732</sup>

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<sup>725</sup> Correspondence from Mr Coutts-Trotter to Chair, 17 May 2016, p 2.

<sup>726</sup> Correspondence from Mr Ardler to Chair, 6 April 2016, p 2.

<sup>727</sup> Evidence, Minister Williams, 5 November 2015, p 1.

<sup>728</sup> Correspondence from Mr Ardler, to Chair, 6 April 2016, p 2.

<sup>729</sup> Submission 21, ANTaR NSW, p 8.

<sup>730</sup> Supplementary submission 31a, Kinchela Boys' Home Aboriginal Corporation, p 6.

<sup>731</sup> Supplementary submission 31a, Kinchela Boys' Home Aboriginal Corporation, p 6.

<sup>732</sup> Evidence, Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, 9 February 2016, p 52.

- 9.44 Ms Paulette Whitton, the daughter of a man who was in the Kinchela Aboriginal Boys' Training Home, outlined the difficulties she had experienced when undertaking her family history and research. She said there were costs associated with getting certain documents such as birth certificates from the Registry of Births, Deaths and Marriages.<sup>733</sup>
- 9.45 This was confirmed by the Chief Executive Officer of Link-Up NSW, Mr Terry Chenery, who stated that there is no exemption from fees for records held by other agencies such as the Registry of Births, Deaths and Marriages, although he noted that this issue has been discussed at a recent meeting with the Department of Family and Community Services.<sup>734</sup>
- 9.46 Dr McComsey added that some records are also held by the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra, and that while there is a researcher there to help locate information, the costs associated with travelling there make it difficult for individuals to search those records.<sup>735</sup>

### Correction and alteration of records

- 9.47 Several stakeholders expressed a concern that there is no mechanism for individuals to amend or supplement their official files. Noting that some people are concerned about the 'tone, accuracy and completeness of the documents contained on their personal files', both Herbert Smith Freehills and the Indigenous Issues Committee of the Law Society of New South Wales suggested that individuals should be afforded this opportunity.<sup>736</sup>
- 9.48 Both stakeholders argued that having this type of mechanism would align with the *Bringing them home* report recommendations, which suggested that personal stories be added to supplement individual records.<sup>737</sup>
- 9.49 Relevant to this issue is section 15 of the *Privacy and Personal Information Protection Act 1998* which enables a person to request a public sector agency to make appropriate amendments to a record (which could be by way of correction, deletion or addition) to ensure it is accurate, and that it is 'relevant, up to date, complete and not misleading'.<sup>738</sup>
- 9.50 While section 15 may enable individuals to amend their personal information in a record, and potentially attach a statement to their story, there appear to be some concerns around the application process to do this.
- 9.51 Herbert Smith Freehills highlighted that unlike other government departments, Aboriginal Affairs NSW and the NSW Department of Education do not have application forms where an individual can apply to alter their record. It suggested that such an application form would be beneficial for members of the Stolen Generations, and that the process should enable 'a statement in the individual's own words' to be added to the relevant files held by Aboriginal

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<sup>733</sup> Evidence, Ms Paulette Whitton, community member, 9 February 2016, p 51.

<sup>734</sup> Correspondence from Mr Terry Chenery, Chief Executive Officer, Link-Up NSW, to Chair, 7 April 2016, p 8.

<sup>735</sup> Evidence, Dr McComsey, 9 February 2016, p 52.

<sup>736</sup> Submission 28, Law Society of NSW, p3; Submission 19, Herbert Smith Freehills, pp 30-33.

<sup>737</sup> Submission 28, Law Society of NSW, p 4; Submission 19, Herbert Smith Freehills, p 32.

<sup>738</sup> *Privacy and Personal Information Protection Act 1998*, s 15.



Affairs NSW, as this would ‘in effect complete the records by allowing those people to give their personal account of events referred to on their file’.<sup>739</sup>

- 9.52** Both Herbert Smith Freehills and the Indigenous Issues Committee of the Law Society of New South Wales urged the New South Wales Government to address this issue, as did the Kinchela Boys’ Home Aboriginal Corporation, which recommended that the State Government examine the possibility of creating an accessible mechanism within existing legislative frameworks for individuals to formally amend or supplement their official files with personal stories.<sup>740</sup>

***Committee comment***

- 9.53** The committee recognises that access to records is vital for members of the Stolen Generations who are trying to trace their family and establish their identity. During the inquiry’s site visits and hearings, the committee heard about some of the difficulties individuals had experienced when trying to access information about their family or history.
- 9.54** Some individuals were unsure how to apply for access to their records, while others had obtained certain records from the Family Records Unit within Aboriginal Affairs NSW but could not afford to get further records from other agencies, such as birth or death certificates from the Registry of Births, Deaths and Marriages. The committee witnessed the heartache of some individuals who had been unsuccessful in locating siblings or family members due to a lack of records.
- 9.55** Given the need for improved access and consolidation of records, the committee recommends that the New South Wales Government undertake a comprehensive review of how records relating to the Stolen Generations are managed and accessed.
- 9.56** As part of this review, the government should remove any barriers that inhibit Stolen Generation survivors and their descendants (as defined in chapter 1) from accessing records related to their family and history. It is not reasonable for those who have been affected by past forcible removal policies and practices to have to pay for access to records about their family and history. Imposing costs on these individuals, many of whom are already significantly disadvantaged and vulnerable, seems simply unfair.
- 9.57** The review should also consider how existing mechanisms for Stolen Generation survivors to correct, alter or supplement records relating to their removal can be improved. It was not clear to the committee from the evidence whether section 15 of the *Privacy and Personal Information Protection Act 1998* is ineffective, or whether some government agencies have not made this process accessible, for example, by failing to have an appropriate form or procedure in place for individuals to make such requests.
- 9.58** Finally, in light of the important role the Family Records Unit plays in providing assistance to those accessing records, the committee believes, it is essential that it be appropriately resourced and promoted to key stakeholders, particularly the Aboriginal community. The government, in its review, should consider the allocation of additional funding to the

<sup>739</sup> Submission 19, Herbert Smith Freehills, p 32.

<sup>740</sup> Submission 31, Kinchela Boys’ Home Aboriginal Corporation, p 16; Submission 19, Herbert Smith Freehills, pp 32-33; Submission 28, Law Society of NSW, p 4.

Aboriginal Affairs NSW Family Records Unit so that it can provide increased assistance to those accessing records and better promote its services to stakeholders.

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### Recommendation 25

That the NSW Government, in consultation with Stolen Generation survivors, undertake a comprehensive review of how records relating to the Stolen Generations are managed and accessed, with a view to:

- removing any barriers that inhibit Stolen Generation survivors and their descendants from accessing records related to their family and history, including any fees that may apply when individuals apply for records from government agencies, such as the Registry of Births, Deaths and Marriages
  - ensuring that appropriate mechanisms are in place for Stolen Generation survivors to correct, alter or supplement records relating to their removal
  - allocating additional funding to the Aboriginal Affairs NSW Family Records Unit so that it can provide increased assistance to those accessing records and better promote its services.
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## Recording of testimonies

**9.59** The *Bringing them home* report recommended that the Council of Australian Governments ensure adequate funding is provided to record, preserve and administer access to the testimonies of Aboriginal people affected by past forcible removal policies and practices who wished to provide their histories in audio, audio visual or written form.<sup>741</sup>

**9.60** The New South Wales Government, in its response to the *Bringing them home* report recommendations, said that it will work with Elders from Aboriginal communities to record oral histories, in consultation with agencies such as the Australian Institute of Aboriginal and Torres Strait Islander Studies. It also said it would work with Elders to record the languages and histories of communities, so as to help protect the cultural heritage of Aboriginal people.<sup>742</sup> As noted in paragraph 9.4, the government provided discretionary funding in 2013-14 to the Kinchela Boys' Home Aboriginal Corporation for a video testimonies project.<sup>743</sup> However, it is not clear whether any funding or assistance has been provided since this time.

**9.61** At the federal level, the Australian Government provided funding from 1998 to 2002 for the *Bringing them home* oral history project, where about 200 recordings were made. In addition, in

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<sup>741</sup> Recommendation 1, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 18, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>742</sup> NSW Government, *NSW Government Response, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 10, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>743</sup> Confidential correspondence from Minister Williams to Chair, 4 November 2015. Evidence published by resolution of the committee.

2012 the Stolen Generations' Testimonies Foundation launched a website with a series of audio visual recordings of members of the Stolen Generations telling their stories.<sup>744</sup>

- 9.62** Some of the women who were in the Cootamundra Aboriginal Girls' Training Home recorded their stories as part of the *Bringing them home* oral history project. The stories also appeared in an associated publication entitled *Many Voices: Reflections on experiences of Indigenous child separation*.<sup>745</sup>
- 9.63** In its 2015 *Scorecard Report*, the National Sorry Day Committee stated that 'sustainability of the testimonies project needs to be ensured'.<sup>746</sup> Both the Coota Girls Corporation and Kinchela Boys' Home Aboriginal Corporation expressed a continuing need to record the testimonies of the former residents of each home, incorporating this priority into their individual work plans and their shared Action Plan – *Our Voice, Our Plan 2015-2018*.<sup>747</sup>

#### ***Committee comment***

- 9.64** The committee acknowledges that at the federal level there has been some action to record the oral histories of members of the Stolen Generations. The *Bringing them home* oral history project was an important initiative in this regard, as it enabled over 200 recordings to be made, however this project ended over a decade ago.
- 9.65** While the New South Wales Government provided funding to the Kinchela Boys' Home Aboriginal Corporation in 2013-14 to record the testimonies of survivors, it is not clear whether any further funding or assistance has been provided for this purpose.
- 9.66** Recording and preserving the histories and experiences of members of the Stolen Generations in New South Wales is an important task. While it may provide a healing opportunity for some individuals who want to use the process for 'truth telling', it will also ensure that their stories are not lost. Recording of testimonies will serve to acknowledge and highlight the ongoing trauma people experienced as a result of the past forcible removal policies and practices in this state, which in turn may help to educate the broader community and children on this aspect of our dark history.
- 9.67** Given that the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home Incorporated all expressed a need to record the testimonies of the former residents of each home, the committee recommends that the New South Wales Government provide them with funding to undertake this task.

<sup>744</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 2, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>745</sup> Submission 36a, Coota Girls Corporation, p 66.

<sup>746</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 2, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>747</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 19; Submission 50, Coota Girls Corporation and Kinchela Boys' Home Aboriginal Corporation, p 12.

## Recommendation 26

That the NSW Government provide funding to the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home Incorporated for the purpose of recording the testimonies of Stolen Generation survivors.

## Reunions

**9.68** The *Bringing them home* report documented the importance of family tracing and reunions for members of the Stolen Generations and their families. In essence, it is a vital part of establishing identity and connection to culture and Country. As noted in Link-Up NSW's submission to the *Bringing them home* inquiry: 'Going home means finding out who you are as an Aboriginal, where you come from, who your people are, where your belonging place is, what your identity is'.<sup>748</sup> The report stated:

Reunion is the beginning of the unravelling of the damage done to Indigenous families and communities by the forcible removal policies. For individuals, their articulated needs to trace their families are diverse. People need to have a sense of belonging and a sense of their own identity. It is important for most people to know their direct and extended family. Reunion is often an essential part of the process of healing when the separation has been so painful.<sup>749</sup>

**9.69** The *Bringing them home* report also highlighted that while some reunions have been joyous occasions, others have not. Sometimes family cannot be located and sometimes when they are, it is too late as the person has died. Some individuals are rejected by their family or community, and some experience language difficulties which make it challenging to build relationships.<sup>750</sup>

**9.70** Auntie Isabel Reid, a Stolen Generation survivor, explained that many of the women who were in the Cootamundra Aboriginal Girls' Training Home have been unable to access information needed to locate their families and communities. In terms of reunions, she noted that some

**“Going home means finding out who you are as an Aboriginal, where you come from, who your people are, where your belonging place is, what your identity is”**

*Bringing them home* report  
1997

<sup>748</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 202, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>749</sup> Recommendations 21- 22, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 202-203, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>750</sup> Recommendations 21- 22, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 204-206, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

have been ‘graveside ones, [and] others have been returned to families and communities only to face non-acceptance’.<sup>751</sup>

- 9.71** Despite the outcomes of family tracing and reunions varying, there was agreement from stakeholders that there should be continued investment in reunion services, particularly given the importance it can play in helping individuals establish their identity. The New South Wales Aboriginal Land Council and Civil Liberties Australia both called for greater investment in reunion services for members of the Stolen Generations and their families.<sup>752</sup>

### **Reunification services provided by Link-Up NSW**

- 9.72** Since the early 1980s, Link-Up NSW has assisted with family tracing and reunification services for members of the Stolen Generations and their families in New South Wales. In 2015-16 it received approximately \$2.3 million in federal funding from the Department of the Prime Minister and Cabinet via the Indigenous Advancement Strategy.<sup>753</sup> In comparison to Link-Ups in other states, the New South Wales organisation is receiving the second highest amount of funding.<sup>754</sup>
- 9.73** Prior to November 2013 there were some issues with the governance of Link-Up NSW which placed the funding of the organisation in jeopardy. The Department of the Prime Minister and Cabinet increased its monitoring and reporting requirements, making the payment of funds contingent on the organisation meeting certain deliverables.<sup>755</sup>
- 9.74** In response, Link-Up NSW undertook a number of actions to improve its governance, including a demographic study to improve the utilisation of resources, obtainment of accreditation and various audits and risk appraisals to improve business strategies. The Acting Secretary of the Department of the Prime Minister and Cabinet, Mr Andrew Tongue, advised that the department was satisfied with the improvements Link-Up NSW made, noting that they have continued to receive funding because they have met governance arrangements and contractual requirements.<sup>756</sup>
- 9.75** To access reunification assistance from Link-Up NSW, individuals must be Aboriginal and/or Torres Strait Islander and over the age of 18, have had someone forcibly removed in their family (even if that person was adopted or fostered) and be seeking a reunion (even if graveside or a return to Country).<sup>757</sup>
- 9.76** Mr Chenery explained that this criteria has been ‘enforced’ more rigorously lately ‘due to ever increasing demands placed on operations from limited funding’. He informed the committee

<sup>751</sup> Evidence, Aunty Isabel Reid, Chair, Coota Girls Corporation, 6 November 2015, p 9.

<sup>752</sup> Submission 17, NSW Aboriginal Land Council, p 11; Submission 38, Civil Liberties Australia, p 8.

<sup>753</sup> Correspondence from Mr Andrew Tongue, Acting Secretary, Department of the Prime Minister and Cabinet, to Chair, 15 April 2016, p 2.

<sup>754</sup> Queensland’s Link-Up received the highest amount of funding from the Department of the Prime Minister and Cabinet in 2015-16, with approximately \$2.4 million being allocated. Correspondence from Mr Tongue to Chair, 15 April 2016, p 2.

<sup>755</sup> Correspondence from Mr Tongue, 15 April 2016, p 3.

<sup>756</sup> Correspondence from Mr Tongue to Chair, 15 April 2016, p 3.

<sup>757</sup> Correspondence from Mr Chenery to Chair, 7 April 2016, p 6.

that 200 people are waiting on a register to be assessed against the eligibility criteria for reunification, 700 people have been deemed ineligible for a reunion and 16 reunions are currently on hold due to funding constraints.<sup>758</sup>

- 9.77** While Link-Up NSW assists with family history and research as part of the reunification service, it is only funded for 36 reunions in a financial year. Mr Chenery said that they ‘are not even scratching the surface’, and that while the organisation receives a reasonable amount of funding, with more funding he could easily double his staff and double the reunions to help address demand.<sup>759</sup>
- 9.78** The counselling provided by Link-Up NSW as part of the reunification service has also been constrained by funding, as clients are now only entitled to post reunion counselling for three months. If a client needs assistance beyond the three months, they will be referred to another organisation.<sup>760</sup> Mr Chenery noted that this is a ‘really tough business rule to put in place, because clients form an attachment to their counsellor’ and do not want to be referred on.<sup>761</sup>
- 9.79** Responding to perceptions that reunification services have diminished, Mr Chenery explained that over the last few years it has been necessary to develop a ‘more robust and equitable service delivery’ framework, given administrative issues prior to 2012 threatened the funding of the organisation. He acknowledged that ‘some may feel this has led to a reduction in either the numbers or quality of services delivered’, however he stressed that it was important to establish stronger governance processes for the long term benefit of the organisation.<sup>762</sup>
- 9.80** The committee was told that another factor affecting Link-Up NSW’s services has been the fact that funding in the last few years has only been for short periods of time, such as 12 months in 2015-16. This has affected its ability to have a long term operational strategy, as the ‘service remains to a degree in “crisis” or “ready to close” mode’. Recently, Link-Up NSW applied for a three year funding agreement from the Department of the Prime Minister and Cabinet.<sup>763</sup>
- 9.81** One concern raised in relation to reunification services is that they generally help individuals link back up with their Aboriginal side of the family but not their non-Aboriginal family. Mr Jeff Richardson, a Bringing Them Home counsellor with Rekindling the Spirit, suggested that this limits a person’s rehabilitation:

You were taken away as a cross-bred person and you link up with some marvellous organisation ... but they will only try to find your Aboriginal family. There is no organisation that I am aware of, except for the Salvation Army and that, but there is no specific Stolen Generation organisation that looks to link you back to your white family or your non-Aboriginal family. I don’t see how you can holistically put a person back together if you are only going to link them to one side of their family.<sup>764</sup>

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<sup>758</sup> Correspondence from Mr Chenery to Chair, 7 April 2016, pp 4-6.

<sup>759</sup> Evidence, Mr Terry Chenery, Chief Executive Officer, Link-Up NSW, 5 November 2015, p 42.

<sup>760</sup> Correspondence from Mr Chenery to Chair, 7 April 2016, pp 3-4.

<sup>761</sup> Evidence, Mr Chenery, 5 November 2015, pp 43-44.

<sup>762</sup> Correspondence from Mr Chenery to Chair, 7 April 2016, p 7.

<sup>763</sup> Correspondence from Mr Chenery to Chair, 7 April 2016, pp 6-7.

<sup>764</sup> Evidence, Mr Jeff Richardson, Bringing Them Home counsellor, Rekindling the Spirit, 8 December 2015, p 35.

*Committee comment*

- 9.82** The committee is impressed by Link-Up NSW's ongoing commitment to providing reunion services for those affected by past forcible removal policies and practices. It is, however, concerned that the organisation's funding by the Department of the Prime Minister and Cabinet only allows for 36 reunions to occur each year. The committee is particularly concerned that some people are on a 'waiting list' for this assistance, and that as more time passes, they may miss out on the opportunity to meet with a family member, particularly in circumstances where age or illness may be a factor.
- 9.83** Given the continuing demand for reunions, and the intrinsic role of reunions in establishing identity and family, the committee recommends that the New South Wales Government request the Department of the Prime Minister and Cabinet to provide additional funding to Link-Up NSW and review if any state funding can be provided for the reunification program.

**Recommendation 27**

That the NSW Government:

- request the Department of the Prime Minister and Cabinet to provide additional funding to Link-Up NSW so that it can provide an increased number of reunions for Stolen Generation survivors each year
- review if any state funding can be provided for the reunification program.

**Education, awareness and cultural competency**

- 9.84** Inquiry participants raised the need for greater emphasis on education and awareness about the history and impacts of past forcible removal policies and practices, and the need for genuine cultural awareness and competency – particularly in regard to the impacts experienced by members of the Stolen Generations and their descendants – for public sector staff providing services to Aboriginal people.

**Public awareness of the past**

- 9.85** Several inquiry participants considered that wider public knowledge and awareness of past forcible removal policies and practices was a necessary component of reparations.
- 9.86** Ms Dennis from the New South Wales Aboriginal Land Council remarked that before the *Bringing them home* report, 'people really did not understand the period of the Stolen Generations, or really acknowledge that these atrocities happened to Aboriginal people'.<sup>765</sup> Despite the passing of nearly 20 years, she was of the view that little had changed, with Aboriginal history still not being adequately taught or understood.<sup>766</sup>

<sup>765</sup> Evidence, Ms Dennis, 9 February 2016, p 40.

<sup>766</sup> Evidence, Ms Dennis, 9 February 2016, p 40.

- 9.87** Mr Darren Kershaw, Executive Officer at Bulgarr Ngaru Medical Aboriginal Corporation, thought that ‘mainstream Australia’ still does not understand the past forcible removal policies and practices and its impacts. He submitted that more ‘education around the true impacts of what happened to people in the past’ is needed.<sup>767</sup>
- 9.88** Both Link-Up NSW and ANTaR NSW recommended that the wider community be better educated about the ‘government policies that led to the Stolen Generations’ and ‘the history and ongoing trauma of removal’.<sup>768</sup>
- 9.89** The National Sorry Day Committee said that greater awareness and acceptance in the wider community about what happened with the past forcible removal policies and practices is essential to the healing and social and emotional wellbeing of Stolen Generation survivors:

There needs to be awareness and acceptance in the wider community of the facts of forcible separation of the Stolen Generations from their families and communities. Many people still have little understanding of what took place, for how long, and how this affected people in the past and affects people today. It is still common for the term Stolen Generations to be used in the singular, as though forcible separations from family and community occurred in only one generation rather than over many, many generations. General community awareness contributes significantly to the [social and emotional wellbeing] of the Stolen Generations. It supports the Stolen Generations in their own right, and it supports their descendants in valuing Aboriginal culture for themselves and their families, so that children and young people no longer need to grow up living in two disconnected worlds, but can live in one integrated world.<sup>769</sup>

- 9.90** Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health agreed that ‘[a]wareness of the history and its impact is an important element for us all to understand’.<sup>770</sup>

### School curriculum

- 9.91** The *Bringing them home* report recommended that ‘State and Territory Governments ensure that primary and secondary school curricula include substantial compulsory modules on the history and continuing effects of forcible removal’.<sup>771</sup>
- 9.92** The New South Wales Government agreed to this recommendation in its 1999 response to the report, and advised that aspects of *Bringing them home* would be included in the following subjects:

<sup>767</sup> Evidence, Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation, 8 December 2015, p 9.

<sup>768</sup> Submission 35, Link-Up NSW Aboriginal Corporation, p 11; Submission 21, ANTaR NSW, p 5.

<sup>769</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 2, p 20.

<sup>770</sup> Evidence, Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health, 5 November 2015, p 25.

<sup>771</sup> Recommendation 8a, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 255, < [https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>



- Years K-6: Human Society and its Environment
  - Years 7-10: History, Aboriginal Studies and other syllabus documents
  - HSC online materials for Years 11 and 12: Aboriginal Studies.<sup>772</sup>
- 9.93** The New South Wales Government's response to the *Bringing them home* report also committed to the continuation of the implementation of the New South Wales Aboriginal Education Training Policy across primary, secondary and vocational education, which 'aim[ed] to improve outcomes for Aboriginal students as well as educating all students and the wider community about Aboriginal histories and cultures'.<sup>773</sup>
- 9.94** As of 2016, the Aboriginal Education and Training Policy has been fully implemented across New South Wales schools and Aboriginal history and cultural content has been further integrated in Years 7-10 English, Maths, Science and History.<sup>774</sup>
- 9.95** The Department of Premier and Cabinet advised that the Board of Studies, Teaching and Educational Standards conducted a review of the K-10 History syllabus in 2012 and added 'content on the impact of the past practices and policies on Aboriginal people, and the experiences of Aboriginal and Torres Strait Islander peoples who were forcibly removed from their families' to the syllabus.<sup>775</sup>
- 9.96** Nevertheless, several inquiry participants felt that the state's school curricula inadequately covers the history of past forcible removal policies and practices, and suggested that more needs to be done to avoid a repetition of the past.
- 9.97** The Shoalcoast Community Legal Centre commented that members of the South Coast Aboriginal community feel the education about past forcible removal policies and practices in public schools is inadequate. It said that children are not being taught about the subject and that it is only through family members passing on information that the children have been learning about it.<sup>776</sup>
- 9.98** According to Ms Rebeckah Mooney, Indigenous Board Member, New South Wales Reconciliation Council, the decision to include Aboriginal history, in particular the history of the past forcible removal policies and practices, is often the responsibility of individual schools and not enforced by broader policy.<sup>777</sup> Ms Mooney commented that many in the teaching profession were of the view that if an Aboriginal child was not enrolled in the school then it

<sup>772</sup> NSW Government, *NSW Government Response, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 12, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>773</sup> NSW Government, *NSW Government Response, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 12, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>774</sup> Submission 34, Department of Premier and Cabinet, p 8.

<sup>775</sup> Submission 34, Department of Premier and Cabinet, p 8.

<sup>776</sup> Submission 42, Shoalcoast Community Legal Centre, p 11.

<sup>777</sup> Evidence, Ms Rebeckah Mooney, Indigenous Board Member, NSW Reconciliation Council, 10 February 2016, p 21.

was not necessary to teach Aboriginal histories.<sup>778</sup> She stressed that change in this area was required as students should know this information: ‘These things happened and they need to know about them. If it is done at a state level and it is something that everyone is seeing on many levels, that is when it will shift in education’.<sup>779</sup>

- 9.99** Shoalcoast Community Legal Centre asserted that the gaps in education about past forcible removal policies and practices in state schools implied that this ‘history [wa]s not important and undermine[s] the seriousness of the damage suffered’ by Aboriginal people.<sup>780</sup> It believed the history of past forcible removal policies and practices ‘must form an essential component of our education system’, particularly for younger generations so they could understand ‘the danger to society of policies based on racial discrimination and the far reaching effects that the implementation of such policies can have on future generations and society generally’.<sup>781</sup>
- 9.100** Mr Les Farrell, a Solicitor at Shoalcoast Community Legal Centre, insisted that the wider Australian population needs to know about the suffering caused by past forcible removal policies and practices so that it does not happen again.<sup>782</sup>
- 9.101** Mr Farrell suggested that schools should include the involvement of Stolen Generation survivors or their descendants through talks ‘so that the young people who are not Aboriginal can see the hurt and pain and the suffering that this caused’.<sup>783</sup> He considered this of particular importance if further ‘racial segregation, disparity of treatment or social outcomes and the risk of repetition’ is to be avoided.<sup>784</sup>
- 9.102** Ms Cecelia Anthony, Co-Chair of the New South Wales Reconciliation Council, thought that resource kits about past forcible removal policies and practices could be helpful for teachers in delivering the history to students, especially if teachers were ‘scared’ about teaching this sensitive topic.<sup>785</sup> Ms Mooney noted that such a kit does currently exist, but suggested that more work needed to be done as kits ‘quickly become outdated’.<sup>786</sup> She acknowledged that it was ‘a hard subject to talk about and many people are worried about whether they know enough’.<sup>787</sup>
- 9.103** However it is not only schools which have the ability to educate children about past forcible removal policies and practices. As noted in chapter 5, the Coota Girls Corporation suggested that a Keeping Place at the Cootamundra Aboriginal Girls’ Training Home site would be advantageous so schools could visit and learn about the children’s training homes constituted under the *Aborigines Act 1909*.<sup>788</sup> It submitted that this could be supported by education

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<sup>778</sup> Evidence, Ms Mooney, 10 February 2016, p 21.

<sup>779</sup> Evidence, Ms Mooney, 10 February 2016, p 21.

<sup>780</sup> Submission 42, Shoalcoast Community Legal Centre, pp 11-12.

<sup>781</sup> Submission 42, Shoalcoast Community Legal Centre, p 11.

<sup>782</sup> Evidence, Mr Les Farrell, Solicitor, Shoalcoast Community Legal Centre, 2 March 2016, p 19.

<sup>783</sup> Evidence, Mr Farrell, 2 March 2016, p 19.

<sup>784</sup> Submission 42, Shoalcoast Community Legal Centre, pp 11-12.

<sup>785</sup> Evidence, Ms Anthony, 10 February 2016, p 21.

<sup>786</sup> Evidence, Ms Mooney, 10 February 2016, p 21.

<sup>787</sup> Evidence, Ms Mooney, 10 February 2016, p 21.

<sup>788</sup> Submission 36a, Coota Girls Corporation, p 47.

resources about the training homes which the Coota Girls Corporation are looking to develop.<sup>789</sup>

### **Cultural competency of the public sector**

- 9.104** Another important component of reparations identified by inquiry participants was cultural awareness and cultural competency within the public sector. Participants questioned the adequacy of current cultural awareness training in the public sector, particularly with reference to the impacts experienced by members of the Stolen Generations and their descendants.
- 9.105** The National Sorry Day Committee noted that ‘general cultural training is not sufficient to equip service providers with specialist Stolen Generations knowledge’.<sup>790</sup>
- 9.106** Ms Brenda Mitchell, Senior Transitional Officer at the Community Restorative Centre, agreed that more cultural awareness and cultural sensitivity was needed within government departments and for public sector staff working closely with Aboriginal clients.<sup>791</sup>
- 9.107** Ms Spencer argued that the completion of a short course on cultural awareness was not enough, with many public sector staff still possessing a ‘general ignorance’ of Aboriginal history and its impacts on communities today.<sup>792</sup>
- 9.108** The committee heard from Mr Ricco Lane, an Aboriginal Mental Health Program Worker from the Walgett Aboriginal Medical Service, that he was yet to meet a non-Aboriginal health worker who was trained in cultural awareness, particularly around past forcible removal policies and practices. When asked if he thought such training would make a difference in helping non-Aboriginal health workers understand the issues in their professional capacity, Mr Lane replied ‘[a]s long as they believe in the sadness and trauma that our people have gone through. It is not about a piece of paper that you stick on the wall’.<sup>793</sup>
- 9.109** Similarly, Mr Farrell emphasised that genuine cultural awareness involves more than just attending a training course:

It needs to be that the Aboriginal people can trust that the NSW Government is not just putting forward tokenistic cultural awareness training so that workers can tick the box and say, “Well, we have had cultural awareness training so you cannot tell us that we are not treating these people culturally appropriately”.<sup>794</sup>

<sup>789</sup> Submission 36a, Coota Girls Corporation, p 47.

<sup>790</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), Appendix 2, p 3, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>791</sup> Evidence, Ms Brenda Mitchell, Senior Transitional Officer, Community Restorative Centre, 17 February 2016, p 17.

<sup>792</sup> Evidence, Ms Spencer, 18 February 2016, p 5.

<sup>793</sup> Evidence, Mr Ricco Lane, Aboriginal Mental Health Program Worker, Walgett Aboriginal Medical Service, 18 February 2016, p 46.

<sup>794</sup> Evidence, Mr Farrell, 2 March 2016, p 16.

**9.110** Particular concerns were raised about a lack of cultural sensitivity and understanding exercised by staff of the Department of Family and Community Services in regard to child protection matters.

**9.111** Women's Legal Services said that through their advice and casework they have seen examples of poor cultural competence and understanding among Family and Community Services staff. It added that using 'western standards' to make judgements can be problematic:

Placing western standards on Aboriginal and Torres Strait Islander community and family is not appropriate or helpful. There are many things to consider in determining what is best for the child including issues such as identity, belonging, community, Country connection and wellbeing.<sup>795</sup>

**9.112** Jumbunna Indigenous House of Learning stated that discrimination and paternalism is 'alive and well' in child protection departments today, even though the issues were identified over 15 years ago during the *Bringing them home* inquiry. It said that cultural biases can affect child protection assessments and reports, and are used to 'justify more interventionist decisions by child welfare and juvenile justice agencies' today in relation to child removals, adoption and custody.<sup>796</sup>

**9.113** Ms Simone Czech from the Department of Family and Community Services advised that all of the department's staff participate in a caseworker development program, which has modules about working with Aboriginal children and their families.<sup>797</sup> Aboriginal frontline caseworkers are also employed to help the department operate in a culturally appropriate manner. Ms Czech said:

Somewhere around 15 per cent of our frontline caseworker workforce is now Aboriginal. That is a significant change in the cultural mix and our capacity to work with families by having Aboriginal people who can work with families and often with families from communities they know very well.<sup>798</sup>

**9.114** In addition, staff in the Joint Investigation and Response Team attend a workshop on interviewing children and young people from Aboriginal communities, which touches on historical aspects of past forcible removal policies and practices and how this impacts on children and young peoples' willingness to engage with departmental staff and police officers.<sup>799</sup>

**9.115** The committee was informed that two other cultural competence programs are also available to Family and Community Services staff – Building Cross Cultural Competence for Managers, which assists managers in understanding the cultural needs of Aboriginal staff, and Aboriginal Cultural Awareness, which is a six week e-learning program for frontline staff.<sup>800</sup> Further, the

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<sup>795</sup> Submission 33, Women's Legal Services, pp 3-4.

<sup>796</sup> Submission 8, Jumbunna Indigenous House of Learning, p 6.

<sup>797</sup> Evidence, Ms Simone Czech, Director, Safe Home for Life (Child Safety and Permanency), Department of Family and Community Services, 5 November 2015, p 26.

<sup>798</sup> Evidence, Ms Czech, 5 November 2015, p 22.

<sup>799</sup> Answers to supplementary questions, Department of Family and Community Services, 21 April 2016, p 5.

<sup>800</sup> Answers to supplementary questions, Department of Family and Community Services, p 5.

department has a Service Charter for Aboriginal clients and Care and Protection Standards, one of which is an expectation that staff will ‘work in a way that is culturally responsive and sensitive to the continued impact of the Stolen Generations’.<sup>801</sup>

- 9.116** The importance of cultural competency was highlighted by Mr Michael Woodhouse, Executive Director of Strategic Policy at the Department of Family and Community Services, who stated:

It is about trying to have a much deeper and more detailed understanding about some of those issues that manifested into generational trauma and how that is able to be translated into practice.<sup>802</sup>

- 9.117** In regard to other departments, the Department of Premier and Cabinet stated that New South Wales Government agencies have a range of frameworks and policies designed to develop cultural competency and understanding of issues faced by Aboriginal people and communities in the public sector workforce.<sup>803</sup>

- 9.118** For example, the committee was informed about NSW Health’s *Aboriginal Cultural Training Framework: Respecting the Difference*, which develops cultural competencies in delivering health services to Aboriginal people via eLearning and face-to-face modules.<sup>804</sup> The framework is designed to provide all NSW Health staff with a ‘knowledge and understanding of the diverse culture, customs and protocols of Aboriginal communities in NSW’.<sup>805</sup>

- 9.119** The *Respecting the Difference* framework provides NSW Health workers with a valuable ‘insight into why many Aboriginal people do not comfortably engage with health care providers, and to identify and acknowledge the discrimination, access issues and inequalities experienced by Aboriginal people’.<sup>806</sup> Dr Chant informed the committee that ‘over 90,000 staff had completed the eLearning module and 23,116 had completed the Face to Face component’.<sup>807</sup>

- 9.120** Dr Chant considered the training of all NSW Health staff in cultural competency as ‘important because ... that is one of the key challenges of the Stolen Generation in respect of the legacy issues about their fears of engaging with our service’.<sup>808</sup>

- 9.121** Dr Chant added that the department trains its staff in cultural competency to combat these concerns and is gaining more capacity to have complex discussions with its workforce as ‘we

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<sup>801</sup> Submission 34, Department of Premier and Cabinet, p 7.

<sup>802</sup> Evidence, Mr Michael Woodhouse, Executive Director, Strategic Policy, Department of Family and Community Services, 5 November 2015, p 25.

<sup>803</sup> Submission 34, Department of Premier and Cabinet, p 8.

<sup>804</sup> Answers to question on notice, Dr Kerry Chant, Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health, 4 December 2015, p .; Answers to questions on notice, the Hon Leslie Williams MP, Minister for Aboriginal Affairs, 2 December 2015, p 4;

<sup>805</sup> Answers to question on notice, Dr Chant, 4 December 2015, p 9.

<sup>806</sup> Answers to question on notice, Dr Chant, 4 December 2015, p 9; Submission 34, Department of Premier and Cabinet, pp 8-9.

<sup>807</sup> Answers to question on notice, Dr Chant, 4 December 2015, p 9.

<sup>808</sup> Evidence, Dr Chant, 5 November 2015, p 25.

have to do a lot better at reducing the disparity and health outcomes for Aboriginal and non-Aboriginal people'.<sup>809</sup>

**9.122** The committee was also informed that the New South Wales Justice cluster is 'working to improve the delivery of Aboriginal cultural awareness training' for legal professionals to improve working relationships with Aboriginal clients and communities.<sup>810</sup>

**9.123** The New South Wales Minister for Aboriginal Affairs, Minister Williams, further noted that the State Government's *Aboriginal Employment Strategy* includes 'concrete actions to strengthen cultural competence and understanding in the NSW public sector'.<sup>811</sup>

### ***Committee comment***

**9.124** The committee acknowledges the value of greater public awareness of past forcible removal policies and practices and the continuing impacts of these policies and practices on the healing process for Stolen Generation survivors and their families and communities.

**9.125** We note that the New South Wales Government has fully implemented the Aboriginal Education Training Policy and that content about past forcible removal policies and practices have been added to the K-10 History syllabus. However, the Aboriginal Education and Training Policy does not appear to necessarily include information about past forcible removal policies and practices, and presumably not all students undertake History units.

**9.126** Given that some inquiry participants feel that education about past forcible removal policies and practices in primary and secondary schools is still lacking, the committee recommends that the New South Wales Government ensure that the history of past forcible removal policies and practices and its continuing impacts on Aboriginal people are compulsory modules in primary and secondary curricula. The committee would also support the government to encourage private education providers and universities to educate their students about past forcible removal policies and practices.

**9.127** The committee also supports the use of recorded testimonies from members of the Stolen Generations to be used for educational purposes. We would encourage the Department of Education to incorporate the use of these testimonies into educational resources and teaching materials and where possible, to include local Stolen Generation survivors and/or organisations in the delivery of education on these issues.

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### **Recommendation 28**

That the NSW Government ensure that the history of past forcible removal policies and practices and its continuing impacts on Aboriginal people are compulsory modules in primary and secondary school curricula, and encourage private providers to do the same.

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<sup>809</sup> Evidence, Dr Chant, 5 November, pp 10-11.

<sup>810</sup> Submission 34, Department of Premier and Cabinet, p 9.

<sup>811</sup> Answers to questions on notice, Minister Williams, 2 December 2015, pp 3-4.

- 9.128** In regard to the cultural competency of the public sector, the committee acknowledges the range of frameworks and policies regarding Aboriginal cultural awareness training across government agencies, yet note that concerns were raised about the adequacy of this training – particularly in regard to specialist Stolen Generations knowledge. We are particularly concerned by the feedback regarding the cultural competence of some staff in the Department of Family and Community Services.
- 9.129** The committee believes that Aboriginal cultural awareness training is essential for all public sector staff, and therefore recommends that the New South Wales Government ensure that staff at all agencies undergo such training, and that the training include mandatory information about the impacts of past forcible removal policies and practices on Aboriginal communities. As part of this, it is essential that the government engage Aboriginal people in the design and delivery of training programs, including Stolen Generation survivors where possible.
- 9.130** The committee also recognises that there is a need for broader community education about the Stolen Generations and the impacts of past forcible removal policies and practices. It believes that community education resources should be developed for inclusion in public libraries, to promote better community awareness and understanding of the issues.

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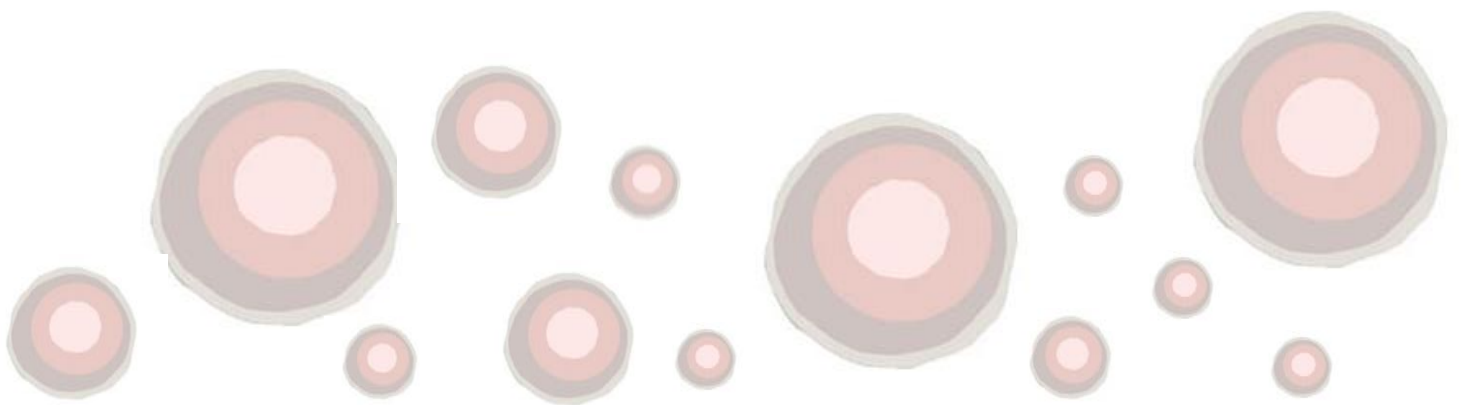
**Recommendation 29**

That the NSW Government ensure that all public sector staff undertake Aboriginal cultural awareness training, and that the training include mandatory information about the impacts of past forcible removal policies and practices on Aboriginal communities.

**Recommendation 30**

That the NSW Government collaborate with community organisations to develop educational resources about the Stolen Generations for the broader community, with the resources to be made available in public libraries.

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## Chapter 10 Avoiding repetition

The NSW Government must ensure that its policies do 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.<sup>812</sup>

Past forcible removal policies and practices have had a devastating impact on Stolen Generation survivors, their families and Aboriginal communities. In light of this, it is critical that these practices not be repeated. Against this context, this chapter examines the overrepresentation of Aboriginal children in the care and protection system. It considers mechanisms which have been established to ensure that Aboriginal children either remain with their family where possible, or if removed, maintain a connection to culture, community and Country. It also discusses the importance of self-determination for Aboriginal and Torres Strait Islander people in the child protection context.

### Overrepresentation of Aboriginal children

- 10.1** The *Bringing them home* report documented high rates of Aboriginal and Torres Strait Islander children and young people in care, across all states and territories. To address this problem, it made a number of recommendations, all of which recognised the importance of family, community and culture for Aboriginal and Torres Strait Islander children and the importance of this being taken into account when decisions are made about children's care.<sup>813</sup>
- 10.2** However, despite it being nearly 20 years since the *Bringing them home* report and recommendations were released, Aboriginal children remain overrepresented in the care and protection system in New South Wales. In the *Social Justice and Native Title Report 2015* Mr Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, stated:
- The overrepresentation of Aboriginal and Torres Strait Islander children and young people in the child protection system is one of the most pressing human rights challenges facing Australia today.<sup>814</sup>
- 10.3** Recent statistics show that there are still high rates of Aboriginal children being reported to the Department of Family and Community Services for neglect and high rates of Aboriginal children being removed from their families and placed in out-of-home care.
- 10.4** Mr Tim Ireland, Chief Executive Officer of Aboriginal Child, Family and Community Care State Secretariat (AbSec), informed the committee that Aboriginal families are '7.3 times more

<sup>812</sup> Submission 17, NSW Aboriginal Land Council, p 8.

<sup>813</sup> Recommendations 44 – 52 and 54, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 245, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>814</sup> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015*, p 138, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

likely to receive child protection services' and Aboriginal children are '9.7 times more likely to be in out of home care'.<sup>815</sup>

**10.5** In fact, as at 30 June 2015, 37 per cent of children and young people in out-of-home care were Aboriginal, which was a slight increase on previous years.<sup>816</sup> The Department of Family and Community Services predict this will rise by about five per cent over the coming year due to 'a range of economic and societal factors' such as a population increase, drug abuse and heightened awareness of risk of harm issues in the community.<sup>817</sup>

**10.6** Reflecting on the disproportionate number of Aboriginal children and families engaging with the child protection system, the Public Interest Advocacy Centre (PIAC) noted that although the rates of non-Aboriginal children in out-of-home care have stabilised over the past decade, the rates for Aboriginal children have actually increased:

There is a disturbing trend of continued disproportionality of the removal of Aboriginal and Torres Strait Islander children compared with that of non-Aboriginal children. Since the BTH report was published, the rate of Aboriginal and Torres Strait Islander children in foster, kinship and residential care has approached one in ten, 11 times higher than non-Aboriginal children. This figure has steadily increased over the past decade, during which time the rates of non-Aboriginal children being placed in out-of-home care has stabilised.<sup>818</sup>

**10.7** The high rate of removal of Aboriginal children from their families has led some stakeholders to refer to this as the 'new Stolen Generation' or the 'Stolen Generations of the 20<sup>th</sup> century'.<sup>819</sup>

**10.8** AbSec stated that the reference to an 'emerging Stolen Generation' stems from the sheer scale of removals taking place and the lack of self-determination in the child welfare system with respect to Aboriginal children:

Arguably the current crisis in Aboriginal child protection in NSW represents a continuation of the Stolen Generations or emerging second Stolen Generation, both in the scale of Aboriginal children being forcibly removed with the prospect of permanent legal orders placing children out of reach of their Aboriginal family and community, and the lack of genuine community participation and self-determination across the child protection system.<sup>820</sup>

**“Aboriginal children continue to be removed from their families in New South Wales and nationally at extremely high levels. Some suggest we are facing a new Stolen Generations today”**

Ms Rebeckah Mooney  
10 February 2016

<sup>815</sup> Evidence, Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, 9 February 2016, p 25.

<sup>816</sup> Evidence, Mr Michael Woodhouse, Executive Director, Strategic Policy, Department of Family and Community Services, 5 November 2015, p 17.

<sup>817</sup> Evidence, Ms Simone Czech, Director, Safe Home for Life (Child Safety and Permanency), Department of Family and Community Services, 5 November 2016, p 17.

<sup>818</sup> Submission 16, Public Interest Advocacy Centre, p 21.

<sup>819</sup> Submission 21, ANTaR NSW, p 6; Submission 8, Jumbunna Indigenous House of Learning, p 1.

<sup>820</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 14.

- 10.9** PIAC commented that although Aboriginal children are not ‘stolen in the sense that members of the Stolen Generations were deliberately removed under a national policy of forcible removals and assimilation’, the high rates still indicate the ‘continued phenomenon’ of disconnection from families and communities.<sup>821</sup>
- 10.10** Expressing a similar view, Mr Richard Weston, Chief Executive Officer of the Healing Foundation, emphasised that the impacts of removing Aboriginal children from their family today are just the same as what the Stolen Generations children experienced under past forcible removal policies and practices:

It is true that the number of children going into care is increasing and that Aboriginal children are over-represented in that system. I baulk at calling it another Stolen Generation, although I know that other people do not. The circumstances are different. What we can predict based on what we know about the impact on Stolen Generations—children removed from their families, culture and communities—is that it will have the same impact on children going into care today.<sup>822</sup>

### Underlying causes

- 10.11** Past forcible removal policies and practices and intergenerational trauma have impacted Aboriginal families and contributed to the overrepresentation of Aboriginal children in the care and protection system. This was noted in the *Bringing them home* report, and acknowledged by several stakeholders, including AbSec, Kingsford Legal Centre, the New South Wales Aboriginal Land Council and Legal Aid NSW.<sup>823</sup> The issue of intergenerational trauma was considered in detail in chapter 3.
- 10.12** Ms Kaleesha Morris, an Aboriginal Access Worker with the Kingsford Legal Centre, stated that this overrepresentation ‘is indicative of compounded intergenerational trauma and a lack of early intervention and prevention support services for families, including members of the Stolen Generations’.<sup>824</sup>
- 10.13** As noted in chapter 3, intergenerational trauma in Aboriginal communities and families has affected peoples’ sense of identity, cultural connection and capacity to parent and build strong and cohesive family relationships.
- 10.14** Aboriginal families also experience significant socioeconomic disadvantage, which is related to higher rates of Aboriginal children being reported for neglect. The issue of socioeconomic disadvantage in Indigenous communities, and ways to overcome it, was examined in chapter 8.
- 10.15** In the *Social Justice and Native Title Report 2015*, the Aboriginal and Torres Strait Islander Social Justice Commissioner noted the connection between higher rates of neglect and lower socioeconomic status for Aboriginal and Torres Strait Islander communities, ‘where social

<sup>821</sup> Submission 16, Public Interest Advocacy Centre, pp 20-21.

<sup>822</sup> Evidence, Mr Richard Weston, Chief Executive Officer, Healing Foundation, 9 February 2016, p 19.

<sup>823</sup> Evidence, Mr Ireland, 9 February 2016, p 25; Evidence, Ms Kaleesha Morris, Aboriginal Access Worker, Kingsford Legal Centre, University of New South Wales, 10 February 2016, p 11; Submission 17, NSW Aboriginal Land Council, p 6; Submission 32, Legal Aid NSW, p 21.

<sup>824</sup> Evidence, Ms Morris, 10 February 2016, p 11.

disadvantage persists around housing, access to services and unemployment'. The Commissioner observed that malnutrition or 'failure to thrive' is a key reason behind the removal of Aboriginal children from their families today, particularly in remote communities.<sup>825</sup>

- 10.16** Yet, Jumbunna Indigenous House of Learning suggested that the child protection system rarely recognises the correlation between 'neglect' and systemic poverty.<sup>826</sup>
- 10.17** The *Social Justice and Native Title Report* also highlighted that family violence is an issue in Aboriginal and Torres Strait Islander communities, and that this is likely to affect the safety and wellbeing of Aboriginal and Torres Strait Islander children.<sup>827</sup>
- 10.18** However, despite the connection between past forcible removal policies and practices and socioeconomic disadvantage and family violence in Indigenous communities, the 2015 *Bringing them home: Scorecard Report* noted that \$3.6 million has recently been withdrawn by the Federal Government from the Indigenous Family Violence Prevention Legal Services, which was a program aimed at dealing with cycles of violence in Aboriginal communities.<sup>828</sup>

***Committee comment***

- 10.19** The committee is deeply concerned about the overrepresentation of Aboriginal children and young people in the care and protection sector. We recognise that past forcible removal policies and practices have influenced this situation, causing social and economic disadvantage in affected Aboriginal families and communities. This in turn has left many Aboriginal families and parents struggling, often without the means to escape poverty or the skills to parent effectively.
- 10.20** Unfortunately, this has brought many of these families into contact with the Department of Family and Community Services, and in some cases, led to an Aboriginal child or young person being removed and placed in out-of-home care.
- 10.21** While the committee recognises that in serious cases a child or young person must be removed from their family for their own safety and wellbeing, we question whether enough is being done in the first instance to ensure that removal is a last resort.
- 10.22** The committee will therefore turn now to consider early intervention programs and family support services.

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<sup>825</sup> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015*, p 141, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

<sup>826</sup> Submission 8, Jumbunna Indigenous House of Learning, p 6.

<sup>827</sup> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015*, p 142, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

<sup>828</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, p 9.

## Early intervention programs

- 10.23** The importance of early intervention and support services in preventing Aboriginal children and young people from being removed from their family was emphasised to the committee, particularly in light of the effects of intergenerational trauma. Recognising this impact, the *Bringing them home* report recommended the establishment of Indigenous based parenting and well-being programs to help support families.<sup>829</sup>
- 10.24** Noting the continued impacts of past forcible removal policies and practices on Aboriginal people, Women's Legal Services said that it is 'essential that parents have access to strengths-based parenting skills mentoring programs', given the cycle of removal and intergenerational trauma that has meant so many people have missed out on learning parenting skills from their family members.<sup>830</sup>
- 10.25** The Department of Family and Community Services advised that it will be investing \$337 million in 2015-16 for community, early intervention and intensive services to support all vulnerable children, young people, families and communities, including Aboriginal families.<sup>831</sup> This includes funding for a range of programs including Aboriginal Intensive Family Based Services, Intensive Family Preservation/Intensive Family Support, Intensive Support Services and Brighter Futures, all programs which aim to work with vulnerable families to increase parenting capacity and family well-being.<sup>832</sup>
- 10.26** The department also outlined a range of its investments in early intervention programs and strategies for Aboriginal families, including:
- training for 48 Aboriginal staff in an evidence based parenting skills program called Triple P<sup>833</sup>
  - training for Aboriginal Intensive Family Based Services caseworkers in cognitive and behavioural techniques with families to increase parenting capacity and improve family well-being
  - funding for a network of targeted early intervention services across the state, including funding to services that would assist a large number of Aboriginal clients.<sup>834</sup>
- 10.27** Another program that helps families in the early stages of a care and protection matter is Family Group Conferencing, which is a family focused form of alternative dispute resolution.

<sup>829</sup> Recommendation 36, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 245, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>830</sup> Submission 33, Women's Legal Services, p 4.

<sup>831</sup> Answers to questions on notice, Department of Family and Community Services, 21 April 2016, p 3.

<sup>832</sup> Answers to questions on notice, Department of Family and Community Services, p 2.

<sup>833</sup> Triple P is the name of the Positive Parenting Program, a program that provides parents with strategies to help build strong and healthy relationships within the family.

<sup>834</sup> Answers to questions on notice, Department of Family and Community Services, p 2.

It provides families with an opportunity to make decisions about how they will ensure a child or young person is kept safe.<sup>835</sup>

- 10.28** The department advised that Aboriginal Family Group Conferencing is being piloted by AbSec in three districts – Central Coast, Illawarra Shoalhaven and the Northern district. While funding was due to end in October 2015, it was rolled over until February 2016 to allow AbSec to conclude the pilot.<sup>836</sup>
- 10.29** The department said that AbSec indicated that progress with the pilot program was slow due to difficulties in recruiting appropriate facilitators and in developing their capacity through training. It was also affected by delays due to the need to re-recruit new staff. As to the future of this program, the department said that ‘FACS will consider future opportunities to incorporate AbSec’s AFGC [Aboriginal Family Group Conferencing] model into the broader scope of work being undertaken in family group conferencing’.<sup>837</sup>
- 10.30** Several stakeholders called for even greater investment in early intervention programs and services, with a focus on parenting skills. Both the Indigenous Issues Committee of the Law Society of New South Wales and the Kingsford Legal Centre advocated in favour of an increase in early intervention strategies and services on the basis that this may help to address some of the drivers leading to the removal of Aboriginal children from their families.<sup>838</sup>
- 10.31** Women’s Legal Services noted that the New South Wales Government has spent more on out-of-home care services than on early intervention services, which they viewed as a concern:
- There needs to be much greater emphasis on early investment. We note with concern, for example, that ‘in 2013-14, combined real expenditure on intensive family support and family support programs was \$6.7 million, compared to \$2.1 billion for out-of-home care services’.<sup>839</sup>
- 10.32** While the Department of Family and Community Services acknowledged that there has been a substantial investment in the out-of-home care system over the last couple of years, Mr Michael Woodhouse, Executive Director, Strategic Policy, Department of Family and Community Services, advised that the department is currently reviewing the funding of early intervention services, with the Minister recently releasing a discussion paper as part of a consultation strategy with the sector.<sup>840</sup>

<sup>835</sup> Department of Family and Community Services, *Safe Home for Life: Alternative dispute resolution*, (accessed 26 April 2016), <<http://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/safe-home-for-life/resolving-contact-disputes-using-alternative-dispute-resolution>>

<sup>836</sup> Answers to questions on notice, Department of Family and Community Services, p 3.

<sup>837</sup> Answers to questions on notice, Department of Family and Community Services, p 3.

<sup>838</sup> Submission 28, Law Society of NSW, Attachment 1, pp 3-5; Submission 43, Kingsford Legal Centre, p 10.

<sup>839</sup> Submission 33, Women’s Legal Services, p 4, citing Senate Community Affairs References Committee, Australian Parliament, *Out of home care*, (August 2015), p 121.

<sup>840</sup> Evidence, Mr Woodhouse, 5 November 2015, p 27.

- 10.33** Mr Woodhouse said that the consultation process is looking at how early intervention funds are being allocated, so as to ensure ‘that those funds are being used for interventions that deliver the best results’.<sup>841</sup>
- 10.34** The Department of Family and Community Services is currently collating this feedback and plans to incorporate it in draft reform directions which will be released in 2017.<sup>842</sup>
- 10.35** The committee heard that one issue affecting the engagement of Aboriginal families in early intervention services is the lack of trust many Aboriginal people have for the Department of Family and Community Services, and more broadly, the government and legal system.
- 10.36** Ms Morris said there is an ‘overwhelming sense of suspicion and fear that if they were to approach legal authorities they might be considered unfit’.<sup>843</sup>
- 10.37** This issue was also highlighted by the Indigenous Issues Committee of the Law Society of New South Wales, which stated that there is a ‘historical distrust’ between Indigenous people and the Department of Family and Community Services. The Indigenous Issues Committee noted the conflict between the department’s investigative and removal role, and its therapeutic role in supporting families, in explaining that Aboriginal parents are afraid to engage in the early stages for fear of having their child removed.<sup>844</sup>
- 10.38** Women’s Legal Services similarly observed that there is a ‘real fear’ in Aboriginal communities that by engaging with early intervention programs and services, children will be removed from their parents’ care. It recommended that there be better community education about supportive programs for Aboriginal families.<sup>845</sup>
- 10.39** Greater involvement of Aboriginal organisations in the early stages of care and protection issues may also help to meet the needs of Aboriginal families better. The Indigenous Issues Committee of the Law Society of New South Wales, in a submission to the Family Law Council in 2015, suggested that the engagement of Aboriginal organisations early on may prevent removal or provide for meaningful pathways to restoration. It also observed that Aboriginal organisations tend to be involved in out-of-home care arrangements, rather than in the early stages of care and protection or family law matters.<sup>846</sup>
- 10.40** A number of other issues were also raised in relation to the ability of Aboriginal parents to access early intervention services. Women’s Legal Services reported incidences where the Department of Family and Community Services had failed to offer parents support and assistance before a child had been removed.<sup>847</sup>

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<sup>841</sup> Evidence, Mr Woodhouse, 5 November 2015, p 27.

<sup>842</sup> Answers to questions on notice, Department of Family and Community Services, p 3.

<sup>843</sup> Evidence, Ms Morris, 10 February 2016, p 11.

<sup>844</sup> Correspondence from Mr Michael Tidball, Chief Executive Officer, Law Society of New South Wales, to Professor Rhoades, Family Law Council Secretariat, Attorney General’s Department, 7 August 2015, pp 3-5.

<sup>845</sup> Submission 33, Women’s Legal Services, p 5.

<sup>846</sup> Correspondence from Mr Tidball to Professor Rhoades, 7 August 2015, p 7.

<sup>847</sup> Submission 33, Women’s Legal Services, p 5.

- 10.41** Women’s Legal Services also said that there were cases where parents were not even aware that they were being monitored by the Department of Family and Community Services until a child was removed from their care, thereby denying them the opportunity to engage in early intervention services.<sup>848</sup>
- 10.42** In addition, the Indigenous Issues Committee of the Law Society of New South Wales noted that referrals to programs such as the New Parent and Infant Network Program<sup>849</sup> are only being made by the department after a child has been removed, as a result of funding changes. Given the program’s preventative nature, it argued that this approach is ‘counter-intuitive’ as ‘referrals should be made to therapeutic early intervention programs **before** removal in order to prevent removal’ [emphasis added].<sup>850</sup>

*Committee comment*

- 10.43** The committee recognises the value of early intervention services and programs in improving outcomes for Aboriginal children and families. We note, however, concerns that early intervention services may not be offered to Aboriginal families prior to removal of children. The committee is also concerned that some individuals may be reluctant to engage in these programs due to fear and mistrust they have for government employees. The committee believes that these barriers need to be addressed, given that engagement in these programs can potentially prevent an Aboriginal child or young person from being removed from their family.
- 10.44** The committee therefore recommends that the Department of Family and Community Services, in consultation with Aboriginal organisations and communities, identify strategies to promote early intervention services and programs that aim to prevent Aboriginal children and young people being removed from their family. We also support specific intervention strategies for Stolen Generation survivors and their family members, given the intergenerational impacts of past forcible removal policies and practices.

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**Recommendation 31**

That the Department of Family and Community Services, in consultation with Aboriginal organisations and communities, identify strategies to promote early intervention services and programs that aim to prevent Aboriginal children and young people being removed from their family.

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<sup>848</sup> Submission 33, Women’s Legal Services, p 5.

<sup>849</sup> The New Parent and Infant Network Program is a preventative, therapeutic program that works intensively with families facing potential or actual child protection issues.

<sup>850</sup> Correspondence from Mr Tidball to Professor Rhoades, 7 August 2015, p 4.



## Aboriginal and Torres Strait Islander Child Placement Principles

- 10.45** When the Department of Family and Community Services makes a decision to remove an Aboriginal child from their parents, it must comply with the Aboriginal and Torres Strait Islander Child Placement Principles, encapsulated in section 13 of the *Children and Young Persons (Care and Protection) Act 1998*.
- 10.46** These principles set out the preferred order of placement for an Aboriginal child who has been removed from their parents, with the preferred order being the child's extended family (kin), followed by the child's Indigenous community (kith), and then other Indigenous people.<sup>851</sup> These principles are incorporated in legislation across all states and territories in Australia.<sup>852</sup>
- 10.47** The Department of Premier and Cabinet advised that the practical application of these principles in New South Wales is supported by Aboriginal Case Consultation panels which work with staff to identify local networks and families that are connected to the Aboriginal child or young person.<sup>853</sup>
- 10.48** The Department of Family and Community Services also provides funding to the Family Link Program, operated by Link-Up NSW, which assists Aboriginal children and young people who are at risk of removal or who have already been removed by helping to find relatives who may be able to provide kinship placement options.<sup>854</sup>
- 10.49** During this inquiry, a number of issues were raised in relation to the effectiveness of the Aboriginal and Torres Strait Islander Child Placement Principles in ensuring a child remains with family or kin and connected to culture.
- 10.50** Legal Aid NSW noted that sometimes the preferred order of placement does not necessarily operate to ensure an Aboriginal child remains connected to their traditional culture, due to the child being placed with 'the "white" side of the family, an Aboriginal carer who is not from the child's own cultural group or kin who may have been disconnected from their traditional culture'.<sup>855</sup>
- 10.51** Legal Aid NSW also highlighted that the preferred placement order may not work effectively if there is a shortage of Indigenous carers. It noted two factors that can contribute to this shortage – the trauma and disadvantage associated with past forcible removal policies and practices that continue to affect adult Aboriginal and Torres Strait Islanders today, and some Aboriginal people not wanting to be associated with the 'welfare' system because of past government practices.<sup>856</sup>

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<sup>851</sup> Submission 32, Legal Aid NSW, p 20.

<sup>852</sup> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Reprt 2015*, p 156, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

<sup>853</sup> Submission 34, Department of Premier and Cabinet, p 6.

<sup>854</sup> Submission 34, Department of Premier and Cabinet, p 6.

<sup>855</sup> Submission 32, Legal Aid NSW, p 20.

<sup>856</sup> Submission 32, Legal Aid NSW, p 20.

- 10.52** There were also concerns raised about the Department of Family and Community Services' level of compliance and reporting in relation to the Aboriginal and Torres Strait Islander Child Placement Principles.
- 10.53** According to AbSec, New South Wales reported the highest level of compliance compared with other states and territories, with 46.1 per cent of Aboriginal children in out-of-home care being placed with Aboriginal relatives or kin, 19.7 per cent placed with an Aboriginal carer and 15.6 placed with non-Aboriginal relatives or kin.<sup>857</sup>
- 10.54** However, Mr Ireland was sceptical of this data, and the genuine commitment and compliance to these principles by the Department of Family and Community Services. He said that from his perspective 'it does not appear that adequate application of the placement principles are being followed, particularly from an Aboriginal community expectation and point of view'.<sup>858</sup>
- 10.55** Mr Ireland expressed concern that the compliance rates do not necessarily reflect whether the best outcome for an Aboriginal child was achieved. He suggested that it was more of a 'tick-a-box' process rather than a genuine approach:
- As an Aboriginal sector we look at, on the one hand, you have compliance with the Aboriginal child placement principles up there and boasted across the country as being quite high but on the other hand that is just a compliance kind of thing so you tick a box, 'Done'; you have looked at it, kind of thing, and you can move on, whereas what we need to really look at is the decision-making thinking around: 'Well, did you really look at number one here and is that the right circumstances for the Aboriginal child? Is there really no other family or extended family that could take the Aboriginal child?' and then move on and on down the list and show that thinking.<sup>859</sup>
- 10.56** AbSec contended that the principles were being treated simply as a 'placement hierarchy', with compliance rates unable to show whether an appropriate decision making process was actually followed regarding the safety, welfare and wellbeing of the child.<sup>860</sup>
- 10.57** This issue was also raised by the Aboriginal and Torres Strait Islander Social Justice Commissioner, who said that the 'data does not tell us if or to what extent Aboriginal and Torres Strait Islander organisations and families participate in decision making about the placement of Aboriginal and Torres Strait Islander children'.<sup>861</sup>
- 10.58** In Queensland, an audit of the Aboriginal and Torres Strait Islander Child Placement Principles was undertaken in 2012-13 which revealed that there had only been proper consideration of each step within the order of preferred placements in 13 per cent of cases. The audit considered factors such as whether Aboriginal community controlled organisations were engaged, how the placement options were applied, how the views of the child's

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<sup>857</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 5.

<sup>858</sup> Evidence, Mr Ireland, 9 February 2016, p 29.

<sup>859</sup> Evidence, Mr Ireland, 9 February 2016, p 27.

<sup>860</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 5.

<sup>861</sup> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Reprt 2015*, p 157, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

community were incorporated and how significant relationships with family, community, culture and Country would be retained.<sup>862</sup>

- 10.59** In light of the results from Queensland’s audit, AbSec argued that the New South Wales compliance data may not accurately reflect what is occurring: ‘They are not showing the detail, the disaggregated kind of detail that is needed to determine the best outcome for the Aboriginal child’.<sup>863</sup>
- 10.60** Ms Elizabeth Rice, co-author of the 2015 *Bringing them home: Scorecard Report*, had the same view, arguing that there is a lack of transparency around the process to place a child. She raised an additional concern with the principles on the basis that they are not mandatory and that they ‘in effect have a let-out clause’ because there are no penalties if they are not followed.<sup>864</sup>
- 10.61** To identify whether the application of the principles is working effectively, AbSec recommended that New South Wales undertake a similar audit process to Queensland.<sup>865</sup>
- 10.62** The Department of Family and Community Services acknowledged that other states are doing better in measuring compliance with the principles, however, it explained it is limited by its client management system as it requires manual entry of data for this type of information, which can make reporting more difficult.<sup>866</sup>
- 10.63** To improve in this area, the department advised that it is investing in the redesign of a new client management system entitled ‘Child Story’, which will provide an opportunity to build in a measurement tool regarding the Aboriginal placement principles. The department said that planning for this project will occur ‘in the coming months’.<sup>867</sup>

#### *Committee comment*

- 10.64** The committee acknowledges the importance of and supports the Aboriginal and Torres Strait Islander Child Placement Principles. Not only do they aim for Aboriginal children and young people to be cared for by their own families and communities where possible, they also aim for Aboriginal children to remain connected to their family, community and culture.
- 10.65** The committee is concerned, however, about compliance with these principles. If the principles are simply being used as a ‘placement hierarchy’ and are tokenistic, with no genuine commitment towards them, then this would be completely unsatisfactory. Unfortunately the data does not paint a clear picture about whether or not this is the case, which itself is a problem.
- 10.66** Although the Department of Family and Community Services explained that reporting against the principles is difficult due to limitations with its client management system, it is troubling that our state is behind others in gaining a better insight into compliance with these principles.

<sup>862</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 5.

<sup>863</sup> Evidence, Mr Ireland, 9 February 2016, p 29.

<sup>864</sup> Evidence, Ms Elizabeth Rice, Principal Consultant, Rice Consulting, 9 February 2016, p 14.

<sup>865</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 5.

<sup>866</sup> Answers to questions on notice, Department of Family and Community Services, p 2.

<sup>867</sup> Answers to questions on notice, Department of Family and Community Services, p 2.

Given the results of the Queensland audit in 2012-13, it would be interesting to see how New South Wales is really performing in this area. Therefore, the committee recommends that the Department of Family and Community Services commission an independent audit of adherence to the Aboriginal and Torres Strait Islander Child Placement Principles, with a view to improving compliance and reporting.

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**Recommendation 32**

That the Department of Family and Community Services commission an independent audit of adherence to the Aboriginal and Torres Strait Islander Child Placement Principles, with a view to improving compliance and reporting.

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**Cultural care planning**

- 10.67** Under the *Children and Young Persons (Care and Protection) Act* a cultural care plan needs to be made prior to a final order being made for an Aboriginal child to be placed in out-of-home care.<sup>868</sup> Cultural care plans aim to ensure that an Aboriginal child maintains their family and cultural connection. They are an ongoing and regularly reviewed process that facilitates cultural development for an Aboriginal child in out-of-home care.<sup>869</sup>
- 10.68** A cultural care plan must be approved by the magistrate involved in the care and protection proceedings for the child and must be updated every 12 months for the duration of that child being in out-of-home care.<sup>870</sup>
- 10.69** In terms of how cultural care plans operate on a practical level, Ms Simone Czech, Director of Safe Home for Life, a division of the Department of Family and Community Services, said that cultural care plans are tailored to an individual, incorporating activities that will help the child be connected to their culture:

Every cultural plan for each individual child is different. Each plan helps the child maintain connections with their families while they are in out-of-home care, in particular birth parents and other relatives or kin. The plan should list a range of cultural connection activities—how they link into NAIDOC Week and how they learn about their culture. It also has an element of how the carer who is looking after that child is actually going to maintain the child's culture while they are in care and in that placement, so it has the element of needing to help carers undertake that function as much as some of the activities that children will participate in.<sup>871</sup>

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<sup>868</sup> *Children and Young Persons (Care and Protection) Act 1998*, s 13(6) and s 83(7A).

<sup>869</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 5.

<sup>870</sup> Evidence, Ms Czech, 5 November 2015, p 16.

<sup>871</sup> Evidence, Ms Czech, 5 November 2015, p 16.

*“Maintaining links to culture and identity are especially important within the Indigenous child protection context. This is particularly the case given the impact of past policies of removal that resulted in the destruction of Aboriginal and Torres Strait Islander family, culture and identity”.*<sup>872</sup>

- 10.70** Both AbSec and the Indigenous Issues Committee of the Law Society of New South Wales emphasised the importance of cultural care plans in promoting connection to culture for Aboriginal children in out-of-home care. AbSec noted that ‘connection to culture remains a significant positive factor promoting resilience for children and young people in the face of significant adversity’.<sup>873</sup>
- 10.71** Likewise, the Indigenous Issues Committee highlighted that ‘a positive culture connection’ can ‘nurture the understanding in children that culture is a positive aspect of their lives and something they should feel proud of’.<sup>874</sup>
- 10.72** There were, however, some concerns raised in relation to cultural care plans. AbSec advised that the Aboriginal community has concerns about the quality of plans and the cultural support planning practice for children.<sup>875</sup>
- 10.73** AbSec explained that there is research from other jurisdictions which suggests that the implementation of cultural care plans is quite low and that they are often of poor quality. It highlighted the results of a recent Queensland review of cultural care plans which found that despite 95 per cent of Aboriginal and Torres Strait Islander children having a cultural care plan, about two in three contained only generic information about cultural activities and observances, for example, family contact or participation in National Aborigines and Islanders Day Observance Committee events.<sup>876</sup>
- 10.74** AbSec provided the following statement from Mr Andrew Jackomos, the Victorian Commissioner for Aboriginal Children and Young People, which emphasised the importance of plans being tailored and containing more than a generic approach:

<sup>872</sup> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Reprt 2015*, p 139, <<https://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf>>

<sup>873</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, pp 5-6, citing National Scientific Council on the Developing Child (2015) *Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper 13*, <<http://developingchild.harvard.edu/wp-content/uploads/2015/05/The-Science-of-Resilience.pdf>>

<sup>874</sup> Correspondence from Mr Tidball to Professor Rhoades, 7 August 2015, p 13.

<sup>875</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 6.

<sup>876</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 6.

... the system is failing in practice to acknowledge that cultural identity and connectedness is vital to the best interests of Aboriginal children ... a cultural support plan is not about just taking a child to a NAIDOC march, or sticking up an Aboriginal flag. Cultural meaning comes from connections, relationships and socialisation with other Koori children and role models who will inspire and support the child as their life unfolds.<sup>877</sup>

- 10.75** Ms Czech from the Department of Family and Community Services acknowledged that no evaluation has been undertaken to date in terms of the quality of care plans in New South Wales, although she said that the department is currently looking to implement a quality assurance framework:

One of the things that Family and Community Services [FACS] is undertaking—and it is still in its planning stages although we are about to go to a trial—is looking at what we call a quality assurance framework. It has a number of key indicators of how children in out-of-home-care are actually faring, how they are doing. One of those indicators will be looking at the quality of cultural care plans, amongst other things. But it is fair to say at the moment the quality we could not comment on as a whole.<sup>878</sup>

- 10.76** AbSec stressed how important it is for quality plans to be developed, so as to ensure that Aboriginal children in out-of-home care will be supported to ‘maintain meaningful connections to family, community, culture and Country’. It recommended that the New South Wales Government support it to undertake an independent review of cultural care plans.<sup>879</sup>

- 10.77** The Department of Family and Community Services advised that there is a project underway to redesign and enhance cultural care planning across the state:

The cultural plan is being redesigned to enhance consistent, effective and meaningful cultural casework and will capture important information regarding Aboriginal children’s culture, heritage, family and communities of belonging. The redesigned plan will deliver a state-wide approach to cultural planning to ensure consistency across FACS and the entire child protection system.<sup>880</sup>

- 10.78** The department is working with stakeholders, including AbSec, on this project, and will also be developing an Aboriginal Case Management Policy to meet the needs of Aboriginal children and young people, their families and communities. It explained that this will include identifying what improvements are required to enhance caseworker skills and experiences in culturally appropriate practice.<sup>881</sup>

<sup>877</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, p 6, citing Andrew Jackomos, ‘International Human Rights Day Oration – Linking our past with our future: How culture rights can help shape identity and build resilience in Koori kids’ (2015) *Indigenous Law Bulletin* Vol. 8 No.17.

<sup>878</sup> Evidence, Ms Czech, 5 November 2015, p 17.

<sup>879</sup> Submission 14, Aboriginal Child, Family and Community Care State Secretariat, pp 6-7.

<sup>880</sup> Answers to questions on notice, Department of Family and Community Services, p 1.

<sup>881</sup> Answers to questions on notice, Department of Family and Community Services, p 1.

*Committee comment*

- 10.79** The committee believes that cultural care planning for Aboriginal children and young people removed from their families is essential as it ensures children retain a connection to their culture. This connection is vital as it is central to Aboriginal identity and can promote positive outcomes in the child's life.
- 10.80** While the committee recognises the value of these plans for Aboriginal children placed in out-of-home care, it is concerned that the plans are not being genuinely tailored to each child. The plans must include more than just participation in an annual Aboriginal event. They must be developed through active engagement with Aboriginal families and communities, so that they are of real substance and are able to truly promote a child's connection to their Aboriginal culture.
- 10.81** Although the Department of Family and Community Services is currently exploring ways to enhance cultural care planning, the committee believes it would be valuable for a review of cultural care plans to be undertaken, similar to the review undertaken in Queensland. The committee therefore recommends that the department review the quality and effectiveness of cultural care planning for Aboriginal children and young people placed in out-of-home care in New South Wales.

**Recommendation 33**

That the Department of Family and Community Services review the quality and effectiveness of cultural care planning for Aboriginal children and young people placed in out-of-home care.

**A self-determined approach to Aboriginal child welfare**

- 10.82** The *Bringing them home* report found that self-determination for Indigenous people is important in reversing the overrepresentation of Indigenous children in the child welfare system.<sup>882</sup> Noting the failures of the child protection system to promote self-determination within its framework, the report made a number of recommendations, all of which were aimed at ensuring that the Indigenous community had a far greater role in the welfare and care and protection of their children.<sup>883</sup>
- 10.83** Recognising the importance of self-determination, section 11 of the *Children and Young Persons (Care and Protection) Act* stipulates that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as possible.<sup>884</sup>

<sup>882</sup> Submission 8, Jumbunna Indigenous House of Learning, pp 7-8.

<sup>883</sup> Recommendations 43 – 52 and 54, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, pp 509-524, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>884</sup> *Children and Young Persons (Care and Protection) Act 1998*, s 11.

- 10.84** Although this principle is encapsulated within the existing legislation, stakeholders called for a far greater emphasis to be placed on self-determination in the child welfare system, including greater engagement with the Aboriginal community and an increase in services delivered by Aboriginal controlled organisations.
- 10.85** Jumbunna Indigenous House of Learning said that ‘Aboriginal people must be in control of child welfare’. It highlighted its work with Grandmothers Against Removals, a ‘grass-roots advocacy organisation’ formed in 2014 by families affected by child removal. It noted that the organisation advocates for Aboriginal control of Aboriginal child welfare and a rapid expansion of resources available for community-led solutions to the social problems often cited as justification for child removal.<sup>885</sup>
- 10.86** ANTaR NSW was concerned that there is currently a lack of respect for self-determination, with current approaches to child protection matters continuing ‘the practice of assimilation’ and ignoring the distinct need to ‘restore cultural integrity’.<sup>886</sup>
- 10.87** Emphasising the importance of self-determination, Mr Ireland from AbSec asserted that the state ‘needs to take steps to place responsibility for Aboriginal children and young people back in the hands of Aboriginal people and communities’.<sup>887</sup>
- 10.88** Mr Ireland stressed the importance of open engagement with Aboriginal communities on child protection matters, so as to enable these communities to identify ways in which families can be strengthened:
- ... more of an emphasis needs to be placed on real conversations with Aboriginal communities and Aboriginal community controlled organisations about how to provide for child safe Aboriginal communities or the necessary services to build family capacity, family strengthening, things like that, from an Aboriginal perspective ...<sup>888</sup>
- 10.89** The committee was informed about the following two programs that operate to promote engagement with Aboriginal people in child protection matters:
- The Aboriginal Family Group Conferencing program, which was explicitly designed to improve the participation of Aboriginal people in decision making in child protection matters. This is currently being piloted in four locations by the Department of Family and Community Services in partnership with AbSec.<sup>889</sup>
  - The Protecting Aboriginal Children Together service, also developed jointly between the Department of Family and Community Services and AbSec, which is an independent cultural advisory and support service that provides specialist advice on Aboriginal child protection cases referred by the department.<sup>890</sup>
- 10.90** In addition to these programs, the committee heard about the important role Aboriginal community controlled organisations play in promoting self-determination. Mr Ireland urged

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<sup>885</sup> Submission 8, Jumbunna Indigenous House of Learning, pp 2 and 7.

<sup>886</sup> Submission 21, ANTaR NSW, p 6.

<sup>887</sup> Evidence, Mr Ireland, 9 February 2016, p 25.

<sup>888</sup> Evidence, Mr Ireland, 9 February 2016, p 26.

<sup>889</sup> Submission 34, Department of Premier and Cabinet, p 7.

<sup>890</sup> Submission 34, Department of Premier and Cabinet, p 7.



for greater investment in Aboriginal community controlled organisations, given they can help to engage Aboriginal families in a meaningful way throughout child protection processes:

[There is a] need for a holistic Aboriginal child and family system, with services delivered by Aboriginal community controlled organisations to ensure connection with the community, culture, and Country—a system designed by Aboriginal people, in partnership with others where needed, to tackle issues in Aboriginal communities related to family capacity and child wellbeing and safety.<sup>891</sup>

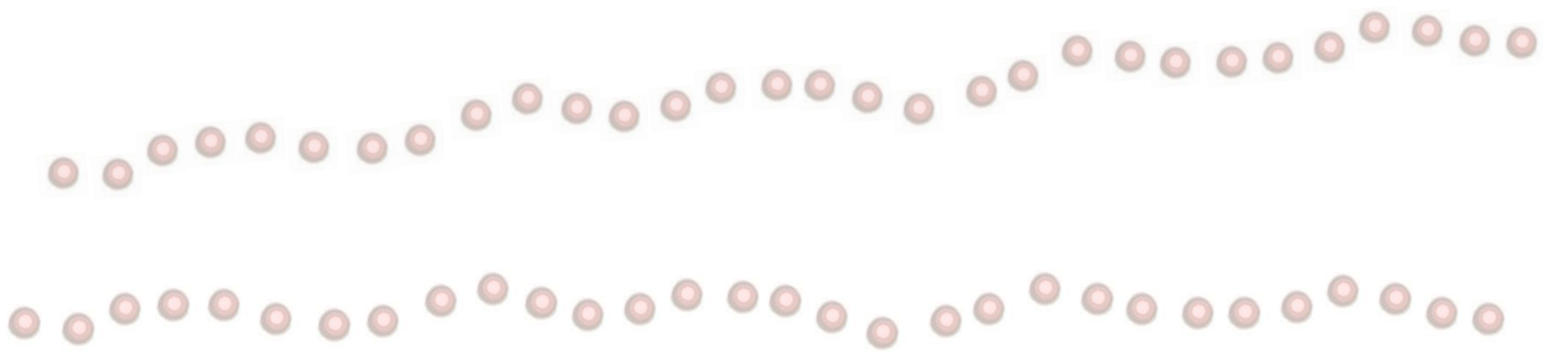
- 10.91** The Indigenous Issues Committee of the Law Society of New South Wales agreed that there should be more Aboriginal community controlled organisations involved in the care and protection realm, particularly in the early intervention stages.<sup>892</sup>

*Committee comment*

- 10.92** The committee supports the principle of self-determination and agrees that Aboriginal people should have a voice in policies and decisions related to the welfare of Aboriginal children and young people. A greater shift towards self-determination may help to address the overrepresentation of Aboriginal children and young people in the care and protection sector.
- 10.93** Given this, the committee encourages the Department of Family and Community Services to continue engaging with the Aboriginal community about policies that affect the welfare of Aboriginal children and young people. It also supports the involvement of Aboriginal controlled organisations in care and protection matters, particularly during the early stages, where intervention services may operate to avoid a child from being removed from their family.
- 10.94** The importance of self-determination more generally as part of any approach or response to issues related to the Stolen Generations is considered in the next chapter.

<sup>891</sup> Evidence, Mr Ireland, 9 February 2016, p 25.

<sup>892</sup> Correspondence from Mr Tidball to Professor Rhoades, 7 August 2015, p 6.



## Chapter 11 Accountability mechanisms and self-determination

We believe that the unfinished business of the Stolen Generations needs to be front and centre in Indigenous affairs and the original *Bringing them home* recommendations offer a sound foundation towards achieving this ...

If we fail to implement these recommendations, we not only fail the Stolen Generations and the current generations of Aboriginal and Torres Strait Islander children, we also undermine efforts to reach a lasting settlement among us ...<sup>893</sup>

This chapter considers two key themes which are vital to the overall approach to providing reparations to members of the Stolen Generations in New South Wales. The first concerns accountability mechanisms and the need to ensure that the state continues to make progress in implementing the *Bringing them home* report recommendations. The second focuses on the importance of self-determination for Aboriginal people and how this principle should form the foundation of any approach or response to issues related to the Stolen Generations.

### Accountability mechanisms

- 11.1** The *Bringing them home* report recommended that at the federal level there be a national process for implementation of the report's recommendations, overseen by the Council of Australian Governments. It was envisaged that states and territories would provide an annual audit report as part of this process.<sup>894</sup>
- 11.2** Yet, the National Sorry Day Committee, in its 2015 *Bringing them home: Scorecard Report*, noted that 'there is still no systematic process for monitoring the implementation of the [report's] recommendations or for monitoring, evaluating and reviewing the outcomes'.<sup>895</sup>
- 11.3** In New South Wales, the government initially set up the following mechanisms to monitor the implementation of its response to the *Bringing them home* report recommendations:
- a Cabinet Committee on Aboriginal Affairs, to oversee the implementation and provide a forum for consideration of further issues identified in the report, so as to ensure a whole of government response
  - a Chief Executive Officers Group on Aboriginal Affairs, to be jointly chaired by the Director General of Aboriginal Affairs and the Director General of the Cabinet office,

<sup>893</sup> Submission 26, Dr John Rule and Ms Elizabeth Rice, Appendix 1, p 8.

<sup>894</sup> Recommendation 2, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 19, <[https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>

<sup>895</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 30, <[http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

with the group's role being to ensure a coordinated response to service delivery issues between key agencies.<sup>896</sup>

- 11.4** Aboriginal Affairs NSW was also tasked (at the time) with monitoring progress in key areas, with the Minister for Aboriginal Affairs being required to oversee the process of implementation of the government's response to the recommendations.<sup>897</sup>
- 11.5** However, these accountability mechanisms no longer exist. Aboriginal Affairs NSW does not have a specific monitoring role in relation to the *Bringing them home* report recommendations, nor does the Minister for Aboriginal Affairs oversee the government's implementation of the recommendations.<sup>898</sup> This was evident when the committee attempted to gather information about the implementation of the New South Wales Government's response to the *Bringing them home* report, as there was no central point or role within government that had responsibility for tracking the government's progress on these issues.
- 11.6** The Hon Leslie Williams MP, Minister for Aboriginal Affairs, explained that her role oversees the government's implementation of the Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) strategy for Aboriginal Affairs (discussed in chapter 2).<sup>899</sup> While some issues related to the Stolen Generations arise under OCHRE, such as healing, it is not specifically focused on addressing the needs of members of the Stolen Generations and their families.
- 11.7** The Cabinet Committee on Aboriginal Affairs and the Chief Executive Officers Group on Aboriginal Affairs also no longer exists.<sup>900</sup> Instead, Mr Jason Ardler, Head of Aboriginal Affairs NSW, said that there is currently a Senior Executive Committee on Aboriginal Reform, of which he is the Chair. He explained that this committee has a role in the coordination and oversight of OCHRE, reporting up to the Secretaries' Board. Mr Ardler added that the committee takes a broader remit to ensure that any service delivery reforms across government agencies 'are not colliding or cutting across one another'.<sup>901</sup>
- 11.8** While Stolen Generation issues are not the primary focus of OCHRE or the Senior Executive Committee's role, Mr Ardler explained that a lot of the issues arising out of the *Bringing them home* report are addressed by the latter, for example, economic development, healing and promotion of language and culture.<sup>902</sup>

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<sup>896</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 28, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>897</sup> NSW Government, *NSW Government Response: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1999, p 28, <<http://www.aboriginalaffairs.nsw.gov.au/wp-content/uploads/2012/11/NSW-Response.pdf>>

<sup>898</sup> Confidential correspondence from the Hon Leslie Williams MP, Minister for Aboriginal Affairs, to Chair, 4 November 2015, p 15. Evidence published by resolution of the committee.

<sup>899</sup> Evidence, the Hon Leslie Williams MP, Minister for Aboriginal Affairs, 5 November 2015, p 3.

<sup>900</sup> Confidential correspondence from Minister Williams to Chair, 4 November 2015, p 15. Evidence published by resolution of the committee.

<sup>901</sup> Evidence, Mr Jason Ardler, Head, Aboriginal Affairs NSW, 5 November 2015, p 7.

<sup>902</sup> Evidence, Mr Ardler, 5 November 2015, p 8.

- 11.9** To improve the monitoring of the government's progress in relation to addressing the needs of members of the Stolen Generations, the Indigenous Issues Committee of the Law Society of New South Wales and the Kinchela Boys' Home Aboriginal Corporation suggested that the New South Wales Deputy Ombudsman (Aboriginal Programs) play a role in overseeing implementation of the *Bringing them home* report recommendations.<sup>903</sup>
- 11.10** The Kinchela Boys' Home Aboriginal Corporation recommended that the New South Wales Deputy Ombudsman (Aboriginal Programs) head a cross agency taskforce which would be responsible for monitoring the government's progress on implementing the recommendations. It also proposed that this taskforce report to the New South Wales Parliament twice a year until all of the recommendations are fulfilled. It suggested that this taskforce be comprised of members of the Stolen Generations, including representatives from its own organisation and the Coota Girls Corporation.<sup>904</sup>

***Committee comment***

- 11.11** From the outset of this inquiry it has been difficult to identify the extent to which the New South Wales Government has implemented the initiatives outlined in its 1999 response to the *Bringing them home* report. There has been no ongoing monitoring of our state's progress in implementing these initiatives or any of the recommendations from the *Bringing them home* report, nor any accountability framework established to ensure that the needs of members of the Stolen Generations are addressed.
- 11.12** Unfortunately, this has meant that the needs of Stolen Generation survivors in this state have been addressed in more of an ad hoc manner, rather than through a coordinated and focused approach by the government. Those who have felt the greatest impact of this are the members of the Stolen Generations themselves, many of whom continue to advocate for their rights, trying to keep their issues on the state's agenda. These individuals continue to show resilience and strength in the face of adversity. They are truly admirable people.
- 11.13** It is time, however, for a robust accountability framework to be established. Not only will this ensure that our state never loses track of its progress in meeting the needs of members of the Stolen Generations again, it will also re-establish clear responsibilities for government agencies and the executive.
- 11.14** While the Minister for Aboriginal Affairs' remit is currently limited to overseeing the implementation of OCHRE, which is the broader policy for Aboriginal Affairs in New South Wales, the committee recommends that this remit be expanded so that the Minister is jointly responsible with the Premier for overseeing implementation of the recommendations in this report. Giving the Premier joint responsibility in this manner will demonstrate to the Aboriginal community that the needs of Stolen Generation survivors are a priority in this state.
- 11.15** To ensure that the issues raised during this inquiry remain on the government's agenda, we recommend that the Premier and Minister for Aboriginal Affairs provide a report to

<sup>903</sup> Submission 28, Law Society of NSW, p 3; Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 16.

<sup>904</sup> Submission 31, Kinchela Boys' Home Aboriginal Corporation, p 16.

Parliament in 2018 for review by this committee on the implementation of recommendations in this report.

- 11.16** The committee further encourages the Premier to raise at the federal level the need for a national system of monitoring and reporting, as previously recommended in the *Bringing them home* report.
- 11.17** In order to ensure Stolen Generation survivors have a voice and input into decisions and policies that affect them, particularly in relation to how their needs are addressed by government and what reparations are provided, the committee has also recommended that a Stolen Generations Advisory Committee be established, comprised of a majority of Aboriginal representatives, including members of the Stolen Generations and/or their descendants (see recommendation 1) This advisory committee could also include representatives from other key Aboriginal organisations, such as the New South Wales Aboriginal Land Council.
- 11.18** The role of the advisory committee will be to advise the Premier and Minister for Aboriginal Affairs on any matter related to the Stolen Generations. Its role should also extend to ongoing monitoring of the implementation of the recommendations in this report, with a progress report to be tabled by the Premier in Parliament every two years.
- 11.19** It is vitally important that the way the advisory committee is established operates with as much self-determination as possible. While the Premier and Minister for Aboriginal Affairs should ensure that the committee is well supported and resourced, the committee must operate independently. It must be a genuine vehicle for representing the interests of Stolen Generation survivors and their descendants.
- 11.20** These mechanisms should help to build a robust accountability framework for the implementation of recommendations in this report.
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#### **Recommendation 34**

That the Premier of New South Wales and the Minister for Aboriginal Affairs be given joint responsibility for overseeing the NSW Government's implementation of recommendations from this inquiry and that they provide a report to Parliament in 2018 for review by General Purpose Standing Committee No. 3 on the implementation of the recommendations of its 2016 report into reparations for the Stolen Generations in New South Wales.

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- 11.21** In addition, the committee recommends that the New South Wales Government review the commitments made in its 1999 response to the *Bringing them home* report, in conjunction with its consideration of the findings and recommendations of this inquiry. This will help to identify the extent to which those commitments have been implemented and are still relevant, and – viewed together with the recommendations in this report – will help identify what more needs to be done to achieve reparations for Stolen Generation survivors.

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### Recommendation 35

That, in conjunction with its consideration of the findings and recommendations of this inquiry, the NSW Government review the commitments made in its 1999 response to the *Bringing them home* report.

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## Self-determination

**11.22** The right of Aboriginal people to self-determination is fundamental to the way in which the needs of Stolen Generation survivors and their families are addressed. In broad terms, self-determination is about Aboriginal people having control of and making decisions over issues that affect their communities. It enables Aboriginal people, as opposed to government or non-Aboriginal people, to determine what is best for Aboriginal communities.

**11.23** The right to self-determination is outlined in the *United Nations Declaration on the Rights of Indigenous Peoples*, international principles which are supported by the Australian Government.<sup>905</sup> The declaration states that Indigenous people have a right to:

- freely determine their political status and freely pursue their economic, social and cultural development
- autonomy or self-government in matters relating to their internal and local affairs
- participate in decision making in matters which would affect their rights, through representatives chosen by themselves.<sup>906</sup>

**11.24** The Public Interest Advocacy Centre (PIAC) in its 2002 *Restoring Identity* report noted that there is no 'one size fits all' model for achieving self-determination and that a key aspect of self-determination is the government's acknowledgement and commitment to Indigenous cultural processes and communities:

It takes many forms ranging from control over decision-making processes and the effective participation of Indigenous peoples in decisions that affect them, to involvement in the design and delivery of services, to recognition and support for Indigenous customary approaches, to the development of community capacity to be self-reliant through broader regional governance and autonomy processes ...

A central aspect of self-determination is an acknowledgement by governments of the legitimacy of Indigenous cultural structures and approaches, and a commitment by them to working in partnership with Indigenous peoples and communities.<sup>907</sup>

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<sup>905</sup> Media release, Australian Human Rights Commission, *United we stand – Support for United Nations Indigenous Rights Declaration a watershed moment for Australia* (3 April 2009), <<http://humanrights.gov.au/news/media-releases/2009-media-release-united-we-stand-support-united-nations-indigenous-rights>>

<sup>906</sup> Articles 3, 4 and 18, United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly 13 September 2007, <<https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>>

<sup>907</sup> Submission 16, Public Interest Advocacy Centre, Appendix B, p 21.

- 11.25** Self-determination was encapsulated within recommendation 43 of the *Bringing them home* report, but according to the National Sorry Day Committee's 2015 *Bringing them home: Scorecard Report*, has not been implemented.<sup>908</sup>
- 11.26** During this inquiry, several stakeholders emphasised the need for self-determination in the context of providing reparations to members of the Stolen Generations and their families and communities.
- 11.27** The Mount Druitt and District Reconciliation Group argued that the government should recognise the need for Aboriginal people to have self-determination. It said that 'there is a need to restore respect for a policy of self-determination... and cultural integrity in government policies'. It explained how this should occur in any context, whether it be related to a review of child protection practices or the funding of community organisations.<sup>909</sup>
- 11.28** ANTaR NSW noted that generations of Aboriginal people have struggled to 'restore control over their own lives'. It recommended that the New South Wales Government adopt mechanisms to ensure the right to self-determination is realised by Stolen Generation survivors.<sup>910</sup>
- 11.29** Ms Elizabeth Rice, co-author of the 2015 *Bringing them home: Scorecard Report*, emphasised the importance of self-determination in formulating any government response to issues facing Aboriginal communities. She expressed the view that without self-determination it may be difficult for Aboriginal people to heal from the impacts of past policies:
- Self-determination is critical both to healing and to the effort to turn around the extraordinarily high rate of overrepresentation of Aboriginal children and young people in the child protection, out-of-home care and juvenile detention systems. The reason self-determination is so critical for both of these is that it is difficult to heal when the system of governance through which the injuries were inflicted on you is still essentially in place and is continuing to injure your descendants.<sup>911</sup>
- 11.30** The New South Wales Reconciliation Council highlighted the importance of engagement with Aboriginal communities as a key component of self-determination. It suggested that consultation should occur in major cities as well as at a regional level, as this will allow the government to 'develop a response that takes into consideration the varied perspectives of Indigenous communities throughout NSW'.<sup>912</sup>
- 11.31** Ms Rice and Dr John Rule, the other co-author of the *Bringing them home: Scorecard Report*, suggested that consideration should be given to whether 'consultation' is actually referred to as 'negotiation' instead, so that engagement with Aboriginal people is on equal terms. Ms Rice noted that the term 'consultation' has become devalued over time, which is why 'negotiation'

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<sup>908</sup> Dr John Rule and Ms Elizabeth Rice, National Sorry Day Committee, *Bringing them home: Scorecard Report* (2015), p 10, < [http://apo.org.au/files/Resource/scorecard\\_report\\_2015\\_with\\_appendices\\_11\\_copy.pdf](http://apo.org.au/files/Resource/scorecard_report_2015_with_appendices_11_copy.pdf)>

<sup>909</sup> Submission 20, Mount Druitt and District Reconciliation Group, p 2.

<sup>910</sup> Submission 21, ANTaR NSW, pp 4 and 6.

<sup>911</sup> Evidence, Ms Elizabeth Rice, co-author of the 2015 *Bringing them home: Scorecard Report*, 9 February 2016, p 9.

<sup>912</sup> Submission 18, NSW Reconciliation Council, p 3.



may be more appropriate because it enables ‘an equal say in decision making’.<sup>913</sup> Dr Rule further explained:

We emphasise the idea of negotiation in addition to consultation because negotiation process implies that there is some organisation of people to begin with. I think that that is important, that it cannot just be a continual mode of consultation at a point when things have to be seriously discussed.<sup>914</sup>

- 11.32** Dr Rule noted that there was a Stolen Generations Working Partnership at a national level which was established to encourage discussion between government agencies and members of the Stolen Generations.<sup>915</sup> The partnership had stakeholders which were nationally, regionally and locally based, including Stolen Generations organisations and Link-Up services.<sup>916</sup> Based on evidence to this inquiry, it is not clear whether this partnership still exists.

### **Empowerment through OCHRE**

- 11.33** A key component of the New South Wales Government’s OCHRE strategy for Aboriginal Affairs is the empowerment of Aboriginal communities to make decisions for themselves. The Minister for Aboriginal Affairs explained that it is about ‘local decision making’ and ‘self-determination’, with ‘local Aboriginal communities having control over what government delivers into their communities, and the community backing community identified priorities, including economic development’.<sup>917</sup>

- 11.34** Mr Ardler stated that local decision making is about communities negotiating on equal terms with the government. He said that Aboriginal communities want greater accountability and transparency in terms of funding for services, and that this should rest with the community as part of self-determination rather than with the government:

... we formed a view that rather than Aboriginal Affairs trying to keep agencies accountable, what we should be doing under the principle of self-determination is creating the capacity for Aboriginal communities to hold Government to account themselves. The self-determination aspect of local decision-making started from the beginning. We did not decide where local decision-making would occur.<sup>918</sup>

- 11.35** An example of local decision making is the Murdi Paaki initiative in Far Western New South Wales. Under this initiative, the Murdi Paaki Regional Assembly was established to represent the interests of Aboriginal people across Western New South Wales. According to the *Murdi Paaki Local Decision Making Accord*, which sets out the principles of local decision making as part of the Murdi Paaki initiative, the government is required to collaborate with the Regional

<sup>913</sup> Evidence, Ms Rice, 9 February 2016, p 10.

<sup>914</sup> Evidence, Dr John Rule, co-author of the 2015 *Bringing them home: Scorecard Report*, 9 February 2016, p 10.

<sup>915</sup> Evidence, Dr Rule, 9 February 2016, p 11.

<sup>916</sup> Australian Government, *Stolen Generations Working Partnership*, <[https://www.dss.gov.au/sites/default/files/documents/05\\_2012/stolen\\_gen\\_working\\_part.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/stolen_gen_working_part.pdf)>

<sup>917</sup> Evidence, Minister Williams, 5 November 2015, p 5.

<sup>918</sup> Evidence, Mr Ardler, 5 November 2015, p 7.

Assembly to seek solutions on local issues.<sup>919</sup> Mr Ardler explained that the Regional Assembly has identified what its local priorities are, with the number one priority being childhood education.<sup>920</sup>

- 11.36** The Minister shared a quote from Mr Sam Jeffries, the Chair of the Murdi Paaki Regional Assembly, who praised the openness and transparency involved in the local decision making occurring with the Murdi Paaki initiative:

Local decision-making is the most exciting initiative to enter the government services and program areas that impact on Aboriginal people. The level of openness and transparency is unprecedented, setting the high water mark in government accountability to Aboriginal people.<sup>921</sup>

- 11.37** Mr Ardler also told the committee about his ‘solution brokerage’ role, which enables him to bring together relevant agencies to talk through a coordinated response to a complex issue. He explained that this approach stemmed from the Auditor-General’s performance review of *Two Ways Together*, the state’s previous Aboriginal Affairs plan, which identified ‘a perceived lack of authority in Aboriginal Affairs NSW to drive change on the ground and to properly coordinate and align’. Mr Ardler said that in light of this, the Premier provided him with the power to identify complex problems and innovative ways to move forward:

[Its] about providing authority in my role as Head of Aboriginal Affairs to identify complex problems, problems that perhaps fall through the cracks of individual agency responsibilities. They are often problems that have been outstanding and unresolved for some time, and to identify the people that I think need to be at the table—sometimes the unusual suspects—to come up with a more innovative way forward.<sup>922</sup>

### *Committee comment*

- 11.38** The committee recognises the importance of self-determination to the Aboriginal community. It acknowledges the positive work that has been taking place as part of OCHRE, with local decision making and solution brokerage occurring in a number of areas in New South Wales.
- 11.39** Earlier in this chapter we recommended the establishment of a Stolen Generations Advisory Committee, which we see as being another opportunity for members of the Stolen Generations to have genuine input into policies and decisions affecting them.
- 11.40** In terms of reparations for Stolen Generation survivors, the committee acknowledges that any component of reparation, whether related to monetary compensation, rehabilitation or other measures, must be developed and implemented in accordance with the principle of self-determination. This was reflected in the committee’s comments and recommendations regarding a reparations framework in chapter 7.

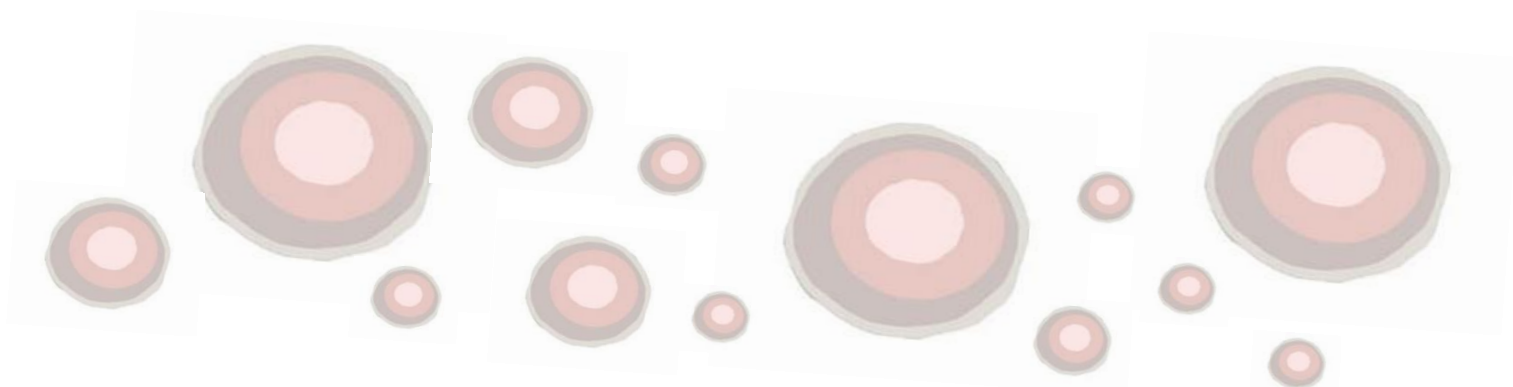
<sup>919</sup> NSW Government, *Murdi Paaki Local Decision Making Accord*, (9 February 2015), p 4, <<http://aboriginalaffairs.nsw.gov.au/wp-content/uploads/2013/07/Murdi-Paaki-Accord-2.pdf>>

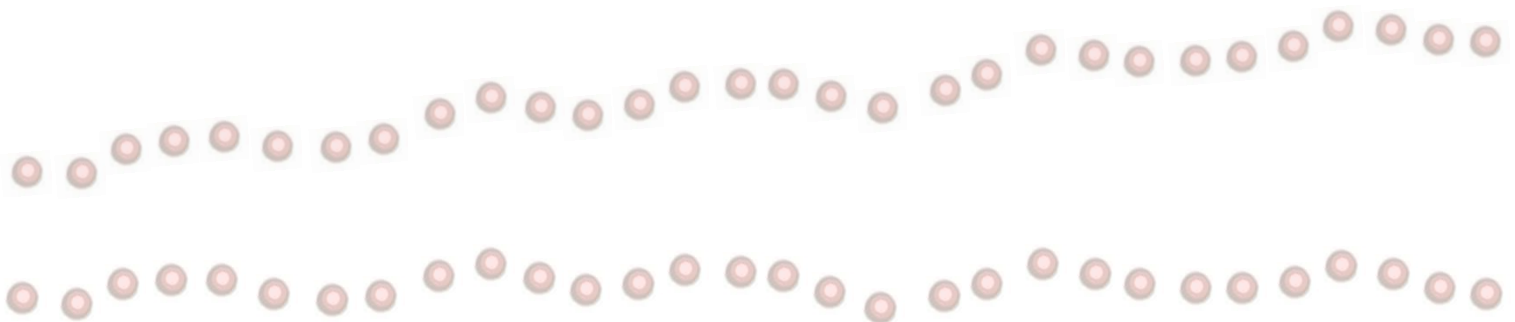
<sup>920</sup> Evidence, Mr Ardler, 5 November 2015, p 6.

<sup>921</sup> Evidence, Minister Williams, 5 November 2015, p 5.

<sup>922</sup> Evidence, Mr Ardler, 5 November 2015, p 7

- 11.41** The importance of self-determination was also acknowledged in chapter 10, as it is critical to effectively addressing the overrepresentation of Aboriginal children in the care and protection context.
- 11.42** It is also vital to the way in which all the recommendations in this report are implemented. Stolen Generation survivors must be given a greater voice and role in decision making on matters affecting them. Not only may this help them to heal, it could prove empowering, thereby producing positive outcomes for members of the Stolen Generations and their families.
- 11.43** It is time we genuinely listened and responded to members of the Stolen Generations in this state. They have waited far too long for action, and it is simply unreasonable and unfair to let them wait any longer. It is time to provide Stolen Generation survivors with the reparations they need and rightly deserve. It is time that this ‘unfinished business’ be finished.





## Appendix 1 Submission list

No	Author
1	Mr Dominic WY Kanak
2	Confidential
3	Mr Ian Rose
4	Name suppressed
5	Ms Beverley Symons
6	Aunty Lindy Lawler
7	Mrs Rosie White
8	Jumbunna Indigenous House of Learning, Research Unit
9	Ms Sonja Ermel
10	Ms Jennifer Ermel (partially confidential)
11	Reconciliation for Western Sydney Inc
12	Royal Australian and New Zealand College of Psychiatrists (RANZCP) NSW Branch
13	Reconciliation Australia
14	Aboriginal Child, Family and Community Care State Secretariat (AbSec)
15	University of New South Wales Law Society
16	Public Interest Advocacy Centre (partially confidential)
17	Mr Joel Anderson
18	New South Wales Reconciliation Council
19	Herbert Smith Freehills
20	Mount Druitt and District Reconciliation Group
21	ANTaR NSW
22	NSW Council of Social Service
23	Name suppressed
24	Confidential
25	Name suppressed
26	Ms Elizabeth Rice and Dr John Rule
26a	Ms Elizabeth Rice and Dr John Rule
27	Ms Sandra Newham
28	Law Society of NSW
29	Dharriwaa Elders Group
30	Redfern Legal Centre
31	Kinchela Boys' Home Aboriginal Corporation

<b>No</b>	<b>Author</b>
31a	Kinchela Boys' Home Aboriginal Corporation
32	Legal Aid
32a	Legal Aid
32b	Legal Aid
33	Women's Legal Services NSW
34	Department of Premier and Cabinet
35	Link-Up NSW Aboriginal Corporation (Link-Up)
36	Confidential
36a	Coota Girls Corporation
36b	Confidential
37	Mr Duncan Marshall
38	Civil Liberties Australia
39	Clarence Valley Healing Centre
40	Mr Robert Eddie
41	Aboriginal Health and Medical Research Council
42	Shoalcoast Community Legal Centre
43	Kingsford Legal Centre, University of NSW
44	Confidential
45	Name suppressed (partially confidential)
46	Ms Margaret Roberts (partially confidential)
47	Confidential
48	Name suppressed
49	Name suppressed
50	Coota Girls Corporation and the Kinchela Boys' Home Aboriginal Corporation
51	Ms Irene Doutney
52	Parramatta Female Factory Precinct Memory Project
53	Name suppressed

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Thursday 5 November 2015</b> <b>Macquarie Room</b> <b>Parliament House</b>	The Hon Leslie Williams MP	Minister for Aboriginal Affairs
	Mr Michael Waterhouse	General Counsel, NSW Department of Education
	Mr Jason Ardler	General Manager, Aboriginal Affairs NSW
	Mr Kevin Harris	Director, Operational Standards and Compliance, Juvenile Justice
	Mr Adam Schreiber	Manager, Aboriginal Strategy and Policy, Corrective Services NSW
	Mr Michael Woodhouse	Executive Director, Strategic Policy, Department of Family and Community Services
	Ms Simone Czech	Director, Safe Home for Life (Child Safety and Permanency) Department of Family and Community Services
	Ms Kerry Chant	Deputy Secretary, Population and Public Health, and Chief Health Officer, NSW Health
	Mr Robert Carr	Former Premier of New South Wales
	Mr Terry Chenery	Chief Executive Officer, Link-Up NSW
Mr John Williams	Public Officer, Stolen Generations Council of NSW/ACT Inc	
The Hon Linda Burney MP	Shadow Minister for Aboriginal Affairs, Member of Parliament	
<b>Friday 6 November 2015</b> <b>Wagga RSL Club</b> <b>Wagga Wagga</b>	Aunty Doreen Webster	Member, Coota Girls Corporation
	Aunty Isabel Reid	Chair, Coota Girls Corporation
	Aunty Shirley McGee	Director, Coota Girls Corporation
	Uncle Bob Glanville	Cultural Elder, Cootamundra
	Dr Jennifer Bell	Medical Director, Riverina Medical and Dental Aboriginal Corporation
	Ms Margaret Roberts	Mental Health Worker, Riverina Medical and Dental Aboriginal Corporation
	Mr Ray Ahmat	Programs Manager, Albury Wodonga Aboriginal Health Service
	Ms Joanne Taylor	Bringing them Home worker, Albury Wodonga Aboriginal Health Service

Date	Name	Position and Organisation
<b>Monday 7 December 2015</b> <b>Kempsey Macleay RSL Club</b> <b>Kempsey</b>	Dr Tiffany McComsey	Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation
	Uncle Manuel Ebsworth	Chair, Kinchela Boys' Home Aboriginal Corporation
	Uncle Lester Maher	Vice Chair, Kinchela Boys' Home Aboriginal Corporation
	Uncle James Michael Welsh	Treasurer, Kinchela Boys' Home Aboriginal Corporation
	Uncle Richard Campbell	Secretary, Kinchela Boys' Home Aboriginal Corporation
	Uncle Harry Ritchie	Board Member, Kinchela Boys' Home Aboriginal Corporation
	Ms Kathy Oliver	Director, Community Engagement, Kempsey Shire Council
	Mr David Rawlings	General Manager, Kempsey Shire Council
	Mr Ken Dickson	Chairperson, Kempsey Aboriginal Land Council
	Mr Greg Douglas	Acting Chief Executive Officer, Kempsey Aboriginal Land Council
<b>Tuesday 8 December 2015</b> <b>Clarence Valley Healing Centre</b> <b>Grafton</b>	Ms Janelle Brown	Coordinator, Gurehlgam Corporation Limited
	Ms Julie Perkins	Chairperson, Gurehlgam Corporation Limited
	Mr Darren Kershaw	Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation
	Ms Ruth Powis	Homelessness Officer, Jali Aboriginal Land Council
	Ms Sandra Bolt	Board member, Jali Aboriginal Land Council
	Ms Judith Currie	Community member, Jali Aboriginal Land Council
	Mr Barry Williams	Chairperson, Grafton Ngerrie Local Aboriginal Land Council
	Mr Jeff Richardson	Bringing them Home Counsellor, Rekindling the Spirit
	Mr Greg Telford	Managing Director, Rekindling the Spirit
	Aunty Gwen Hickling Williams	Community member, North Coast
Aunty Jacqui Williams	Community member, North Coast	
Ms Robyne Bancroft	Elder, Cultural Heritage Officer	
<b>Tuesday 9 February 2016</b> <b>Macquarie Room</b> <b>Parliament House</b>	Aunty Lorraine Peeters	Director, Winangali Marumali
	Ms Shaan Hamann	Partner, Winangali Marumali
	Ms Elizabeth Rice	Principal Consultant, Rice Consulting



Date	Name	Position and Organisation
	Dr John Rule	Conjoint Associate Lecture, School of Public Health and Community Medicine, Faculty of Medicine, University of New South Wales
	Mr Richard Weston	Chief Executive Officer, Healing Foundation
	Mr Tim Ireland	Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat (AbSec)
	Mr Norm Sheehan	Director, Gnibi College of Indigenous Australian Peoples
	Ms Anne Dennis	Deputy Chair, New South Wales Aboriginal Land Council
	Aunty Mary Terszak	Community member
	Ms Donna Meehan	Community member
	Ms Paulette Whitton	Community member
	Dr Tiffany McComsey	Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation
<b>Wednesday 10 February 2016 Macquarie Room Parliament House</b>	Ms Melissa O'Donnell	Solicitor, Civil Law Division, Port Macquarie Regional Office, Legal Aid NSW
	Mr Anthony Levin	Solicitor, Human Rights Team, Civil Law Division, Central Sydney Office, Legal Aid NSW
	Ms Dixie Link-Gordon	Senior Community Access Officer, Indigenous Women's Legal Program, Women's Legal Services NSW
	Ms Anna Cody	Director, Kingsford Legal Centre, University of New South Wales
	Ms Kate Haillday	Law Reform and Policy Solicitor, Kingsford Legal Centre, University of New South Wales
	Ms Kaleesha Morris	Aboriginal Access Worker, Kingsford Legal Centre, University of New South Wales
	Ms Rebeckah Mooney	Indigenous Board Member, NSW Reconciliation Council
	Ms Cecelia Anthony	Co-Chair, NSW Reconciliation Council
	Mr Nathan Moran	Chief Executive Officer, Metropolitan Local Aboriginal Land Council

Date	Name	Position and Organisation
<b>Wednesday 17 February 2016</b> <b>Broken Hill City Council</b> <b>Chambers</b> <b>Broken Hill</b>	Mr James Smith	Member, Metropolitan Local Aboriginal Land Council
	Ms Ann Weldon	Board member, Metropolitan Local Aboriginal Land Council
	Ms Debra Hocking	Post-graduate Program Coordinator, University of Wollongong
	Ms Lorraine McGee-Sippel	Community member
	Ms Shannon Oates	Resource Worker, Warra Warra Legal Service
	Ms Ann Maree Payne	Acting Manager, Warra Warra Legal Service
	Ms Eliza Hull	Principal Solicitor, Warra Warra Legal Service
	Mr Dale Tonkin	Manager, Community Restorative Centre
	Ms Brenda Mitchell	Senior Transitional Officer, Community Restorative Centre
	Ms Diane Hall	Intensive Transitional Support, Community Restorative Centre
	Mr Lance Jones	Community member
	Ms Suzanne Hall	Community member
	Mr Dennis Williams	Community member
	Aunty Isobel Bennett	Community member
Ms Marsha Files	Community member	
<b>Thursday 18 February 2016</b> <b>Walgett RSL Club</b> <b>Walgett</b>	Ms Wendy Spencer	Project Manager, Dharriwaa Elders Group
	Ms Virginia Robinson	Secretary, Dharriwaa Elders Group
	Mr Ted Russell	Community member
	Mr Clem Dodd	Community member
	Ms Kathy Sullivan	Community member
	Ms Gloria Nean	Community member
	Mr George Fernando	Community member
	Mr Lewis Beale	Community member
	Ms Gail Kennedy	Community member
	Ms Helen Fernando	Community member
	Ms Rose Simpson	Community member
	Ms Kim Sullivan	Community member
	Ms Rhonda Ashby	Gamilaraay/Yuwaalaraay/Yuwaala yaay Language and Culture Nest
	Aunty Brenda McBride	Gamilaraay/Yuwaalaraay/Yuwaala yaay Language and Culture Nest
Ms Mary Kennedy	Community member	
Ms Kylie Gilmore	Practice Manager, Walgett Aboriginal Medical Service	
Ms Christine Corby	Chief Executive Officer, Walgett	

Date	Name	Position and Organisation
<b>Wednesday 2 March 2016</b> <b>Nowra Local Aboriginal Land Council Offices</b> <b>Bomaderry</b>	Mr Ricco Lane	Aboriginal Medical Service Aboriginal Mental Health Program Worker, Walgett Aboriginal Medical Service
	Uncle Willy Dixon	Former resident of the Bomaderry Aboriginal Children's Home
	Uncle Sonny Simms	Former resident of the Bomaderry Aboriginal Children's Home
	Aunty Christine Blakeney	Former resident of the Bomaderry Aboriginal Children's Home
	Mr Les Farrell	Solicitor, Shoalcoast Community Legal Centre
	Mr James Allen	Chairperson, Batemans Bay Local Aboriginal Land Council, and Coordinator, Murra Mia Aboriginal Tenants Advisory Service
	Ms Sharlene Cruickshank	Social and Emotional Wellbeing Counsellor, South Coast Medical Service Aboriginal Corporation
	Aunty Linda Lawler	Community member
	Ms Erin Fraser	Social Emotional Wellbeing Counsellor, Illawarra Aboriginal Medical Service
	Ms Nicole Moore	Managing Director, Habitat Personnel
<b>Tuesday 22 March 2016</b> <b>Macquarie Room</b> <b>Parliament House</b>	Pastor Ray Minniecon	Chief Executive Officer, Public Interest Advocacy Centre
	Mr Edward Santow	Chief Executive Officer, Public Interest Advocacy Centre

## Appendix 3 Tabled documents

### Thursday 5 November 2015

#### Parliament House

- 1 Reflection: Case Study, *tendered by Dr Kerry Chant, Chief Health Officer, NSW Health*
- 2 Respecting the difference – An Aboriginal Cultural Training Framework for NSW Health, *tendered by Dr Kerry Chant, Chief Health Officer, NSW Health*
- 3 NSW Aboriginal Health Plan 2013-2023, *tendered by Dr Kerry Chant, Chief Health Officer, NSW Health*
- 4 Responding to Family Violence in Aboriginal Communities 2011-2016, *tendered by Dr Kerry Chant, Chief Health Officer, NSW Health.*

### Friday 6 November 2015

#### Wagga RSL Club, Wagga Wagga

- 5 Opening statement, *tendered by Dr Jennifer Bell, Medical Director, Riverina Medical and Dental Aboriginal Corporation*
- 6 Opening statement, *tendered by Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service*
- 7 The Colour of Skin Stories by Stolen Generation Survivors, *tendered by Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service*
- 8 Unfinished Business DVD, stories from Stolen Generation Survivors, *tendered by Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service.*

### Monday 7 December 2015

#### Kinchela Boy's Home

- 9 Benelong's Haven Ltd DVD, *tendered by Mr Andrew Hegedus, Chief Executive Officer Benelong's Haven Aboriginal Family Residential Drug and Alcohol Rehabilitation Centre*
- 10 Benelong's Haven factsheet with admission criteria, *tendered by Mr Andrew Hegedus, Chief Executive Officer Benelong's Haven Aboriginal Family Residential Drug and Alcohol Rehabilitation Centre.*

### Tuesday 8 December 2015

#### Clarence Valley Healing Centre, Grafton

- 11 Clarence Valley Aboriginal Healing Centre Development Plan 2015, Gurehlgam Corporation Ltd, *tendered by Ms Janelle Brown, Coordinator, Clarence Valley Healing Centre*
- 12 Closing the Gap Impact Report 2015: Pathway to good health, *tendered by Mr Darren Kersham, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation.*

### Tuesday 9 February 2016

#### Parliament House

- 13 Healing for our Stolen Generations: Sharing our Stories, Executive Summary, Healing Foundation, *tendered by Mr Richard Weston, Healing Foundation*
- 14 Prospective Cost Benefit Analysis of Healing Centres, Healing Foundation, *tendered by Mr Richard Weston, Healing Foundation*
- 15 Stolen Generations Education text book, *tendered by Professor Norm Sheehan, Gnibi College of Indigenous Australian Peoples.*

## Appendix 4 Answers to questions on notice

The committee received answers to questions on notice from the following:

- The Hon Leslie Williams MP, Minister for Aboriginal Affairs
- NSW Health
- Department of Justice
- Department of Family and Community Services
- Women's Legal Services NSW
- Kingsford Legal Centre
- Aboriginal Child, Family and Community Care State Secretariat
- Legal Aid NSW
- NSW Aboriginal Land Council
- Children of the Bomaderry Aboriginal Children's Home Incorporated
- Dharriwaa Elders Group
- The Healing Foundation
- Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong
- Kempsey Shire Council
- Public Interest Advocacy Centre
- Department of Education
- Warra Warra Legal Centre

## **Appendix 5 Public Interest Advocacy Centre's Draft Stolen Generations Reparations Tribunal Bill**

### **Draft Stolen Generations Reparations Tribunal Bill**

**A Bill for an Act to provide for the establishment of a Tribunal to  
decide and make recommendations on claims for Stolen Generations  
reparations and other matters**

**A Bill for an Act to provide for the establishment of a Tribunal to decide and make recommendations on claims for Stolen Generations reparations and other matters**

The Parliament of Australia enacts:

**1. Short title**

This Act may be cited as the *Stolen Generations Tribunal Act 2008*.

**2. Commencement**

This Act commences on the day on which it receives the Royal Assent.

**3. Interpretation**

In this Act, unless the contrary intention appears:

*Aboriginal or Torres Strait Islander* means anybody who identifies as an Aboriginal or Torres Strait Islander descendant as defined in the *Aboriginal and Torres Strait Islander Act 2005*.

*Eligibility Criteria* means the criteria that determine whether a claimant for reparations is eligible for reparations as set out in section 10.

*Indigenous* means Aboriginal or Torres Strait Islander.

*Stolen Generations* means persons eligible for reparations under this Act.

*Stolen Generations Fund* means the Fund established by section 14.

*Tribunal* means the Stolen Generations Reparations Tribunal established by this Act.

*Van Boven Principles* means the *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law* (UN Doc E/CN.4/Sub.2/1996/17, 24 May 1996) drafted in 1996 by Professor Theo van Boven.

**4. Stolen Generations Reparations Tribunal and establishing Principles**

- (1) A tribunal, to be known as the Stolen Generations Reparations Tribunal, is established by this Act.
- (2) The Tribunal is established in recognition of the Principles.
- (3) The Principles are:
  - (a) Acknowledgement that forcible removal policies were racist and caused emotional, physical and cultural harm to the Stolen Generations.
  - (b) Indigenous children should not, as a matter of general policy, be separated from their families.
  - (c) The distinct identity of the Stolen Generations should be recognised and they should have a say in shaping reparations.
  - (d) Indigenous people affected by removal policies should be given information to facilitate their access to the Tribunal and other options for redress.

- (e) Reparations measures for the effects of forcible removals should be guided by the Van Boven Principles.

## 5. Composition of the Tribunal

---

- (1) The Tribunal shall consist of six members, at least half of whom must be Aboriginal or Torres Strait Islanders.
- (2) The Attorney General must by writing determine a code of practice within 15 days of the commencement of this Act, for selecting persons to be nominated by the Attorney General for appointment as members of the Tribunal, that sets out general principles on which the selections are to be made, including but not limited to:
- (a) merit; and
  - (b) independent scrutiny of appointments; and
  - (c) probity; and
  - (d) openness and transparency.
- (3) After determining a code of practice under subsection (1), the Attorney General must publish the code in the *NSW Government Gazette*.
- (4) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the *Subordinate Legislation Act 1989* (NSW).
- (5) Schedule 1 has effect in relation to the Tribunal.

## 6. Functions of the Tribunal

---

The Tribunal has the following functions:

- (a) to decide whether a claimant is eligible for reparations;
- (b) to decide on appropriate reparations to be granted in response to a claim;
- (c) to promote a process of truth and reconciliation;
- (d) to consider proposed legislation;
- (e) to consider prejudicial policies and practices; and
- (f) such other functions as may be prescribed.

## 7. Powers of the Tribunal

---

- (1) The Tribunal has power to do all things necessary or convenient to be done to perform their functions and, in particular, has power:
- (a) to obtain information from departments and agencies; and
  - (b) to obtain further information from the claimant, if unable to decide from the information obtained under paragraph (a) whether a claimant is eligible for reparations.



- (2) The Tribunal may exercise their powers notwithstanding any other legislation relating to the confidentiality or privacy of information.

## 8. Entitlement to reparations

---

- (1) The Tribunal shall award reparations on a claim under this Act if the claimant satisfies one or more of the Eligibility Criteria.
- (2) Monetary reparations are payable from the Stolen Generations Fund.

## 9. Reparations

---

- (1) The Tribunal may award reparations in the form of:
- (a) resources for stolen generations groups to provide culture and history centres, or healing centres, including funding for land or premises;
  - (b) community education programs about the history of forcible removals;
  - (c) community genealogy projects for Indigenous communities to help identify membership of the Stolen Generations and their dependants;
  - (d) monetary payments for individuals to meet current needs such as funding to travel to see family;
  - (e) access to appropriate counselling services;
  - (f) access to appropriate health services;
  - (g) access to language and culture training;
  - (h) memorials that appropriately reflect the views of members of the Stolen Generations; and
  - (i) monetary compensation.
- (2) The Tribunal may award one or more of the forms of reparations set out in subsection (1) in response to a claim.
- (3) The Tribunal may award reparations in the form set out in subsection (1)(i) to people who can prove
- (a) that they suffered particular types of harm, such as sexual or physical assault or labour exploitation; or
  - (b) that they suffered or continue to suffer from physical or psychological injury caused by the fact of their removal.
- (4) The Tribunal may vary the forms of reparations set out in subsection (1) as it sees fit.
- (5) The Tribunal shall have regard to the Van Boven Principles in varying the forms of reparations set out in subsection (1).
- (6) The Tribunal shall where practicable award reparations that maximise group rather than individual outcomes.

- (7) In awarding reparations, the Tribunal must take into account the nature and extent of any reparations received by the claimant under State or Territory legislation and any damages or compensation received by the claimant at common law or otherwise.

## 10. Eligibility criteria for reparations

---

- (1) To be eligible for reparations under this subsection, a claimant must be:
- (a) a person who was, as a child, removed from their family under legislation that applied specifically to Aboriginal or Torres Strait Islander people; or
  - (b) an Aboriginal or Torres Strait Islander person who was, as a child, removed from their family prior to 31 December 1975, where that removal was carried out, directed or condoned by an Australian government or an agent of an Australian government.
- (3) To be eligible for reparations under this subsection, a claimant must be:
- (a) an Aboriginal or Torres Strait Islander person; and
  - (b) a living descendant of a deceased person who would have satisfied the criteria in subsection (1).
- (4) To be eligible for reparations under this subsection, a claimant must be:
- (c) an Aboriginal or Torres Strait Islander person;
  - (d) a relative, family member or descendant of a person who satisfies or would have satisfied the criteria in subsection (1):  
who the Tribunal is satisfied suffered or was harmed as a consequence, in whole or in part, of the removal of that person.
- (5) To be eligible for reparations under this subsection, a claimant must be a community that suffered detriment as a result of circumstances that gave rise to eligibility of any member of that community for reparations under subsection (1), (3) or (4).
- (6) The Tribunal shall recognise statements by organisations such as Link Ups and Aboriginal and Islander Child Care Agencies for the purpose of determining eligibility under this section.

## 11. Claims for reparations

---

- (1) A claim for reparations must be made to the Tribunal in such manner as it prescribes and shall include a certificate of Indigenous identity and a statement about the circumstances and impact of the removal.
- (2) A claim must be made within 10 years after the commencement of this Act.
- (3) The Minister may, for any proper reason, extend the time for making an application under s 11(2), taking into account:
- (a) the reason for the delay;
  - (b) the merits of the application;

- (c) fairness as between the person and other persons in a like position; and
- (d) any other factor the Minister considers to be relevant.
- (4) A claimant for reparations may, with the consent of the Tribunal, amend a claim.
- (5) A claim for reparations may be made by a group of persons.
- (6) A claim for reparations may be made on behalf of a person under a legal disability by a guardian of that person.
- (7) For the purposes of determining eligibility, the person under the legal disability is to be regarded as the claimant.

## 12. Time for completion of assessments

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The Tribunal must decide a claim within 12 months after receiving it.

## 13. Tribunal to decide claims

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If the Tribunal is satisfied that reparations should be awarded on a claim, the Tribunal must:

- (a) notify the Trustee of the Stolen Generations Fund of the amount to be disbursed to cover the cost of the award; or
- (b) recommend the reparation measure for action by the relevant government, church or non-government body.

## 14. Establishment of Stolen Generations Fund

---

- (1) An account to be known as the Stolen Generations Fund is established:
  - (a) for the establishment and work of the Tribunal; and
  - (b) to disburse funds for reparations awarded to claimants eligible under this Act.
- (2) Payments from the Stolen Generations Fund are to be met from funds appropriated by the Parliament, together with any contributions from state or territory governments, church organisations involved in administering forcible removal policies, and any other contributors.
- (3) The Stolen Generations Fund will be administered by a Trustee to be appointed by the Attorney General.

## 15. Tribunal decision is reviewable

---

All decisions made by the Tribunal are eligible for merits review by the NSW Civil and Administrative Tribunal. Review may be sought by the relevant claimant or by any government, church or non-government body that is the subject of a recommendation of the kind referred to in section 13(b).

## 16. Jurisdiction of the Tribunal to consider prejudicial policies and practices

- (1) Where any Aboriginal or Torres Strait Islander claims that he or she, or any group of Aboriginal or Torres Strait Islanders of which he or she is a member, is or is likely to be prejudicially affected –
- (a) by any ordinance or any Act (whether or not still in force), passed at any time on or after 31 December 1975; or
  - (b) by any regulation, order, proclamation, notice or other statutory instrument made, issued, or given at any time on or after 31 December 1975 under any ordinance or Act referred to in paragraph (a) of this subsection; or
  - (c) by any policy or practice (whether or not still in force) adopted by or on behalf of the Commonwealth, [the State Governments], any Government Agency or [Church Organisation], or by any policy or practice proposed to be adopted by or on behalf of the Commonwealth, [the State Governments], any Government Agency or [Church Organisation]; or
  - (d) by any act done or omitted at any time on or after 31 December 1975, or proposed to be done or omitted, by or on behalf of the Commonwealth, [the State Governments], any Government Agency or [Church Organisation],
- and that the ordinance or Act, or the regulation, order, proclamation, notice or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the Principles, he or she may submit that claim to the Tribunal under this section.
- (2) The Tribunal must inquire into every claim submitted under subsection (1).
- (3) If the Tribunal finds that any claim submitted to it under subsection(1) is well-founded it may, if it thinks fit, having regard to all the circumstances of the case, recommend to the relevant body that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.
- (4) A recommendation under subsection (3) may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the relevant body should take.
- (5) The Tribunal shall cause a sealed copy of its findings and recommendations (if any) with regard to any claim to be served on –
- (a) the claimant;
  - (b) such relevant body as in the opinion of the Tribunal has an interest in the claim; and
  - (c) such other persons as the Tribunal thinks fit.

## 17. Jurisdiction of the Tribunal to consider proposed legislation

- (1) The Tribunal shall examine any proposed legislation referred to it under subsection (2) and shall report whether, in its opinion, the provisions of the proposed legislation or any of them would be contrary to the Principles.

- (2) Proposed legislation may be referred to the Tribunal, in the case of a Bill before the Parliament, by the relevant Minister or by a resolution of either house.

## 18. Truth and reconciliation

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- (1) The Tribunal shall provide a forum and process for truth and reconciliation under which Indigenous peoples affected by forcible removal policies may tell their story, have their experience acknowledged and be offered an apology by the Tribunal or others.
- (2) The Tribunal shall determine and publish appropriate procedures to facilitate the matters referred to in subsection (1).

## 19. Protection from liability

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The Tribunal does not incur any personal liability for an act done or omitted to be done by the Tribunal in good faith in the performance or exercise, or purported performance or exercise, of any of their functions or powers under this Act.

## 20. Confidentiality

---

- (1) The Tribunal must not divulge the information obtained under this Act otherwise than as provided by this section.
- (2) The Tribunal may divulge the information obtained under this Act in so far as it is necessary to do so to carry out their functions under this Act.

## 21. Annual reports & operational review

---

- (1) The Tribunal is to publish annual reports on the performance of their functions.
- (2) The Tribunal is to cause copies of any reports prepared in accordance with subsection (1) to be made widely available to the public.
- (3) A review of the Tribunal's operation is to commence three years from the commencement date of this Act.
- (4) The purpose of the review is to assess the Tribunal's operation against the principles defined in section 4.
- (5) The review must:
- (a) involve consultation with claimants, potential claimants, recipients of monetary compensation and whole communities;
- (b) be published in full no later than 12 months from the date the review commenced.

## 22. Death of applicant

---

- (1) A claim for reparations does not lapse because the claimant dies before the claim is decided.

- (2) If a claimant for reparations dies before the claim is decided, monetary compensation, if payable on the claim, is to be paid to the estate of the deceased.

### **23. Regulations**

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The Governor-General may make regulations for the purposes of this Act.

**Schedule 1**

**Provisions in relation to the Stolen Generations Reparations Tribunal**

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[To comprise details concerning remuneration and conditions of appointment; staffing; sittings, etc.

Rules of evidence not to apply.

Tribunal to have investigative powers.



## Appendix 6 Minutes

### Minutes no. 2

Thursday 25 June 2015

General Purpose Standing Committee No. 3

Parkes Room, Parliament House, Sydney, at 2.15 pm

#### 1. Members present

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Revd Nile

Mr Secord

#### 2. Draft minutes

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 1 be confirmed.

#### 3. Consideration of terms of reference

The Chair tabled a letter proposing the following self-reference:

That General Purpose Standing Committee No. 3 inquire into and report on registered nurses in New South Wales nursing homes, and in particular:

1. The need for registered nurses in nursing homes and other aged care facilities with residents who require a high level of residential care, in particular:
  - a. the impact of amendments to the *Aged Care Act 1997* (Cth) by the *Aged Care (Living Longer Living Better) Act 2013* (Cth) on the requirement under s 104 of the *Public Health Act 2010* to have a registered nurse on duty at all times in a nursing home, and in particular:
    - i. the impact this has on the safety of people in care
    - ii. the possibility for cost-shifting onto other parts of the public health system as a result of any legislative or regulatory change to the current provisions
  - b. the requirement for a registered nurse to be on duty in a nursing home at all times, as compared with requirements in aged care hospital wards
  - c. the administration, procurement, storage and recording of administration of medication by non-registered nurses in nursing homes and other aged care facilities with residents who require a high level of residential care, as compared with hospital clinical settings
  - d. the role of registered nurses in responding to critical incidents and preventing unnecessary hospital admissions
2. The need for further regulation and minimum standards for assistants in nursing and other employees or carers with similar classifications
3. The adequacy of nurse to patient ratios in nursing homes and other aged care facilities with residents who require a high level of residential care
4. Any other related matter.

Resolved, on the motion of Revd Nile: That the terms of reference be amended by inserting a new paragraph 'The report by the NSW Health Aged Care Steering Committee' before paragraph 4 'Any other related matter'.



Resolved, on the motion of Revd Nile: That the committee adopt the terms of reference, as amended.

#### **4. Inquiry into reparations for the Stolen Generations in New South Wales**

##### **4.1 Terms of reference**

The committee noted the following terms of reference referred by the House on 25 June 2015:

1. That General Purpose Standing Committee No. 3 inquire into and report on reparations for the Stolen Generations in New South Wales, and in particular:
  - (a) the New South Wales Government's response to the report of the 1996 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and Their Families entitled 'Bringing them Home' and the recommendations made in the report regarding reparations,
  - (b) potential legislation and policies to make reparations to members of the Stolen Generations and their descendants, including approaches in other jurisdictions, and
  - (c) any other related matter.
2. That for the purposes of paragraph 1, the committee adopt the definition of 'reparations' contained in recommendation no. 3 of the 'Bringing them Home' report, which states that reparation should consist of:
  - (a) acknowledgment and apology,
  - (b) guarantees against repetition,
  - (c) measures of restitution,
  - (d) measures of rehabilitation, and
  - (e) monetary compensation.

##### **4.2 Timeline**

Resolved, on the motion of Revd Nile: That the inquiry into reparations for the Stolen Generations in New South Wales take place after the inquiry into registered nurses in nursing homes.

##### **4.3 Closing date for submissions**

Resolved, on the motion of Mr Franklin: That the closing date for submissions be 27 September 2015.

#### **5. Conduct of the inquiry into registered nurses in New South Wales nursing homes**

##### **5.1 Closing date for submissions**

Resolved, on the motion of Revd Nile: That the closing date for submissions be 23 July 2015.

##### **5.2 Stakeholder list**

Resolved, on the motion of Mrs Mitchell: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

##### **5.3 Advertising**

The committee noted that the inquiry will be advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

##### **5.4 Timeline**

Resolved, on the motion of Revd Nile: That the secretariat circulate proposed dates for hearings and/or site visits and a reporting date, and that the dates be determined by the Chair after consultation with members regarding their availability.

#### **6. Next meeting**

The committee adjourned at 2.29 pm, *sine die*.

Madeleine Foley  
**Committee Clerk**

**Minutes no. 12**

Friday 16 October 2015

General Purpose Standing Committee No. 3

Waratah Room, Parliament House, Sydney, at 9.50 am

**1. Members present**

Ms Barham, *Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell (from 9.57am)

Revd Nile (from 10.50am)

Mr Secord

**2. Apologies**

Mrs Maclaren-Jones, *Deputy Chair*

**3. Previous minutes**

Resolved, on the motion of Mr Franklin: that draft minutes nos. 10 and 11 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 7 October 2015 – The Hon. Leslie Williams MP, Minister for Aboriginal Affairs, to Chair, responding to the Chair's request for information about the implementation of the NSW Government's response to the *Bringing them Home* report.

**Sent:**

- 6 October 2015 – Chair to Mr Nathan Martin, Department of Premier and Cabinet, requesting information about the implementation of the NSW Government's response to the *Bringing them Home* report
- 28 September 2015 – Chair to members of the Bimbadeen College Board, requesting permission to visit Bimbadeen Aboriginal Training College, the former Cootamundra Aboriginal Girls' Training Home.

**5. Inquiry into reparations for the Stolen Generations in New South Wales**

**5.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 1, 3, 5-9 and 11-15.

**5.2 Partially confidential submissions**

Resolved, on the motion of Mrs Houssos: That:

- the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission no. 4
- the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submission nos. 10 and 16.

**5.3 Confidential submissions**

Resolved, on the motion of Mr Franklin: That the committee keep submission no. 2 confidential, as per the request of the author, as it contains identifying and/or sensitive information.

**5.4 Aboriginal cultural awareness and inter-cultural communication training**

Resolved, on the motion of Mr Franklin: That Aboriginal cultural awareness and inter-cultural communication training be held for the committee, from 10am to 12pm today, facilitated by Professor Diana Eades and Dave Widders, and that the total cost of \$3960.42 for this training be shared with the State Development Committee.

Mrs Mitchell joined the meeting.

**5.5 Briefing by Link-Up NSW**

Resolved, on the motion of Ms Housses: That Link-Up NSW provide the committee with an informal briefing on Wednesday 28 October, from 1.15 to 2.00pm.

**5.6 Hearings and site visit on 5 and 6 November**

Resolved, on the motion of Mr Franklin: That the committee agree to the following proposed witness list for 5 and 6 November, subject to the availability of witnesses:

5 November (full day, Sydney)	<ul style="list-style-type: none"> <li>• Aboriginal Affairs NSW and Ms Leslie Williams MP, Minister for Aboriginal Affairs (45 mins)</li> <li>• Department of Justice, Department of Health, Department of Family and Community Services (1.5 hrs)</li> <li>• Mr Bob Carr, former NSW Premier (30 mins)</li> <li>• Ms Linda Burney MP, Shadow Minister for Aboriginal Affairs (30 mins)</li> <li>• Link-Up NSW (45 mins)</li> <li>• Healing Foundation (45 mins)</li> <li>• Stolen Generations Council of NSW (45 mins)</li> <li>• NSW Aboriginal Land Council (45 mins)</li> </ul>
6 November (half day, Wagga Wagga)	<ul style="list-style-type: none"> <li>• Coota Girls Corporation (Chair is Aunty Isabel Reid) (45 mins)</li> <li>• Dhunlung Yarra Service (part of Relationships Australia) (45 mins)</li> <li>• Wagga Wagga Aboriginal Land Council (45 mins)</li> <li>• Riverina Medical and Dental Corporation and Albury Wodonga Aboriginal Health Service (1 hour)</li> </ul>

**5.7 Aboriginal cultural awareness and inter-cultural communication training**

Professor Diana Eades and Dave Widders provided the committee with Aboriginal cultural awareness and inter-cultural communication training. Members of the State Development Committee also attended the training.

Revd Nile joined the meeting.

**6. Adjournment**

The committee adjourned at 12.15 pm until 9.30am, Wednesday 26 October 2015 (report deliberative for the nurses inquiry).

Tina Higgins  
Clerk to the Committee

**Minutes no. 14**

Wednesday 28 October 2015

General Purpose Standing Committee No. 3

Room 1254, Parliament House, Sydney at 1.05 pm

**1. Members present**Ms Barham, *Chair*Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos (from 1.14 pm)

Mrs Mitchell

Revd Nile (from 1.13 pm)

Mr Secord

**2. Previous minutes**

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no.13 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 21 October 2015 – Correspondence from Dr Peter Phelps, Government Whip, to Director, advising that Mr Lou Amato will be substituting for Mrs Natasha Maclaren-Jones on Friday 6 November during the hearing in Wagga Wagga
- 16 October 2015 – Correspondence from Dr Peter Phelps, Government Whip, to Director, advising that Mr Scott Farlow will be substituting for Mrs Natasha Maclaren-Jones on Thursday 5 November during the hearing in Sydney.

**4. Inquiry into reparations for the Stolen Generations in New South Wales****4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 17 – 22 and 26 – 31.

**4.2 Partially confidential submissions**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee keep the following information confidential, as per the request of the authors: names and/or identifying and sensitive information in submissions nos. 23 and 24.

**4.3 Confidential submission**

Resolved, on the motion of Mr Franklin: That the committee keep submission no. 25 confidential, as per the request of the author, as it contains identifying and/or sensitive information.

**4.4 Hearing and site visit in Cootamundra and Wagga Wagga on 6 November**

The committee noted that for the site visit in Cootamundra and public hearing in Wagga Wagga on Friday 6 November, the dress standard is smart casual.

Resolved, on the motion of Mrs Mitchell: That the committee authorise four former residents of the Cootamundra Aboriginal Girls' Training Home (and one individual's carer) to travel with the committee on the bus between Wagga Wagga and Cootamundra on 6 November 2015.

**4.5 Attendance on the site visit to Cootamundra by Mr Blake Mooney**

Resolved, on the motion of Mrs Mitchell: That the committee authorise Mrs Houssos' staff member, Mr Blake Mooney, to accompany the committee on the site visit to the former Cootamundra Aboriginal Girl's Training Home.

**4.6 Sydney hearing on 5 November**

Resolved, on the motion of Mrs Mitchell: That representatives from the Department of Education also be invited to appear at the hearing on 5 November as part of the government panel.

Resolved, on the motion of Mrs Mitchell: That Jumbunna Indigenous House of Learning (UTS), the Aboriginal Child Family and Community State Secretariat and the Public Interest Advocacy Centre be invited to appear at one of the hearings.

#### **4.7 Briefing by Link-Up NSW**

An informal briefing was provided to the committee by the Chief Executive Officer of Link-Up NSW, Mr Terry Chenery.

Revd Nile arrived.

Mrs Houssos arrived.

### **5. Adjournment**

The committee adjourned at 2.15 pm until 9.30am, Thursday 5 November 2015 (Sydney hearing).

Teresa McMichael

**Clerk to the Committee**

### **Minutes no. 15**

Thursday 5 November 2015

General Purpose Standing Committee No. 3

Macquarie Room, Parliament House, Sydney at 9.30 am

#### **1. Members present**

Ms Barham, *Chair*

Mr Farlow (substituting for Mrs Maclaren-Jones)

Mr Franklin

Mrs Houssos

Mrs Mitchell (from 10.42am)

Mr Moselmane

#### **2. Apologies**

Mrs Mitchell (until 10.42am)

Revd Nile

### **3. Inquiry into reparations for the Stolen Generations in New South Wales**

#### **3.1 Hearing**

Resolved, on the motion of Mrs Houssos: That the evidence of John Williams, Public Officer, Stolen Generations Council of NSW, be given *in camera* on Thursday 5 November 2015.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined under a former oath:

- The Hon Leslie Williams, Minister for Aboriginal Affairs NSW.

The following witnesses were sworn and examined:

- Mr Jason Ardler, General Manager, Aboriginal Affairs NSW
- Mr Michael Waterhouse, General Counsel Department of Education.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Kerry Chant, Chief Health Officer, NSW Health
- Mr Adam Schreiber, Manager, Aboriginal Strategy and Policy CSNSW, Department of Justice
- Mr Kevin Harris, Director Operational Standards and Compliance, Juvenile Justice, Department of Justice
- Mr Michael Woodhouse, Executive Director Strategic Policy, Department of Family and Community Services
- Ms Simone Czech, Director, Safe Home for Life (Child Safety and Permanency), Department of Family and Community Services.

Dr Chant tendered the following documents:

- Reflection: Case Study
- Respecting the difference – An Aboriginal Cultural Training Framework for NSW Health
- NSW Aboriginal Health Plan 2013-2023
- Responding to Family Violence in Aboriginal Communities 2011-2016.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Bob Carr, former Premier of New South Wales.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Terry Chenery, Chief Executive Officer, Link-Up NSW.

The evidence concluded and the witness withdrew.

The public and media withdrew.

#### **4. *In camera* hearing**

According to a previous resolution of the committee, the committee proceeded to take evidence *in camera*.

Persons present other than the committee: Teresa McMichael, Tina Higgins, Emma Rogerson and Hansard reporters.

The following witness was sworn and examined:

- Mr John Williams, Public Officer, Stolen Generations Council of NSW.

The *in camera* evidence concluded and the witness withdrew.

#### **5. Public hearing**

Witnesses, the public and the media were re-admitted.

The following witness was examined under a former oath:

- The Hon Linda Burney, Shadow Minister for Aboriginal Affairs.

The evidence concluded and the witness withdrew.

### 5.1 Tendered documents

Resolved, on the motion of Mrs Mitchell: That the committee accept the following documents tendered during the public hearing:

- Reflection: Case Study, tendered by Dr Kerry Chant, Chief Health Officer, NSW Health
- Respecting the difference – An Aboriginal Cultural Training Framework for NSW Health, tendered by Dr Kerry Chant, Chief Health Officer, NSW Health
- NSW Aboriginal Health Plan 2013-2023, tendered by Dr Kerry Chant, Chief Health Officer, NSW Health
- Responding to Family Violence in Aboriginal Communities 2011-2016, tendered by Dr Kerry Chant, Chief Health Officer, NSW Health.

### 5.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 32 – 34.

The committee noted that submission 34, from the Department of Premier and Cabinet, contained a minor error on page 6. In the section titled ‘Aboriginal and Torres Strait Islander principles’, the FACS funding for Aboriginal non-government organisations to provide out of home care was actually \$50m and not \$450m. The committee noted that the corrected version has been published on the committee’s webpage.

### 5.3 Site visit/hearing in Cootamundra/Wagga Wagga on 6 November

The committee was provided with a site visit booklet for the trip to Cootamundra/Wagga Wagga.

Resolved, on the motion of Mr Franklin: That Ms Kerrie Kelly and Uncle Bob Glanville be authorised to travel with the committee on the bus between Wagga Wagga and Cootamundra on 6 November 2015.

### 5.4 Future site visits and hearings

Resolved, on the motion of Mr Franklin: That the committee undertake a site visit to Kinchela Boy’s home in Kempsey this year, followed by a hearing, with the secretariat to canvass members’ availability.

## 6. Draft minutes

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 14 be confirmed.

## 7. Correspondence

The committee noted the following items of correspondence:

### *Received:*

- 4 November 2015 – Email from Mr Shaoquett Moselmane, Opposition Whip to secretariat, advising that Mr Moselmane will be substituting for Mr Walt Secord for the duration of the inquiry
- 4 November 2015 – Correspondence from Minister Williams to Chair, responding to the Chair’s request for information about the implementation of the NSW Government’s response to the *Bringing them Home* report
- 3 November 2015 – Email from John Williams, Public Officer, Stolen Generations Council of NSW, to committee, requesting to give evidence *in-camera* at the hearing on Thursday 5 November 2015
- 3 November 2015 – Email from Mr Nathan Martin, Principal Policy Officer, Department of Premier and Cabinet, to secretariat, concerning Minister Williams’ response to the Chair’s letter

dated 6 October 2015 in which information was sought about the implementation of the Government's response to the *Bringing them Home* report

- 2 November 2015 – Email from Ms Kerrie Kelly, nominated contact for Coota Girls Corporation to committee, including a document entitled the 'All One Statement by Coota Girls About Our Support Needs', in advance of the committee's visit to the former Cootamundra Aboriginal Girls' Training Home on Friday 6 November 2015
- 2 November 2015 – Email from Ms Claire Todd, Principal Policy Officer, Strategy and Evaluation, Department of Education, to secretariat, advising that the Department of Education will not be sending a representative for the government panel on Thursday 5 November 2015 as a representative is appearing alongside Minister Williams
- 28 October 2015 – Email from Ms Clare McHugh, Executive Director, Policy and Program NSW, Aboriginal Land Council to secretariat, advising that representatives from the NSW Aboriginal Land Council are unable to appear at the hearing on 5 November 2015 but would like to appear at a future hearing
- 30 October 2015 – Email from Ms Vivienne Hungerford, Assistant Director, Subsidies and Supplements Section, Funding Policy and Legislation Branch, Department of Social Services to secretariat, responding to a query raised during the registered nurses inquiry about the conduct of appraisals under the Aged Care Funding Instrument (ACFI) tool.

**Sent:**

- 20 October 2015 – Letter from Chair to the Hon Daryl Maguire MP, member for Wagga Wagga, advising that the committee is having a hearing in Wagga Wagga on 6 November 2015
- 20 October 2015 – Letter from Chair to the Hon Katrina Hodgkinson MP, member for Cootamundra, advising that the committee will be conducting a private site visit to the former Cootamundra Aboriginal Girls' Training Home on 5 November 2015.

Resolved, on the motion of Mrs Houssos: That the email from John Williams, Public Officer, Stolen Generations Council of NSW, to committee, dated 3 November 2015 be kept confidential.

Resolved, on the motion of Mrs Houssos: That the document entitled 'All One Statement by Coota Girls About Our Support Needs', provided by Kerrie Kelly, nominated contact for Coota Girls Corporation, be kept confidential.

## **8. Election of Deputy Chair for 6 November 2015**

The Chair noted the absence of the Deputy Chair for the meeting on 6 November 2015.

The Chair called for nominations for the Deputy Chair for 6 November 2015.

Mr Franklin moved: That Mrs Mitchell be nominated as Deputy Chair for the 6 November 2015.

There being no further nominations, the Chair declared Mrs Mitchell elected Deputy Chair for 6 November 2015.

## **9. Adjournment**

The committee adjourned at 4.30 pm until 9.30am, Friday 6 November 2015 (Cootamundra site visit).

Tina Higgins  
**Clerk to the Committee**



**Minutes no. 16**

Friday 6 November 2015

General Purpose Standing Committee No. 3

Former Cootamundra Aboriginal Girls' Training Home, Cootamundra at 11.55 am

**1. Members present**

Ms Barham, *Chair*

Mrs Mitchell, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mr Moselmane

Revd Nile

**2. Apologies**

Mrs Maclaren-Jones

**3. Inquiry into reparations for the Stolen Generations in New South Wales****3.1 Site visit to the former Cootamundra Aboriginal Girls' Training Home**

The committee visited the former Cootamundra Aboriginal Girls' Training Home, accompanied by the following former residents of the home and Uncle Bob Glanville:

- Aunty Isabel Reid
- Aunty Shirley McGee
- Aunty Doreen Webster.

**3.2 Public hearing – Wagga RSL Club, Wagga Wagga**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Aunty Isabel Reid, member, Coota Girls Corporation
- Aunty Doreen Webster, member, Coota Girls Corporation
- Aunty Shirley McGee, member, Coota Girls Corporation
- Uncle Bob Glanville, Cultural Elder, Cootamundra.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Jennifer Bell, Medical Director, Riverina Medical and Dental Aboriginal Corporation
- Ms Karen Smith, Human Resources Manager, Riverina Medical and Dental Aboriginal Corporation
- Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service
- Mr Ray Ahmat, Programs Manager, Albury Wodonga Aboriginal Health Service.

Dr Bell tendered the following document:

- Opening statement.

Ms Taylor tendered the following documents:

- Opening statement

- The Colour of Skin Stories by Stolen Generation survivors
- Unfinished business DVD, stories from Stolen Generation survivors.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

#### 4. **Adjournment**

The committee adjourned at 4.46 pm, *sine die*.

Tina Higgins

**Clerk to the Committee**

### **Minutes no. 18**

Monday 7 December 2015

General Purpose Standing Committee No. 3

Benelong's Haven Family Rehabilitation Centre, Kinchela at 11.45 am

#### 1. **Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos (from 2.00 pm)

Mr Moselmane

Revd Nile

#### 2. **Apologies**

Mrs Mitchell

#### 3. **Inquiry into reparations for the Stolen Generations in New South Wales**

##### **3.1 Site visit to the former Kinchela Boy's Home**

The committee visited the former Kinchela Boy's Home, now known as Benelong's Haven Family Rehabilitation Centre, accompanied by the following representatives of Kinchela Boys' Home Aboriginal Corporation:

- Uncle Manuel Ebsworth, Chair, Kinchela Boys' Home Aboriginal Corporation
- Uncle Lester Maher, Vice Chair, Kinchela Boys' Home Aboriginal Corporation
- Uncle James Michael Welsh, Treasurer, Kinchela Boys' Home Aboriginal Corporation
- Uncle Harry Ritchie, Board Member, Kinchela Boys' Home Aboriginal Corporation
- Ms Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation
- and other current and former residents and workers at the home.

##### **3.2 Public hearing in Kempsey**

Mrs Houssos joined the meeting.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Uncle Manual Ebsworth, Chair, Kinchela Boys' Home Aboriginal Corporation

- Uncle Lester Maher, Vice Chair, Kinchela Boys' Home Aboriginal Corporation
- Uncle James Michael Welsh, Treasurer, Kinchela Boys' Home Aboriginal Corporation
- Uncle Harry Ritchie, Board Member, Kinchela Boys' Home Aboriginal Corporation
- Ms Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Rawlings, General Manager, Kempsey Shire Council
- Ms Kathy Oliver, Director Community Engagement, Kempsey Shire Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ken Dickson, Chairperson, Kempsey Local Aboriginal Land Council
- Mr Greg Douglas, A/Chief Executive Officer, Kempsey Local Aboriginal Land Council.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

#### 4. **Adjournment**

The committee adjourned at 4.45 pm until 9.00 am, Tuesday 8 December 2015 at the Clarence Valley Healing Centre, Grafton.

Tina Higgins

**Clerk to the Committee**

#### **Minutes no. 19**

Tuesday 8 December 2015

General Purpose Standing Committee No. 3

Clarence Valley Healing Centre, Grafton at 9.00 am

#### 1. **Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos (until 2.20 pm)

Mrs Mitchell

Mr Moselmane

Revd Nile

#### 2. **Inquiry into reparations for the Stolen Generations in New South Wales**

##### 2.1 **Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Janelle Brown, Coordinator, Clarence Valley Healing Centre
- Ms Julie Perkins, Regional Manager – Northern Area, NSW Aboriginal Legal Services.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Sandra Bolt, Board Member, Jali Local Aboriginal Land Council
- Ms Ruth Powis, Homelessness Officer, Jali Local Aboriginal Land Council
- Ms Judith Currie, local community member.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Barry Williams, Chairperson, Grafton Ngerrie Local Aboriginal Land Council.

The evidence concluded and the witness withdrew.

The public and media withdrew.

### **3. Deliberative meeting**

#### **3.1 Previous minutes**

Resolved, on the motion of Mrs Mitchell: That draft minutes nos. 15, 16 and 17 be confirmed.

#### **3.2 Correspondence**

The committee noted the following items of correspondence:

##### ***Received***

- 12 November 2015 – Letter from the Hon Leslie Williams MP, Minister for Aboriginal Affairs to Chair, offering to arrange legal representatives to provide evidence *in camera*, as well as providing information about OCHRE
- 26 November 2015 – Letter from Mr John Williams, Public Officer, Stolen Generations Council (NSW/ACT) Inc to secretariat, providing additional information to the committee.

Resolved, on the motion of Mr Franklin: That the legal representatives nominated by Minister Williams' office be able to provide evidence *in camera* when appearing before the committee.

#### **3.3 Tended documents**

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following documents tendered during the public hearing in Wagga Wagga on Friday 6 November 2015:

- Opening statement, tendered by Dr Jennifer Bell, Medical Director, Riverina Medical and Dental Aboriginal Corporation
- Opening statement, tendered by Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service

Resolved, on the motion of Mrs Houssos: That the committee accept the following documents tendered during the public hearing in Wagga Wagga on Friday 6 November 2015:

- The Colour of Skin Stories by Stolen Generation Survivors, tendered by Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service
- Unfinished Business DVD, stories from Stolen Generation Survivors, tendered by Ms Joanne Taylor, Bringing them Home worker, Albury Wodonga Aboriginal Health Service.

Resolved, on the motion of Mrs Houssos: That the committee accept the following documents tendered during the site visit to the former Kinchela Boy's Home on Monday 7 December 2015:

- Benelong's Haven Ltd DVD, tendered by Mr Andrew Hegedus, Chief Executive Officer, Benelong's Haven Aboriginal Family Residential Drug and Alcohol Rehabilitation Centre
- Benelong's Haven factsheet with admission criteria, tendered by Mr Andrew Hegedus, Chief Executive Officer Benelong's Haven Aboriginal Family Residential Drug and Alcohol Rehabilitation Centre.

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following documents tendered during the public hearing in Grafton on Tuesday 8 December 2015:

- Clarence Valley Aboriginal Healing Centre Development Plan 2015, Gurehlgam Corporation Ltd, tendered by Ms Janelle Brown, Coordinator, Clarence Valley Healing Centre
- Closing the Gap Impact Report 2015: Pathway to good health, tendered by Mr Darren Kershaw, Executive Officer, Bulgarr Ngaru Medical Aboriginal Corporation.

### **3.4 Publication of *in camera* transcript**

Resolved, on the motion of Mrs Mitchell: That the committee authorise the publication of *in camera* evidence from 5 November 2015 provided by Mr John Williams, Public Officer, Stolen Generations Council NSW/ACT, with the exception of identifying and sensitive information, as per the recommendation of the secretariat.

### **3.5 Inquiry hearings proposed for 2016**

Resolved, on the motion of Mr Franklin: That the committee conduct the following hearings and site visits in 2016:

- two full day Sydney hearings on 9 and 10 February
- a two day trip to Broken Hill and Walgett on 17 and 18 February, with hearings in each location
- a one day site visit to the Bomaderry Children's home and hearing in Nowra on 2 March.

Resolved, on the motion of Mr Franklin: That the secretariat, in consultation with the Chair, prioritise the witness list for the remaining hearings so as to only hear from witnesses directly relevant to Stolen Generations matters.

### **3.6 Closing date for submissions**

Resolved, on the motion of Mrs Houssos: That the closing date for submissions be extended to 10 March 2016.

### **3.7 Support for individual inquiry participants**

Resolved, on the motion of Revd Nile: That, where possible, the local Bringing them Home counsellor (or Social and Emotional Wellbeing counsellor) be invited to each regional hearing to offer support to witnesses on the day.

## **4. Public hearing**

Witnesses, the public and the media were re-admitted.

The following witnesses were sworn and examined:

- Mr Greg Telford, Managing Director, Rekindling the Spirit
- Mr Jeff Richardson, Bringing them Home Counsellor, Rekindling the Spirit.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Aunty Gwenda Hickling, community member from the North Coast
- Ms Jacqui Williams, community member from the North Coast.

The evidence concluded and the witnesses withdrew.

Mrs Houssos left the meeting at 2.20pm.

The following witness was sworn and examined:

- Ms Robyne Bancroft, individual.

The evidence concluded and the witness withdrew.

The public and media withdrew.

## 5. **Adjournment**

The committee adjourned at 2.35 pm, until 9.00 am, Tuesday 9 February 2016 (Sydney hearing).

Tina Higgins

**Clerk to the Committee**

## **Minutes no. 20**

Tuesday 9 February 2016

General Purpose Standing Committee No. 3

Macquarie Room, Parliament House, Sydney at 9.50am

### 1. **Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane

Revd Nile

### 2. **Draft minutes**

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes nos. 18 and 19 be confirmed.

### 3. **Correspondence**

The committee noted the following items of correspondence:

#### ***Received:***

- 9 December 2015 – Email from Ms Margo Delaney, Office of Professor the Hon Bob Carr, advising the secretariat that Mr Carr will not be answering the questions taken on notice during the hearing on 5 November 2015
- 24 December 2015 – Email from Ms Claire Coulton, Office of the Hon Leslie Williams MP, advising the secretariat that the Minister will not be appearing at the hearing on 10 February 2016 but has organised other representatives to appear in her place
- 27 January 2016 – Email from Ms Allyson Campbell, Australian Human Rights Commission, advising the secretariat that Mr Mick Gooda and Professor Gilliam Triggs are unavailable to attend the hearings on 9 or 10 February 2016
- 27 January 2016 – Email from Ms Phoebe Dent, Reconciliation Australia, advising the secretariat that representatives from Reconciliation Australia are unavailable to attend the hearings on 9 or 10 February 2016
- 2 February 2016 – Email from the Office of Kevin Humphries MP, advising the secretariat that the Hon Kevin Humphries MP is not available to be present at the Broken Hill and Walgett public hearings

- 4 February 2016 – Email from Mr Gary Oliver, Aboriginal Legal Service, advising the secretariat that representatives from the Aboriginal Legal Service are unavailable to attend the hearings on 9 or 10 February 2016.

**Sent:**

- 2 February 2016 – Letter from Chair to the Hon Kevin Humphries MP, member for Barwon, advising that the committee is having a hearing in Broken Hill on 17 February 2016 and Walgett on 18 February 2016.

**4. Inquiry into reparations for the Stolen Generations in New South Wales****4.1 Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Hon Leslie Williams MP, Minister for Aboriginal Affairs received 2 December 2015
- answers to questions on notice and supplementary questions from Dr Kerry Chant, Deputy Secretary and Chief Health Officer, NSW Ministry of Health received 4 December 2015
- answers to questions on notice and supplementary questions from Department of Justice, received 4 December 2015.

**4.2 Public submissions**

The committee noted that the following submission was published by the committee clerk under the authorisation of an earlier resolution: submission no. 35.

Resolved, on the motion of Revd Nile: That the committee publish submission nos. 37-38.

**4.3 Confidential submissions**

Resolved, on the motion of Mrs Mitchell: That the committee keep submission no. 36 confidential, until further advice from the author.

**4.4 Feedback from inquiry participants**

The committee noted that positive feedback has been provided from the nominated contact from the Coota Girls Corporation and Kinchela Boys' Home Aboriginal Corporation about the previous site visits.

**4.5 Hearings on 17 and 18 February 2016**

Resolved, on the motion of Mr Moselmann: That the committee approve the cost of \$24,822.70 for a charter flight to Broken Hill and Walgett for the public hearings on 17 and 18 February 2016.

**4.6 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Aunty Lorraine Peeters, Director, Winangali Marumali
- Ms Shaan Hamann, Partner, Winangali Marumali.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr John Rule, Conjoint Associate Lecturer, School of Public Health and Community Medicine, Faculty of Medicine, University of NSW
- Ms Elizabeth Rice, Principal Consultant, Rice Consulting.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Richard Weston, Chief Executive Officer, Healing Foundation.

Mr Weston tendered the following documents:

- Healing for our Stolen Generations: Sharing our stories, Executive Summary, Healing Foundation
- Prospective Cost Benefit Analysis of Healing Centres, Healing Foundation.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat (AbSec).

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor Norm Sheehan, Director, Gnibi College of Indigenous Australian Peoples.

Professor Sheehan tendered the following document:

- Stolen Generations Education text book.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Cr Anne Dennis, Deputy Chair, NSW Aboriginal Land Council.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Donna Meehan, Community member
- Aunty Mary Terszak, Community member.

Ms Meehan tendered the following documents:

- letter to Managing Director, TAFE NSW, dated 2 May 2000
- letter from the Privacy Commissioner, dated 2 May 2000
- letter from Managing Director, TAFE NSW, dated 8 May 2000
- application to the Aboriginal Welfare Board.

Aunty Terszak tendered the following documents:

- Certificate of Exemption dated 14 September 1951
- copy of a photograph of Aunty Mary Terszake as a child
- Confirmation of Aboriginality dated 6 November 2013
- file notes from children's home and copy of birth certificate.

The evidence concluded and the witnesses withdrew.

The following witness was examined on her former oath:

- Ms Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation.



The following witness was sworn and examined:

- Ms Paulette Whitton, Community member

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

## 5. **Adjournment**

The committee adjourned at 4.48 pm until 9.20am, Wednesday 10 February 2016 (Sydney hearing).

Teresa McMichael

**Clerk to the Committee**

## **Minutes no. 21**

Wednesday 10 February 2016

General Purpose Standing Committee No. 3

Macquarie Room, Parliament House, Sydney at 9.23am

### 1. **Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane

Revd Nile

### 2. **Inquiry into reparations for the Stolen Generations in New South Wales**

#### 2.1 **Tendered documents – Public hearing 9 February 2016**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee accept the following documents tendered during the public hearing on Tuesday 9 February 2016:

- Healing for our Stolen Generations: Sharing our Stories, Executive Summary, Healing Foundation, tendered by Mr Richard Weston, Healing Foundation
- Prospective Cost Benefit Analysis of Healing Centres, Healing Foundation, tendered by Mr Richard Weston, Healing Foundation.

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following document tendered during the public hearing on Tuesday 9 February 2016:

- Stolen Generations Education text book, tendered by Professor Norm Sheehan, Gnibi College of Indigenous Australian Peoples.

Resolved, on the motion of Revd Nile: That the committee accept and keep confidential the following documents tendered during the public hearing on Tuesday 9 February 2016:

- letter to Managing Director, TAFE NSW dated 2 May 2000; letter from the Privacy Commissioner dated 2 May 2000; letter from Managing Director, TAFE NSW dated 8 May 2000; and application to the Aboriginal Welfare Board, tendered by Ms Donna Meehan

- Certificate of exemption dated 14 September 1951; photograph of Aunty Mary Terszak as a child; Confirmation of Aboriginality dated 6 November 2013; file notes from children's home; copy of birth certificate, tendered by Aunty Mary Terszak.

## **2.2 Public Interest Advocacy Centre**

Resolved, on the motion of Mrs Mitchell: That the committee hold an additional public hearing for 45 minutes with Mr Edward Santow from the Public Interest Advocacy Centre, on a date to be canvassed by the secretariat.

## **2.3 Site visit to Broken Hill and Walgett**

Resolved, on the motion of Mrs Mitchell: That the committee note that the charter flight company has requested passengers to pack lightly and use soft sided luggage where possible for the trip to Broken Hill and Walgett.

## **2.4 In camera evidence – Public hearing 10 February 2016**

Resolved, on the motion of Mrs Mitchell: That the committee authorise Mr Peter Mghee, Senior Legal Officer, Department of Education, to attend the *in camera* session at 3.30pm – 4.15pm on 10 February 2016.

## **2.5 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Melissa O'Donnell, Solicitor, Civil Law Division, Port Macquarie Regional Office, Legal Aid NSW
- Mr Anthony Levin, Solicitor, Human Rights Team, Civil Law Division, Central Sydney Office, Legal Aid NSW
- Ms Dixie Link-Gordon, Senior Community Access Officer, Indigenous Women's Legal Program, Women's Legal Service NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Associate Professor Anna Cody, Director, Kingsford Legal Centre, University of NSW
- Ms Kaleesha Morris, Aboriginal Access Worker, Kingsford Legal Centre, University of NSW
- Ms Kate Halliday, Law Reform and Policy Solicitor, Kingsford Legal Centre, University of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Cecelia Anthony, Co-Chair, NSW Reconciliation Council
- Ms Rebeckah Mooney, Indigenous Board Member, NSW Reconciliation Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Nathan Moran, Chief Executive Officer, Metro Local Aboriginal Land Council
- Mr James Smith, Cultural Tourism Officer, Metro Local Aboriginal Land Council
- Ms Ann Weldon, Board Member, Metro Local Aboriginal Land Council.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong.

The evidence concluded and the witness withdrew.

Ms Mitchell and Mr Franklin left the hearing.

The following witness was sworn and examined:

- Ms Lorraine Mcgee-Sippel, Community member.

The evidence concluded and the witness withdrew.

The public and media withdrew.

### **2.6 In camera hearing**

According to a previous resolution of the committee, the committee proceeded to take evidence *in camera*.

Persons present other than the committee: Teresa McMichael, Sarah Dunn, Emma Rogerson, Hansard reporters and Mr Peter Mghee, Senior Legal Officer, Department of Education.

The following witness was examined on his former oath:

- Mr Michael Waterhouse, General Counsel, Office of the Hon. Leslie Williams MP, Minister for Aboriginal Affairs

The following witnesses were sworn and examined:

- Mr John Agius, Senior Counsel, Office of the Hon. Leslie Williams MP, Minister for Aboriginal Affairs
- Mr Nicolas Newton, Counsel, Office of the Hon. Leslie Williams MP, Minister for Aboriginal Affairs
- Ms Sarah Ryan, Senior Solicitor, Office of the Hon. Leslie Williams MP, Minister for Aboriginal Affairs.

The *in camera* evidence concluded and the witness withdrew.

### **3. Adjournment**

The committee adjourned at 4.53 pm until 7.30am, Wednesday 17 February 2016 (Sydney airport for the Broken Hill hearing).

Teresa McMichael  
**Clerk to the Committee**

**Minutes no. 22**

Wednesday 17 February 2016

General Purpose Standing Committee No. 3

Universal FBO Facility, Hangar 394, Ross Smith Avenue, Sydney Airport at 7.40 am

**1. Members present**Ms Barham, *Chair*Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane

Revd Nile

**2. Previous minutes**

Resolved, on the motion of Mrs Mitchell: That draft minutes nos. 20 and 21 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 10 February 2016 – Email from Ms Donna Meehan, advising the secretariat that documents tabled at the hearing on 9 February 2016 should remain confidential and providing further information to the committee
- 11 February 2016 – Email from Ms Donna Meehan, advising the secretariat of a correction to the information the email dated 10 February 2016.

Resolved, on the motion of Mr Moselmane: That the committee keep the correspondence received from Ms Donna Meehan, dated 10 February 2016 and 11 February 2016, confidential.

**4. Inquiry into reparations for the Stolen Generations in NSW****4.1 Public transcripts**

Resolved, on the motion of Revd Nile: That the committee:

- authorise the publication of the transcripts from 9 February 2016, with the exception of private details about a third party, as per the recommendation of the secretariat
- authorise the publication of the transcript from 10 February 2016, with the exception of an adverse mention regarding a former mission manager in Cowra, as per the recommendation of the secretariat.

**4.2 *In camera* transcript**Resolved, on the motion of Mr Franklin: That the committee keep the *in camera* transcript from 10 February 2016 confidential, and that it redact the words “That is one of them – the Ben Wilkins’ position” from page 12 of the transcript.**4.3 Letter to Minister**

Resolved, on the motion of Mrs Houssos: That the committee write to the Minister for Aboriginal Affairs to request a written statement providing details about the class action by Carroll &amp; O’Dea that could be published by the committee for use in its report.

**4.4 Aboriginal artwork for report cover**

Resolved, on the motion of Mrs Mitchell: That the committee commission Kim Healey, Indigenous graphic designer, to design an Aboriginal artwork for the report cover at a cost of no more than \$1,000.

**4.5 Attendance on the site visit to Nowra by Mr Blake Mooney**

Resolved, on the motion of Revd Nile: That the committee authorise Mr Blake Mooney to accompany the committee on its site visit to Nowra on 2 March 2016.

**4.6 Walgett public hearing – Welcome to Country**

Resolved, on the motion of Mrs Mitchell: That the committee approve the cost of \$150.00 for the Dharrivaa Elders Group to do a Welcome to Country at the public hearing in Walgett on 18 February 2016.

**4.7 Dharrivaa Elders Group filming proceedings**

Resolved, on the motion of Mrs Houssos: That the committee approve the Dharrivaa Elders Group to film and take photos at the public hearing in Walgett, provided that the group signs an undertaking to abide by the requirements of the Broadcasting Resolution.

**4.8 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Shannon Oates, Resource Worker, Warra Warra Legal Service
- Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Service
- Ms Ann-Maree Payne, Acting Manager, Warra Warra Legal Service.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Dale Tonkin, Manager, Community Restorative Centre
- Ms Brenda Mitchell, Senior Transitional Officer, Community Restorative Centre
- Ms Diane Hall, Intensive Transitional Support, Community Restorative Centre.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Lance Jones, community member
- Ms Susan Hall, community member.

The evidence concluded and the witnesses withdrew.

**4.9 *In camera* evidence**

Resolved, on the motion of Revd Nile: That the committee proceed to take evidence from Aunty Isobel Bennett and Ms Marsha Files, community members, *in camera*.

The public and the media withdrew.

The committee proceeded to take *in camera* evidence.

Resolved, on the motion of Revd Nile: That the committee authorise Ms Shannon Oates and Ms Mary-Anne Frail to be present during *in camera* evidence.

Persons present other than the committee: Teresa McMichael, Sarah Dunn, Emma Rogerson, Ron Perkins, Mary-Anne Frail, Ms Shannon Oates and Hansard reporters.

The evidence concluded and the witnesses withdrew.

**4.10 Public hearing**

The public and the media were readmitted.

The following witness was examined upon her former oath:

- Ms Susan Hall, community member

The following witness was sworn and examined:

- Mr Dennis Williams, community member

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

## 5. **Adjournment**

The committee adjourned at 3.40 pm, until 8.20am, Thursday 18 February 2016, Walgett RSL Memorial Club, Walgett.

Teresa McMichael

**Clerk to the Committee**

## **Minutes no. 23**

Thursday 18 February 2016

General Purpose Standing Committee No. 3

Walgett RSL Memorial Club, Walgett, 8.28am

### 1. **Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane

Revd Nile

### 2. **Inquiry into reparations for the Stolen Generations in NSW**

#### 2.1 **Public hearing**

Witnesses, the public and the media were admitted. Ms Virginia Robinson, a Dharriwaa Elder, gave a Welcome to Country.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Virginia Robinson, Secretary, Dharriwaa Elders Group
- Ms Wendy Spencer, Project Manager, Dharriwaa Elders Group.

The evidence concluded and the witnesses withdrew.

#### 2.2 **Roundtable discussions**

The following witnesses were examined:

- Mr Ted Russell, community member
- Mr Clem Dodd, community member
- Ms Kathy Sullivan, community member
- Ms Gloria Nean, community member
- Mr George Fernando, community member

- Mr Lewis Beale, community member
- Ms Gail Kennedy, community member
- Ms Helen Fernando, community member
- Ms Rose Simpson, community member
- Ms Kim Sullivan, community member.

Ms Kathy Sullivan tendered the following document:

- files on the life of Ms Phyllis Sullivan.

Mr Ted Russell tendered the following document:

- files on the Ms Rachel Russell.

Ms Gail Kennedy tendered the following documents:

- Aboriginal Welfare Boards files relating to Ms Gloria Nean
- Files on the life of Mr Clarence Nean.

### **2.3 *In camera* evidence**

Resolved, on the motion of Mrs Houssos: That the committee proceed to take evidence from Ms Kathy Sullivan *in camera*, and that Ms Nicole Laupepa from Link-up be authorised to attend the hearings as a support person.

The public and media withdrew.

Mr Franklin, Mr Moselmane and Revd Nile left the meeting.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Teresa McMichael, Nicole Laupepa from Link-up and Hansard Reporters.

The evidence concluded and the witness withdrew.

Mr Franklin, Mr Moselmane and Revd Nile re-joined the meeting.

The public and the media were readmitted.

### **2.4 Public hearing**

The following witnesses were sworn and examined:

- Ms Rhonda Ashby, Gamilaraay/Yuwaalaraay/Yuwaalayaay Language and Culture Nest
- Ms Brenda McBride, Gamilaraay/Yuwaalaraay/Yuwaalayaay Language and Culture Nest
- Ms Mary Kennedy, Community member.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Christine Corby, Chief Executive Officer, Walgett Aboriginal Medical Service
- Mr Ricco Lane, Aboriginal Mental Health Program Worker, Walgett Aboriginal Medical Service
- Ms Kylie Gilmore, Practice Manager, Walgett Aboriginal Medical Service

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

**3. Adjournment**

The committee adjourned at 2.45pm, until Wednesday 2 March 2016, Nowra (*public hearing*).

Teresa McMichael

**Clerk to the Committee**

**Minutes no. 24**

Wednesday 2 March 2016

General Purpose Standing Committee No. 3

Nowra Local Aboriginal Land Council offices, Bomaderry at 9.35am

**1. Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mrs Houssos

Mrs Mitchell

Revd Nile

Mr Moselmane

**2. Apologies**

Mr Franklin

**3. Inquiry into reparations for the Stolen Generations in New South Wales**

**3.1 Site visit to the former Bomaderry Aboriginal Children's Home**

The committee visited the former Bomaderry Aboriginal Children's Home, accompanied by the following representatives:

- Uncle Willy Dixon, former resident of the Bomaderry Aboriginal Children's Home
- Uncle Sonny Sims, former resident of the Bomaderry Aboriginal Children's Home
- Aunty Christine Blakeney, former resident of the Bomaderry Aboriginal Children's Home and her support person, Mr Matthew Byers
- Ms Sharlene Cruickshank, Social and Emotional Wellbeing Counsellor, South Coast Medical Service Aboriginal Corporation
- Mr Greg Peterson, Chief Executive Officer of the Nowra Local Aboriginal Land Council.

**3.2 Public hearing in Nowra**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Uncle Willy Dixon, former resident of the Bomaderry Aboriginal Children's Home
- Uncle Sonny Sims, former resident of the Bomaderry Aboriginal Children's Home
- Aunty Christine Blakeney, former resident of the Bomaderry Aboriginal Children's Home.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Les Farrell, Solicitor, Shoalcoast Community Legal Centre



- Mr James Allen, Chairperson, Batemans Bay Local Aboriginal Land Council, and Coordinator, Murra Mia Aboriginal Tenants Advisory Service.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Sharlene Cruickshank, Social and Emotional Wellbeing Counsellor, South Coast Medical Service Aboriginal Corporation.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Aunty Linda Lawler, community member
- Ms Erin Fraser, Social and Emotional Wellbeing Counsellor, Illawarra Aboriginal Medical Service.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Nicole Moore, Habitat Personnel.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Pastor Ray Minnican.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

#### 4. Previous minutes

Resolved, on the motion of Revd Nile: That draft minutes nos. 22 and 23 be confirmed.

#### 5. Correspondence

The committee noted the following items of correspondence:

##### *Sent*

- 25 February 2016 – Letter from Chair to the Hon Leslie Williams MP, Minister for Aboriginal Affairs, seeking a written statement providing details about the class action by Carroll & O’Dea that could be published by the committee for use in its report
- 22 February 2016 – Letter from Chair to the Hon Shelley Hancock MP, member for South Coast, advising that the committee is having a site visit and hearing in Nowra on 2 March 2016.

#### 6. Inquiry into reparations for the Stolen Generations in New South Wales

##### 6.1 Tended documents from the public hearing in Walgett on 18 February 2016

Resolved, on the motion of Mrs Maclaren-Jones: That the committee accept and keep confidential the following documents tendered during the public hearing on Thursday 18 February 2016:

- files relating to Gloria Nean from the Aborigines Welfare Board, tendered by Ms Gail Kennedy
- files on the life of Mr Clarence Nean, tendered by Ms Gail Kennedy
- files on the life of Phyllis Sullivan, tendered by Ms Kathy Sullivan
- files on Ms Rachel Russell, tendered by Mr Ted Russell.

##### 6.2 Public submissions

The committee noted the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 39-42.

##### 6.3 Supplementary submission

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of supplementary submission no.36a.

#### **6.4 Closing date for submissions**

Resolved, on the motion of Mrs Maclaren-Jones: That the closing date for submissions be extended to 31 March 2016.

#### **6.5 Letters to Government agencies**

Resolved, on the motion of Mrs Mitchell: That the committee write to the NSW Department of Education, Arts NSW, State Records Authority of NSW, NSW Department of Family and Community Services and NSW Department of Aboriginal Affairs to request further information relevant to the implementation of the NSW Government's response to the *Bringing them Home* report, with draft letters circulated to the committee for comment before being distributed.

#### **6.6 Letters to local Aboriginal Land Councils**

Resolved, on the motion of Mrs Mitchell: That the committee write to the local Aboriginal Land Councils that own the sites where the former Bomaderry Children's home, Cootamundra Girls Home and Kinchela Boys Home are located, to seek further information about the current and future use of these sites, with draft letters circulated to the committee for comment before being distributed.

#### **6.7 Arrangements for the committee's visit to former Bomaderry**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee approve the cost of \$200.00 for Uncle Willy Dixon to provide a Welcome to Country and tour of the former Bomaderry Aboriginal Children's home and memorial garden on 2 March 2016.

### **7. Adjournment**

The committee adjourned at 2.50pm, until 1.00pm Tuesday 22 March 2016 in the Macquarie Room at Parliament House (PIAC hearing).

Tina Higgins

**Clerk to the Committee**

### **Minutes no. 25**

Tuesday 22 March 2016

General Purpose Standing Committee No. 3

Macquarie Room, Parliament House, 1.07 pm

#### **1. Members present**

Ms Barham, *Chair*

Mr Franklin

Mrs Houssos

Mr Mallard (substituting for Mrs Maclaren-Jones) (from 1.10pm)

Mrs Mitchell

Revd Nile (from 1.10pm)

Mr Moselmane

#### **2. Apologies**

Mrs Maclaren-Jones.

#### **3. Previous minutes**

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 24 be confirmed.

#### **4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 11 March 2016 – Email from Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys Home Aboriginal Corporation to committee, providing additional information to the committee
- 15 March 2016 – Letter from Mr Joseph Castley, on behalf of the AWD Aboriginal Justice Support Group to Chair, expressing sincere appreciation of the generous way the committee has conducted its inquiry.

***Sent:***

- 14 March 2016 – Letter from Chair to the Secretary of the NSW Department of Education, seeking information relating to Stolen Generations issues being included in the school curriculum
- 14 March 2016 – Letter from Chair to the Secretary of the NSW Department of Finance, Services and Innovation, seeking information from the NSW State Records Authority relating to records of the Aborigines Welfare Board
- 14 March 2016 – Letter from Chair to the Executive Director of Arts NSW, seeking information about how culture, language, history and art in Aboriginal communities is supported
- 14 March 2016 – Letter from Chair to the Secretary of the NSW Department of Family and Community Services, seeking information relating to records of the Aborigines Welfare Board
- 14 March 2016 – Letter from Chair to the General Manager, NSW Department of Aboriginal Affairs, seeking information relating to records of the Aborigines Welfare Board
- 14 March 2016 – Letter from Chair to Chief Executive Officer of the Nowra Local Aboriginal Land Council, requesting information about the current and future use of the site of the former Bomaderry Aboriginal Children's Home
- 14 March 2016 – Letter from Chair to A/Chief Executive Officer of the Kempsey Local Aboriginal Land Council, requesting information about the current and future use of the site of the former Kinchela Boy's Home
- 14 March 2016 – Letter from Chair to Chief Executive Officer of the Young Local Aboriginal Land Council, requesting information about the current and future use of the site of the former Cootamundra Girls Home
- 11 March 2016 – Letter from Chair to the Chief Executive Officer, Link-Up NSW, thanking counsellors from Link-Up for their assistance at the hearings in Sydney, Broken Hill, Walgett and Nowra.

## **5. Inquiry into Reparations for the Stolen Generations in New South Wales**

### **5.1 Public submission**

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 43.

### **5.2 Partially confidential submissions**

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of submission nos. 45-46, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

### **5.3 Confidential submission**

Resolved, on the motion of Mr Franklin: That the committee keep submission no. 44 confidential, as per the request of the author.

### **5.4 Supplementary submission**

Resolved, on the motion of Mrs Mitchell: That the committee authorise the publication of supplementary submission no. 32a.

### **5.5 Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from Ms Liz Snell, Law Reform and Policy Co-ordinator, Women's Legal Services NSW received 3 March 2016
- answers to question on notice from Kingsford Legal Centre received 8 March 2016
- answers to questions on notice from Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat (AbSec) received 9 March 2016.

Resolved, on the motion of Mrs Houssos: That the committee:

- publish the answers to questions on notice from Legal Aid NSW received 15 March 2016
- keep the answers to questions on notice and supplementary questions from Mr Michael Waterhouse, received 4 March 2016, confidential, as per the request of the author.

#### **5.6 In camera transcript**

Resolved, on the motion of Mr Franklin: That the committee keep the *in camera* transcript from 18 February 2016 confidential, as per the recommendation of the secretariat.

Revd Nile and Mr Mallard arrived at 1.10pm.

Resolved, on the motion of Mrs Mitchell: That the committee authorise the amendment of the *in camera* transcript of Mr Michael Waterhouse, General Counsel, NSW Department of Education, from 10 February 2016 by changing a reference to the 'Native Welfare Board' to the '*Aborigines Protection Act 1909*'.

#### **5.7 Proposed letters to other organisations**

Resolved, on the motion of Mrs Houssos: That the committee:

- write to Link-Up NSW, Department of Prime Minister and Cabinet and Department of Health to seek additional information regarding Link-Up NSW's funding, counselling and reunification services
- that the letter to the Department of Prime Minister and Cabinet include a request for information regarding the evaluation of projects and future funding opportunities for the Healing Foundation.

#### **5.8 Aboriginal artwork for report cover**

Resolved, on the motion of Mrs Mitchell: That the committee approve the artwork provided by Ms Kim Healey for use within the report (including on the report cover), at a total cost of \$1078.

#### **5.9 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre.

The evidence concluded and the witness withdrew.

### **6. Adjournment**

The committee adjourned at 2.15pm, *sine die*.

Sarah Dunn

**Clerk to the Committee**

**Minutes no. 26**

Monday 11 April 2016

General Purpose Standing Committee No. 3

Room 814/815, Parliament House, 10.31 am

**1. Members present**Ms Barham, *Chair*Mrs Maclaren-Jones, *Deputy Chair* (from 10.33 am)

Mr Franklin

Mrs Houssos

Mrs Mitchell (*by teleconference*)

Mr Moselmane

Revd Nile (from 10.34 am)

**2. Previous minutes**

Resolved, on the motion of Mrs Houssos: That draft minutes no. 25 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 6 April 2016 – Letter from Mr Jason Ardler, Head of Aboriginal Affairs, to Chair, responding to questions from the committee about the Family Records Unit
- 4 April 2016 – Email from Ms Annamaree Reisch, Adviser, Community Safety & Policy Division, Department of the Prime Minister and Cabinet, requesting an extension to 15 April 2016 in regard to the letter from the Chair to Dr Martin Parkinson
- 29 March 2016 – Letter from Ms Paulette Whitton to committee, providing additional information about her father post- Kinchela Boys Home
- 21 March 2016 – Letter from the Hon Leslie Williams MP, Minister for Aboriginal Affairs, to Chair, advising that no further information about the class action can be provided
- 17 March 2016 – Email from Ms Rhonda Ashby, Aboriginal Language & Culture Nest Teacher, Gamilaraay/Yuwaalaraay/Yuwaalayaay to committee, providing additional information about the Stolen Generations
- 18 March 2016 – Letter from Mr Dennis Williams to committee, providing additional information about monetary compensation
- 18 March 2016 – Letter from Ms Suzan Hall to committee, providing additional information about monetary compensation.

Resolved, on the motion of Mr Moselmane: That the committee approve the request for extension to 15 April 2016 from the Department of the Prime Minister and Cabinet in regard to the letter from the Chair to Dr Martin Parkinson.

**4. Inquiry into reparations for the Stolen Generations in New South Wales****4.1 Public transcript 18 February 2016**

Resolved, on the motion of Mrs Houssos: That the committee make the following amendments to the transcript of Ms Wendy Spencer, Project Manager, Dharriwaa Elders Group from 18 February 2016, as per the request of Ms Spencer:

- insert 'with inadequate resourcing' after 'struggling to develop that' on page 3 of the transcript
- insert 'at least' before 'A plaque would be good' on page 6 of the transcript
- insert 'pastoral' before 'property in the Walgett area either' on page 6 of the transcript.

**4.2 Public transcript 9 February 2016**

Resolved, on the motion of Mr Moselmane: That the committee make the following amendment to the transcript of Ms Paulette Whitton from 9 February 2016, as per the request of Ms Whitton:

- replace 'we' with 'Donna and I'.

#### **4.3 Public submissions**

Resolved, on the motion of Mr Franklin: That the committee authorise the publication of submission nos. 50-52.

#### **4.4 Partially confidential submissions**

Resolved, on the motion of Mr Moselmane: That the committee authorise the publication of submission nos. 48 and 49, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the authors.

Mrs Maclaren-Jones joined the meeting.

#### **4.5 Confidential submission**

Resolved, on the motion of Mrs Mitchell: That the committee keep submission no. 47 confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information.

#### **4.6 Supplementary submissions**

Resolved, on the motion of Mr Franklin: That the committee authorise the publication of supplementary submission nos. 26a and 32b.

Revd Nile joined the meeting.

Resolved, on the motion of Mrs Houssos: That the committee keep supplementary submission no. 36b confidential, as per the request of the author, as it contains sensitive information.

#### **4.7 Attachments to submissions**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of attachment 1 to submission no. 16 and attachment 1 to submission no. 28.

#### **4.8 Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from Cr Anne Dennis, Deputy Chair, New South Wales Aboriginal Land Council, received 22 March 2016
- answers to questions on notice from Aunty Christine Blakeney, community member, received 24 March 2016.

Resolved, on the motion of Revd Nile: That the committee publish the answers to questions on notice from Ms Wendy Spencer, Dharriwaa Elders Group received 6 April 2016.

#### **4.9 Proposed letters to other organisations**

Resolved, on the motion of Mr Franklin: That the committee write to the:

- Minister for Education to seek information about scholarships and financial aid to support Aboriginal and Torres Strait Islander people in the education system
- Minister for Skills to seek information about scholarships and financial aid to support Aboriginal and Torres Strait Islander people in the vocational education system.

Resolved, on the motion of Mrs Houssos: That the committee write to the Clontarf Foundation to invite them to make a submission to the inquiry, or provide a copy of the submission they made to the State Development Committee inquiry into Economic development in Aboriginal communities.

#### **4.10 Report roundtable**

The committee discussed potential recommendations for the report.

Resolved, on the motion of Mr Franklin: That the committee reconvene, at a date to be canvassed by the secretariat, to continue the discussion on potential recommendations for the report and the remaining timeline for the inquiry.

## 5. Adjournment

The committee adjourned at 12.33pm, *sine die*.

Sarah Dunn

**Clerk to the Committee**

## Minutes no. 27

Wednesday 11 May 2016

General Purpose Standing Committee No. 3

Room 1043, Parliament House, 1.23 pm

### 1. Members present

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane

Revd Nile (from 1.25pm)

### 2. Previous minutes

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 26 be confirmed.

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 2 May 2016 – Email from Mr Ross Kelly, Chairman, Clontarf Foundation, to secretariat, confirming the committee can refer to the submission the Clontarf Foundation made to the inquiry into economic development in Aboriginal Communities
- 2 May 2016 – Email from Ms Kate Johnston, Department Liaison Officer, Office of the Hon John Barilaro MP, Minister for Skills, to secretariat, requesting an extension to 16 May 2016 to provide a response to the letter from the Chair
- 27 April 2016 – Email from Ms Kim Spinks, Manager Strategic Initiatives, Arts NSW, to secretariat, advising of delay in providing a response to request for information from the Chair
- 27 April 2016 – Letter from Mr Peter Riordan, Acting Secretary, NSW Department of Education, to Chair, providing information about scholarships
- 27 April 2016 – Correspondence from Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, to Chair, providing her organisation's views on PIAC's proposed Stolen Generations Tribunal
- 26 April 2016 – Letter from Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre, to Chair, providing a response to the committee's questions about the potential cost and infrastructure for its proposed Stolen Generations Tribunal
- 23 April 2016, Email from Mr Ross Kelly, Chairman, Clontarf Foundation, to secretariat, providing a response to the invitation to make a submission to the inquiry

- 21 April 2016 – Letter from Ms Kerrie Kelly, Network Coordinator, Coota Girls Aboriginal Corporation, to Chair, providing her organisation’s views on PIAC’s proposed Stolen Generations Tribunal and the current class action
- 18 April 2016 – Letter from Mr Andrew Tongue, Acting Secretary, Department of the Prime Minister and Cabinet, to Chair, responding to questions from the committee about funding of Stolen Generations services, including the Healing Foundation and Link-Up NSW
- 16 April 2016 – Email from Mr John Williams, Public Officer, Stolen Generations Council, to committee, providing his organisation’s views about PIAC’s proposed Stolen Generations Tribunal
- 12 April 2016 – Letter from Mr Martin Bowles PSM, Secretary, Department of Health to Chair, advising the department does not provide funding to the Link-Up programme
- 8 April 2016 – Email from Mr Greg Peterson, Chief Executive Officer, Nowra Local Aboriginal Land Council, to Chair, responding to questions from the committee about the site of the former Bomaderry Aboriginal Children’s Home
- 8 April 2016 – Letter and attachment from Mr Martin Hoffman, Secretary, Department of Finance, Services and Innovations, to Chair, responding to questions from the committee about Stolen Generations records
- 8 April 2016 – Letter and attachment from Mr Gregory Prior, Deputy Secretary, School Operations and Performance, NSW Department of Education, to Chair, responding to questions from the committee about the subject of the Stolen Generations in the school curriculum
- 7 April 2016 – Letter from Mr Terry Chenery, Chief Executive Officer, Link-Up NSW, to Chair, responding to questions from the committee about Link-Up NSW.

***Sent:***

- 12 April 2016 – Letter from Chair to the Clontarf Foundation, inviting the organisation to make a submission to the inquiry
- 12 April 2016 - Letter from Chair to the Minister for Skills, seeking information about scholarships
- 12 April 2016 - Letter from Chair to the Minister for Employment, seeking information about scholarships
- 23 March 2016 – Letter from Chair to the Department of Health, seeking information about funding of Stolen Generation services, including the Healing Foundation and Link-Up NSW.

Resolved, on the motion of Mr Moselmane: That the committee authorise the confidential correspondence of Dr Tiffany McComsey, Kinchela Boys’ Aboriginal Corporation, received on 27 April 2016, to be provided to the Public Interest Advocacy Centre.

Revd Nile arrived at 1.25pm.

Resolved, on the motion of Mr Franklin: That the committee authorise the publication of the following items of correspondence:

- letter from Mr Peter Riordan, providing information about scholarships, dated 27 April 2016
- letter from Mr Edward Santow, regarding the potential costs and infrastructure for its proposed Stolen Generations Tribunal, dated 26 April 2016
- letter from Dr Tiffany McComsey, regarding the tribunal model proposed by the Public Interest Advocacy Centre, dated 21 April 2016, subject to a copy of the confidential correspondence being first provided to the Public Interest Advocacy Centre
- letter from Ms Kerrie Kelly, regarding the current group action and tribunal model proposed by the Public Interest Advocacy Centre, dated 21 April 2016
- letter from Mr Andrew Tongue, regarding funding of Stolen Generation services, dated 18 April 2016
- email from Mr John Williams, regarding the tribunal model proposed by the Public Interest Advocacy Centre, dated 16 April 2016
- email from Mr Greg Peterson, regarding the site of the former Bomaderry Aboriginal Children’s Home, dated 8 April 2016



- letter and attachment from Mr Martin Hoffman, regarding Stolen Generation records, dated 8 April 2016
- letter from Mr Gregory Prior, regarding Stolen Generation issues and the school curriculum, dated 8 April 2016
- letter from Mr Terry Chenery, regarding funding and services of Link-Up NSW, dated 7 April 2016.

#### 4. Inquiry into reparations for the Stolen Generations in New South Wales

##### 4.1 Supplementary submission

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of supplementary submissions nos 31a and 32b.

##### 4.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Wendy Spicer, Dharriwaa Elders Group, received 7 April 2016
- answers to questions on notice from Mr Richard Weston, Chief Executive Officer, The Healing Foundation, received 7 April 2016
- answers to questions on notice from Ms Debra Hocking, Post-graduate Program Coordinator, University of Wollongong, received 14 April 2016
- answers to questions on notice from Ms Kathy Oliver, Director Community Engagement, Kempsey Shire Council, received 15 April 2016
- answers to questions on notice from Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre, received 15 April 2016.

Resolved, on the motion of Revd Nile: That the committee authorise the publication of the following answers to questions on notice and supplementary questions:

- answers to questions on notice and supplementary questions from Mr Michael Woodhouse, Acting Deputy Secretary, Corporate Services, Department of Family and Community Services, received 21 April 2016
- answers to questions on notice from Ms Eliza Hull, Principal Solicitor, Warra Warra Legal Centre, received 26 April 2016.

##### 4.3 *In camera* transcript

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of the *in camera* transcript from 17 February 2016, as per the request of the authors.

##### 4.4 Proposed recommendation for final report

Mr Franklin tabled the following proposed recommendation for the committee's report:

That the NSW Government establishes a reparations scheme for surviving members of the Stolen Generations that, under the principles of self-determination and doing no further harm:

- is developed in close consultation with members of the Stolen Generations;
- complements the current Stolen Generations Group Action;
- provides appropriate communal and individual responses;
- includes the right of appeal; and
- considers learning from the South Australian and Tasmanian Reparations schemes.

Debate ensued.

The committee agreed in principle to include the proposed recommendation in its final report.

#### **4.5 Inquiry timeline**

The committee agreed in principle to the following timeline for the remainder of the inquiry:

- Friday 27 May – Chair’s draft report to committee
- Friday 3 June at 1.30pm – report deliberative to consider and adopt the report in principle
- mid-June – face to face consultation with representatives from the Coota Girls Corporation, Kinchela Boys’ Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children’s Home Incorporated
- last sitting week in June – final report deliberative to adopt the report
- Thursday 23 June – tabling of report.

#### **5. Adjournment**

The committee adjourned at 2.13pm, until Friday 3 June at 1.30pm (report deliberative to adopt the report in principle).

Tina Higgins

**Clerk to the Committee**

#### **Minutes no. 28**

Friday 3 June 2016

General Purpose Standing Committee No. 3

Room 1136, Parliament House, 1.35 pm

#### **1. Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos (from 1.53 pm)

Mrs Mitchell

Revd Nile

Mr Moselmane

#### **2. Previous minutes**

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no. 27 be confirmed.

#### **3. Correspondence**

The committee noted the following items of correspondence:

##### ***Received:***

- 26 May 2016 – correspondence from Mr Michael Brealey, Acting Executive Director, Arts NSW, to Chair, providing a response to the committee’s questions about culture, language, history and art in Aboriginal communities
- 25 May 2016 – email from Ms Claire Coulton, Deputy Chief of Staff, Office of the Hon Leslie Williams MP, Minister for Aboriginal Affairs, to secretariat, regarding the publication of excerpts from correspondence from the Minister’s office dated 4 November 2015
- 17 May 2016 – correspondence from Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, to Chair, providing a response to the committee’s questions about records pertaining to the Stolen Generations

- 16 May 2016 – correspondence from the Hon John Barilaro MP, Minister for Skills, to Chair, providing a response to the committee’s questions about scholarships
- 14 March 2016 – Letter from Mr Lance Jones, inquiry participant, to committee, providing additional information to the committee about monetary compensation.

**Sent:**

- 15 April 2016 – Letter from Chair to Ms Kerrie Kelly, Network Coordinator, Coota Girls Corporation, requesting further information in relation to the current group action against the state and the Public Interest Advocacy Centre’s proposal for a tribunal
- 15 April 2016 – Letter from Chair to Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre, requesting further information about the Public Interest Advocacy Centre’s proposal for a Stolen Generations tribunal
- 15 April 2016 – Letter from Chair to Mr John Williams, Public Officer, Stolen Generations Council NSW/ACT, requesting further information in relation to the current group action against the state and the Public Interest Advocacy Centre’s proposal for a tribunal.

Resolved, on the motion of Mrs Mitchell: That the committee authorise the publication of the following items of correspondence:

- correspondence from Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, to Chair, received 17 May 2016
- correspondence from the Hon John Barilaro MP, Minister for Skills, to Chair, received 16 May 2016.

Resolved, on the motion of Revd Nile: That the committee keep confidential the correspondence received from the Hon Leslie Williams MP, Minister for Aboriginal Affairs, dated 4 November 2015, with the exception of the small excerpts the secretariat has proposed be published.

#### 4. Inquiry into reparations for the Stolen Generations in NSW

##### 4.1 Requests for information – outstanding responses

The committee noted that it has not received a response to the committee’s requests for further information from the following organisations:

- Young Local Aboriginal Land Council
- Kempsey Local Aboriginal Land Council.

##### 4.2 Consideration of Chair’s draft report

The Chair submitted her draft report, entitled *Reparations for the Stolen Generations in NSW: Unfinished business*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Franklin: That paragraph 2.43 be amended by inserting ‘with bipartisan support’ after ‘apology on 18 June 1997’.

Resolved, on the motion of Mr Franklin: That paragraph 4.35 be amended by omitting: ‘the *Healing Our Way* forum. However, since the forum was held in 2014, it appears that no further work on healing has progressed. Much more needs to be done in this space’, and inserting instead ‘the *Healing Our Way* forum, but more work needs to be done in this area’.

Resolved, on the motion of Mr Franklin: That recommendation 5 be amended by:

- a) omitting ‘make a further apology to Stolen Generation survivors and their families and communities, and further’ after ‘the NSW Government’
- b) inserting ‘and the ongoing commitment to provide reparations to survivors’ after ‘past government policies and practices’.

Resolved, on the motion of Mr Franklin: That recommendation 6 be amended by omitting ‘That the Parliament of New South Wales apologise to members of the Stolen Generations and acknowledge the

wrongdoing of past forcible removal policies and practices' and inserting instead 'That the Parliament of New South Wales acknowledge and promote the strength and importance of Aboriginal culture and heritage'.

Resolved, on the motion of Mr Franklin: That recommendation 4 be amended by:

- a) omitting 'That the NSW Government provide funding to' and inserting instead 'That the NSW Government collaborate with and provide support, both financial and non-financial, to'
- b) omitting 'so that each organisation can establish a healing centre in an appropriate location to' and inserting instead 'to establish healing centres in appropriate locations to'.

Resolved, on the motion of Mr Franklin: That recommendation 9 be omitted: 'That the NSW Government provide funding to assist in the establishment of Keeping Places at the sites of the former Cootamundra Aboriginal Girls' Training Home, Kinchela Aboriginal Boys' Training Home and Bomaderry Aboriginal Children's Home, subject to consent from the relevant local land councils being obtained', and the following new recommendation be inserted instead:

'That the NSW Government, in cooperation with the Commonwealth Government, collaborate with and support the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Aboriginal Children's Home Incorporated and relevant local Aboriginal land councils to establish Keeping Places at the sites of these former homes'.

Resolved, on the motion of Mr Franklin: That recommendation 10 be amended by:

- a) omitting 'provide funding to the relevant local Aboriginal land councils' and inserting instead 'work with the relevant local Aboriginal land councils'
- b) omitting 'to allow investigation and searches of the sites' and inserting instead 'to investigate and search the sites'.

Resolved, on the motion of Mr Franklin: That recommendation 11 be amended by:

- a) moving it to appear after paragraph 8.61, after the committee comment and recommendation regarding a health care card
- b) inserting 'work with the Australian Government to' after 'That the NSW Government'.

Resolved, on the motion of Mrs Houssos: That paragraph 6.9 be amended by inserting at the end: 'Furthermore, certain facilities were specifically administered by the New South Wales Government through the Aboriginal Welfare Board, namely Kinchela Aboriginal Boys' Training Home and Cootamundra Aboriginal Girls' Training Home'. [FOOTNOTE: Evidence, the Hon Leslie Williams MP, Minister for Aboriginal Affairs, 5 November 2015, p 2.]

Resolved, on the motion of Mrs Houssos: That paragraph 6.27 be amended by omitting 'The committee acknowledges that compensation can' and inserting instead 'The committee acknowledges that financial reparation can'.

Resolved, on the motion of Mr Franklin: That recommendation 17 be amended by:

- a) inserting 'seek the support of the Australian Government to' after 'That the NSW Government'
- b) omitting 'similar to the Department of Veterans Affairs Health Care Card' and inserting instead 'similar to other Commonwealth health care cards'.

Resolved, on the motion of Mr Franklin: That recommendation 22 be amended by omitting 'create a new unit within Aboriginal Affairs NSW' and inserting instead 'establish a direct point of contact'.

Resolved, on the motion of Mr Franklin: That the following recommendations 24, 25 and 26:

**'Recommendation 24**

That the NSW Government provide more funding to the Aboriginal Affairs NSW Family Records Unit so that it can provide increased assistance to those accessing records and better promote its services to stakeholders.

**Recommendation 25**

That the NSW Government remove barriers that inhibit Stolen Generation survivors and their descendants from accessing records related to their family and history, including any fees that may apply when individuals apply for records from government agencies, such as the Registry of Births, Deaths and Marriages.

**Recommendation 26**

That the NSW Government ensure that appropriate mechanisms are in place for Stolen Generation survivors to correct, alter or supplement records relating to their removal.'

be combined into the following single new recommendation:

**'Recommendation 24**

That the NSW Government:

- provide more funding to the Aboriginal Affairs NSW Family Records Unit so that it can provide increased assistance to those accessing records and better promote its services to stakeholders
- remove barriers that inhibit Stolen Generation survivors and their descendants from accessing records related to their family and history, including any fees that may apply when individuals apply for records from government agencies, such as the Registry of Births, Deaths and Marriages.
- ensure that appropriate mechanisms are in place for Stolen Generation survivors to correct, alter or supplement records relating to their removal'.

Resolved, on the motion of Mr Franklin: That recommendation 31 be amended by inserting 'collaborate with community organisations to' after 'That the NSW Government'.

Resolved, on the motion of Mr Franklin: That the following new recommendation be inserted as the final recommendation after paragraph 11.19:

**'Recommendation X**

That, in conjunction with its consideration of the findings and recommendations of this inquiry, the NSW Government review the commitments made in its 1999 response to the *Bringing them home* report'.

Resolved, on the motion of Mr Franklin: That recommendations 35 and 36 be omitted:

**'Recommendation 35**

'That the Premier of New South Wales and Minister for Aboriginal Affairs be given joint responsibility for overseeing the NSW Government's implementation of recommendations from this inquiry and any previous commitments it made in its 1999 response to the *Bringing them home report*, with an annual report to be tabled in Parliament.

**Recommendation 36**

That General Purpose Standing Committee No. 3 conduct a review in 2018 of the implementation of the recommendation of its 2016 report into reparations for the Stole Generations in New South Wales'

and the following new recommendation be inserted instead:

'That the Premier of New South Wales and the Minister of Aboriginal Affairs be given joint responsibility for overseeing the NSW Government's implementation of recommendations from this

inquiry and that they provide a report to Parliament in 2018 for review by General Purpose Standing Committee No. 3 on the implementation of the recommendations of its 2016 report into reparations for the Stolen Generations in New South Wales’.

Resolved, on the motion of Mr Franklin: That recommendation 37 be moved to the summary of key issues to appear as recommendation 1.

Resolved, on the motion of Mrs Houssos: That recommendation 22 be further amended by omitting the second dot point: ‘is staffed by Aboriginal and Torres Strait Islander people who are trauma- informed and have specialist knowledge about the Stolen Generations’ and inserting instead: ‘is staffed by people who are trauma-informed and have specialist knowledge about the Stolen Generations, and who are preferably Aboriginal or Torres Strait Islander’.

In addition to recommendation 37, the committee agreed to move the following recommendations to appear upfront in the summary of key issues:

- recommendation 13 – reparations scheme
- recommendation 3 – funding for healing initiatives
- recommendation 17 – health care card
- recommendation 14 – education scholarship scheme.

Resolved, on the motion of Revd Nile: That the report, as amended, be adopted in principle.

#### **4.3 Consultation**

Resolved, on the motion of Mr Moselmane: That the committee hold a face-to-face consultation on Thursday 9 June 2016 at 11am with representatives from the Coota Girls Corporation, Kinchela Boys’ Home Aboriginal Corporation and the Children of the Bomaderry Aboriginal Children’s Home Incorporated to gather feedback on some of the proposed report recommendations.

Resolved, on the motion of Mr Franklin: That the committee invite two Link-Up NSW counsellors on Thursday 9 June 2016 to provide support to representatives attending the consultation.

#### **4.4 Recommendations for consultation**

Resolved, on the motion of Mrs Mitchell: That the committee adopt the consultation paper, as amended, and authorise it to be sent to the invited representatives, on a confidential basis, on 3 June 2016, in advance of the consultation on Thursday 9 June 2016.

#### **4.5 Inquiry timeline**

Resolved, on the motion of Revd Nile: That the committee adopt the following timeline for the inquiry:

- meet for a final report deliberative in the last sitting week in June, on a date to be canvassed by the secretariat
- table the report on Thursday 23 June 2016.

#### **4.6 Report tabling event**

Resolved, on the motion of Revd Nile: That the committee hold a tabling event on 23 June 2016, subject to the concurrence of the House, with the tabling and subsequent debate to be held from 10.30 am to 11.30 am, followed by a morning tea from 11.30 am to 12.00 pm, and that inquiry participants be invited to attend.

Resolved, on the motion of Mrs Maclaren-Jones: That the committee congratulate the secretariat for their excellent work in preparing the Chair’s draft report.

### **5. Adjournment**

The committee adjourned at 4.07 pm until 11.00 am, Thursday 9 June 2016 (*stakeholder consultation*).

Tina Higgins  
**Clerk to the Committee**

### **Minutes no. 29**

Thursday 9 June 2016

General Purpose Standing Committee No. 3

Macquarie room, Parliament House, Sydney, 11.00 am

#### **1. Members present**

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair* (from 1.47pm via teleconference)

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane

Revd Nile

#### **2. Inquiry into reparations for the Stolen Generations in NSW**

##### **2.1 Private consultation with Stolen Generation survivors**

The committee conducted a private consultation on some of the proposed report recommendations with the following representatives from the Coota Girls Corporation, Kinchela Boys' Home Aboriginal Corporation and Children of the Bomaderry Children's Home Incorporated:

- Aunty Isabel Reid
- Aunty Doreen Webster
- Aunty Shirley McGee
- Aunty Lorraine Peeters
- Kerrie Kelly
- Uncle Richard Campbell
- Uncle Lester Maher
- Uncle Michael Welsh
- Uncle Manuel Ebsworth
- Dr Tiffany McComsey
- Aunty Christine Blakeney
- Matthew Byers.

Also present during the consultation to provide support to participants were the following counsellors from Link-Up NSW: Mary-Anne Frail and Noel Rashleigh.

#### **3. Previous minutes**

Resolved, on the motion of Revd Nile: That draft minutes no. 28 be confirmed.

#### **4. Correspondence**

The committee noted the following items of correspondence:

##### ***Sent:***

- 3 June 2016 - Letter from Chair to Ms Kerrie Kelly, Network Coordinator, Coota Girls Corporation, regarding the private consultation with Stolen Generation survivors on 9 June.

- 3 June 2016 - Letter from Chair to Dr Tiffany McComsey, Chief Executive Officer, Kinchela Boys' Home Aboriginal Corporation, regarding the private consultation with Stolen Generation survivors on 9 June
- 3 June 2016 - Letter from Chair to Aunty Christine Blakeney, Chair, Children of the Bomaderry Children's Home Incorporated, regarding the private consultation with Stolen Generation survivors on 9 June.

## 5. Inquiry into reparations for the Stolen Generations in NSW

### 5.1 Partially confidential submission

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of submission no. 53, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.

### 5.2 Consideration of Chair's draft report

Resolved, on the motion of Mr Franklin: That recommendation 11 in the Chair's original draft report, regarding a funeral fund, remain at the end of paragraph 5.97.

The committee discussed feedback from the private consultation and possible amendments to the report.

Resolved, on the motion of Mrs Mitchell: That the secretariat circulate an amended version of the report, with any concerns raised by committee members about these changes to be discussed at the next meeting.

## 6. Adjournment

The committee adjourned at 2.17 pm until 1.10pm, 21 June 2016 (second report deliberative).

Tina Higgins

**Clerk to the Committee**

## Draft minutes no. 30

Tuesday 21 June 2016

General Purpose Standing Committee No. 3

Room 1136, Parliament House, Sydney, 1.14 pm

### 1. Members present

Ms Barham, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Mr Moselmane (from 1.16 pm)

Revd Nile

### 2. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no. 29 be confirmed.

### 3. Inquiry into Budget Estimates 2016-2017 – procedural resolutions

The committee noted the Budget Estimates timetable for 2016-2017, including the following GPSC 3 hearings, as agreed to by the House:



Date	Time	Portfolio	Room
Monday 29 August 2016	9.00 am – 11.00 am	Early Childhood Education, Aboriginal Affairs (Williams)	Jubilee
	11.15 am – 12.00 pm	The Legislature (Harwin)	Jubilee
	2.00 pm – 6.00 pm	Education (Piccoli)	Jubilee
Tuesday 30 August 2016	9.00 am – 1.00 pm	Mental Health, Medical Research, Women, Prevention of Domestic Violence and Sexual Assault (Goward)	Macquarie
	2.00 pm – 6.00 pm	Health (Skinner)	Macquarie

### 3.1 Allocation of question time

The committee noted that under the resolution establishing General Purpose Standing Committees, the sequence of questions at hearings will alternate between opposition, crossbench and government members, with equal time allocated to each, unless the committee decides otherwise.

### 3.2 Government questions

Resolved, on the motion of Mr Franklin: That with no questions asked by government members:

- On Monday 29 August 2016, the portfolios of Early Childhood Education, Aboriginal Affairs be examined from 9.00 am until 10.20am
- On Monday 29 August 2016, the portfolio of The Legislature be examined from 11.15am to 11.45am
- On Monday 29 August 2016, the portfolio of Education be examined from 2.00 pm to 4.40 pm
- On Tuesday 30 August 2016, the portfolios of Mental Health, Medical Research, Women, Prevention of Domestic Violence and Sexual Assault be examined from 9.00 am to 11.40 am
- On Tuesday 30 August 2016, the portfolio of Health be examined from 2.00 pm to 4.40 pm.

Mr Moselmane arrived at 1.16 pm.

### 3.3 Order for examination of portfolios

Resolved, on the motion of Revd Nile: That for the Early Childhood Education, Aboriginal Affairs hearing on Monday 29 August 2016 the portfolios be examined in this order:

- Early Childhood Education – 9.00 am to 9.40 am
- Aboriginal Affairs – 9.40 am to 10.20 am.

Resolved, on the motion of Mr Franklin: That for the Mental Health, Medical Research, Women, Prevention of Domestic Violence and Sexual Assault hearing on Tuesday 30 August 2016 the portfolios be examined in this order:

- Mental Health, Medical Research – 9.00 am to 10.20 am
- Women, Prevention of Domestic Violence and Sexual Assault – 10.20 am to 11.40 am.

### 3.4 Witness requests

Resolved, on the motion of Revd Nile: That the selection of witnesses be left to the discretion of the Minister.

## 4. Inquiry into reparations for the Stolen Generations in NSW

### 4.1 Tabled document

Resolved, on the motion of Mrs Houssos: That the timeline tabled by Aunty Lindy Lawler during the hearing on 2 March 2016 be kept confidential.

### 4.2 Re-consideration of Chair's draft report

The committee continued consideration of the Chair's draft report.

Resolved, on the motion of Mr Franklin: That paragraph 4.98 be amended by omitting 'and others' after 'reunions with family members'.

Resolved, on the motion of Mr Franklin: That paragraph 8.25 be amended by inserting 'work in partnership with business and other organisations to' after 'we would also encourage the government to'.

Resolved, on the motion of Mrs Mitchell: That:

- the draft report, as amended, be the report of the committee and that the committee present the report to the House;
- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee;
- the report be tabled on Thursday 23 June 2016;
- a media conference be held on Thursday 23 June 2016 at 1pm in The Domain.

## 5. Adjournment

The committee adjourned at 1.37 pm, *sine die*.

Tina Higgins  
Clerk to the Committee



