



# Stolen Generations Redress Victoria

## Discussion Paper

**Victorian Aboriginal Legal Service**

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## Introduction by Wayne Muir

### CEO Victorian Aboriginal Legal Service

As a legal service supporting the rights of Aboriginal and Torres Strait Islander people, we know that many of our community members have been subject to forced removal policies and practices. This has led to lifelong injury and trauma, felt through generations of family and kin. Most devastatingly, such policies destroyed the cultural connection between child, family, community, land and language.

The experiences and impacts of past removal policies have been well documented in reports such as *Bringing Them Home* (1997) and most recently, the Victorian Government's *Betrayal of Trust* (2013). These impacts include sexual, physical, and psychological abuse, and additionally for Aboriginal people – as acknowledged by the Victorian Government – cultural abuse<sup>1</sup>; that is, the denial of cultural practices unique to Aboriginal Victorians.

A well informed, culturally appropriate redress scheme is an opportunity for the Victorian State Government to acknowledge the trauma that removal has caused for Aboriginal Victorians and the loss of culture sustained due to past practices. We have the benefit of other jurisdictional redress schemes to learn from, with New South Wales most recently implementing a redress scheme for Aboriginal people removed as part of the Stolen Generations. It is from these examples, and consultation with Aboriginal communities around Victoria, that the recommendations in this report have been made.

In looking at some of the issues around the possible design of a redress scheme, VALS approach has been to look at how such processes would work, and what specific concerns may arise for a person making an application for redress. VALS has drawn on extensive reporting and community consultation with regards to this, including questioning what cultural loss means to different members of the community. We have aimed to be both inclusive of community views and academically rigorous in developing this proposal.

What we do know, however, is that Victoria's Aboriginal population has been named as one of the worst effected states by child removal and institutionalisation. It also remains the only state which has not yet had any form of redress offered to them. And with these effected members of our communities becoming increasingly elderly, and the inter-generational traumas only getting worse, it's time for the Victorian Government to act now and to redress Aboriginal cultural loss.

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<sup>1</sup> Victorian Government, 'A Victorian redress scheme for institutional child abuse: Public Consultation Paper' (2015) p11



## Stolen Generations Timeline Victoria

- 1837** Church Missionary Society sets up the Yarra Mission for Aboriginal children near present-day Melbourne.
- 1838** Port Philip Protectorate established (early Victoria).
- 1838** Aborigines Protection Society formed in 1838 as reports of mistreatment and murder of Aboriginal people filters back to the 'home office' in England.<sup>2</sup>
- 1839** Yarra Mission closes down.
- 1851** Colonial population of Victoria around 95 000.
- 1858** Colonial population of Victoria over 500 000.<sup>3</sup>
- 1858** *Report of the Select Committee of the Victorian Legislative Council on Aborigines* recommends that a system of reserves be established in remote areas of the colony to 'protect' Aboriginal people.
- 1863** Aboriginal population declines from an estimated 15 – 30 000 prior to colonisation,<sup>4</sup> to roughly 2000.<sup>5</sup>
- 1864** *Neglected and Criminal Children's Act* introduced due to the aftermath of the gold rush; first of many children's institutions created (Ballarat Orphanage).
- 1869** First law passed specifically concerning the removal of Aboriginal children - the *Aborigines Protection Act* - by which the Governor could make regulations for the 'care, custody and education of the aborigines.' Aborigines Protection Board established.
- 1871** *Aborigines Protection Act* amended to include regulations by which the Governor 'may order the removal of any child neglected by its parents or left unprotected to any of the places of residence or to an industrial or reformatory school.'<sup>6</sup>

<sup>2</sup> To put it in context, the *Slave Emancipation Act* had been passed in 1834 – the welfare of colonised and enslaved peoples throughout the British Empire was on the agenda.

<sup>3</sup> State Library of Victoria website *Impact of Immigration*.

<sup>4</sup> Some estimates have put the population of Aboriginal people in Victoria as high as 60 000. Source: Report released by the State Government of Victoria: *Victorian Aboriginal Affairs Framework 2013-2018 Building for the future: a plan for 'Closing the Gap' in Victoria by 2031*, pg 7.

<sup>5</sup> *Second Step: Engaging Students with the Stolen Generations* (Stolen Generations Victoria, 2008).

<sup>6</sup> *rightsED: Bringing Them Home* (Australian Human Rights Commission).





- 1886 *Aborigines Protection Act* extended the coverage of the 1869 legislation to ‘all other persons whatever of mixed aboriginal blood.’<sup>7</sup>
- 1890 *Aborigines Act* introduced, consolidating the previous Acts. Additional scope of regulation is also added, by which the Governor may regulate ‘the conditions on which half-castes’ may ‘obtain and acquire Crown land.’<sup>8</sup>
- 1899 *Aborigines Act* ensures that the Governor may order the removal of any ‘aboriginal child left neglected by its parents, or left unprotected’<sup>9</sup> to an ‘industrial or reformatory school.’<sup>10</sup>
- 1910 *Aborigines Act 1910* gives the Aborigines Protection Board equal powers over ‘half-castes’ for ‘all or any of the powers conferred on the Board with regard to aboriginals.’<sup>11</sup>
- 1915 *Aborigines Act 1915* regulates employment and residence for Aboriginal peoples.<sup>12</sup>
- 1928 *Aborigines Act 1928* explicitly states a ‘duty of the board’ is to ‘provide for the custody, maintenance and education of children of aborigines.’<sup>13</sup>
- 1957 *Aborigines Act 1957* Aboriginal Welfare Board formed,<sup>14</sup> however child removal is not explicitly stated as a power.
- 1960 *Social Welfare Act* passed which deals generally with the welfare of children with no specific provisions for Aboriginal children.

<sup>7</sup> *Aboriginal Protection Act 1886 (Vic)*, accessed at:

[http://www.austlii.edu.au/au/legis/vic/hist\\_act/tapa1886265/](http://www.austlii.edu.au/au/legis/vic/hist_act/tapa1886265/).

<sup>8</sup> *Aborigines Act 1890 (Vic)*, accessed at: [http://www.austlii.edu.au/au/legis/vic/hist\\_act/aa1890110/](http://www.austlii.edu.au/au/legis/vic/hist_act/aa1890110/).

<sup>9</sup> Executive Council, *Aboriginal Act 1890 Regulations*, in Victoria, *Victorian Government Gazette*, No 113, 23 September 1908, Regulation 13, p. 4707, accessed at [http://gazette.slv.vic.gov.au/view.cgi?year=1908&class=general&page\\_num=4693&state=V&class-Num=G113](http://gazette.slv.vic.gov.au/view.cgi?year=1908&class=general&page_num=4693&state=V&class-Num=G113).

<sup>10</sup> Executive Council, *Aboriginal Act 1890 Regulations*, in Victoria, *Victorian Government Gazette*, No 113, 23 September 1908, Regulation 13, p. 4707, accessed at [http://gazette.slv.vic.gov.au/view.cgi?year=1908&class=general&page\\_num=4693&state=V&class-Num=G113](http://gazette.slv.vic.gov.au/view.cgi?year=1908&class=general&page_num=4693&state=V&class-Num=G113).

<sup>11</sup> *Aborigines Act 1910 (Vic)*, accessed at

[http://www.foundingdocs.gov.au/resources/transcripts/vic7ii\\_doc\\_1910.pdf](http://www.foundingdocs.gov.au/resources/transcripts/vic7ii_doc_1910.pdf).

<sup>12</sup> *Aborigines Act 1915 (Vic)*, accessed at [http://www.austlii.edu.au/au/legis/vic/hist\\_act/aa1915110/](http://www.austlii.edu.au/au/legis/vic/hist_act/aa1915110/).

<sup>13</sup> Executive Council, *Aborigines Act 1928 Regulations*, in Victoria, *Victorian Government Gazette*, No 100, 13 May 1931, Regulation 21, p. 1558, accessed at [http://gazette.slv.vic.gov.au/view.cgi?year=1931&class=general&page\\_num=1537&state=V&class-Num=G100](http://gazette.slv.vic.gov.au/view.cgi?year=1931&class=general&page_num=1537&state=V&class-Num=G100).

<sup>14</sup> *Aborigines Act 1957 (Vic)*.



- 1967 Ministry for Aboriginal Affairs is established and the Protection Board abolished but there is no scope for this Ministry to authorise any child removal.<sup>15</sup>
- 1970 Aboriginal children specifically referred to as being subject to the *Social Welfare Act* but there are no specific provisions relating to them.
- 1989 *Children's and Young Person's Act* introduces principles of case planning for Aboriginal children that require members of the Aboriginal community to which the child belongs to be involved in the decision making process.
- 2005 *Children Youth and Families Act* makes provisions which specifically relate to Aboriginal children, including the Aboriginal Child Placement Principles (ACPP) which aim to ensure that Aboriginal children are placed with and maintain contact with the Aboriginal community and culture.

The State Government discussion paper recommended that alongside physical, sexual and psychological abuse, Aboriginal and Torres Strait Islander applicants would possibly be eligible for additional forms of redress due to cultural abuse. The State Government discussion paper defined cultural abuse as:

the cessation of the ability to continue cultural practices that would have been handed down by parents to children but for the fact of institutionalisation including spiritual practices, language, cultural practices, understanding of kinship relations, and other traditions.

He was moved all over the place and removed from the border of SA and NT. They provided him with the wrong birth date and they gave him his father's name and to find out it was not true was sad and frustrating.

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<sup>15</sup> *Aboriginal Affairs Act 1967 (Vic)*.



# Stolen Generations Redress Victoria

## Discussion Paper

### 1. Why have a redress scheme?

#### The Purpose of Redress

The fundamental purpose of a redress scheme should be to recognise the loss of culture experienced by Aboriginal people after being removed from land, language and community, and placed in institutions or other forms of care, such as foster care or adoption.

The effects of removal of Aboriginal children are not limited to cultural loss, but include physical, sexual and psychological abuse, and manifest in the present day through poor mental and physical health, loss of employment and education prospects, alcohol and substance misuse and abuse. In Victoria, this inter-generational trauma is seen in the high rate of second and third generation families whose children are now in out of home care.<sup>16</sup>

Under the *Victorian Charter of Human Rights and Responsibilities (2006)*, the Victorian Government has acknowledged and made a commitment to the unique cultural heritage Aboriginal people within Victoria hold. As such, a redress scheme should be developed to address the loss of that cultural heritage through child removal and institutionalisation.

**More needs to be done for children and families being removed now as it is not being addressed.**

#### Why is redress necessary for Aboriginal Victorians?

The 2013 Victorian Government report *Betrayal of Trust* recommended that a redress scheme be established for victims of child abuse regardless of background, ethnicity or Aboriginality. In a further discussion paper concerning

<sup>16</sup> 'Nationally, the rate of Indigenous children in out of home care was 10 times the rate for non-Indigenous children. In all jurisdictions, the rate of Indigenous children in out of home care was higher than for non-Indigenous children, with rate ratios ranging from 3.4 in Tasmania to 15.8 in Victoria.' In Victoria, this meant 66.4 out of every 1000 Indigenous children compared to 4.2 out of every 1000 non-Indigenous children. Australian Government: Australian Institute of Health and Welfare *Child Protection Australia 2011-2012* pp 41-42.





redress, the Victorian Government stated that in any redress scheme, the loss of culture (termed ‘cultural abuse’) should be considered as a possible head of damage for Aboriginal Victorians.<sup>17</sup>

The Victorian Government is looking to the Federal Government for guidance on redress, as per the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. However, any Federal redress scheme created under the auspices of the Royal Commission recommendations will only address sexual abuse, and not any other form of abuse, including cultural loss for Aboriginal and Torres Strait Islander peoples.

As such, the Victorian Aboriginal Legal Service is advocating for a redress scheme that specifically acknowledges the loss of culture sustained by Aboriginal Victorians due to past Victorian Government policies.

**She had to speak English and could not speak her own language.**

### Rates of Removal in Victoria Were High

*Bringing Them Home* stated that between 1 in 3 and 1 in 10 Aboriginal and Torres Strait Islander people were removed from their family, land, language and culture and placed into an institutionalised setting between 1900 - 1970.<sup>18</sup>

Yet the removal of Aboriginal children in Victoria began well before 1900; the first recorded Aboriginal child removals occurred in 1837, when the Church Missionary Society set up the Yarra mission<sup>19</sup>, and was first legislated through government policy in 1869.<sup>20</sup> Such policies in one form or another continue up until the present day<sup>21</sup>, and

<sup>17</sup> Victorian Government, ‘A Victorian redress scheme for institutional child abuse: Public Consultation Paper’ (2015) p11

<sup>18</sup> 1900-1970 was the main period of investigation of the Inquiry and the subsequent report. However, child removal had been a feature of Indigenous policy at a State and colony level for much of the 1800’s.

<sup>19</sup> By the end of that year, the mission had 36 children; however, at the conclusion of 1839, it had none. Rowley, C.D. *The Destruction of Aboriginal Society* (Penguin, 1968).

<sup>20</sup> *Aboriginal Protection Act 1869 (Vic)*

<sup>21</sup> In 1869, the first law was passed specifically concerning the removal of Aboriginal children - the Aborigines Protection Act - by which the Governor could make regulations for the ‘care, custody and education of the aborigines.’ This was amended in 1871, to include regulations by which the Governor ‘may order the removal of any child neglected by its parents or left unprotected to any of the places of residence or to an industrial or reformatory school.’

By 1933, the definition of ‘neglect’ was altered to include ‘a child living under conditions that means he/she is likely to lapse into a career of vice or crime [or that] the child’s guardian is unfit by reason of his conduct or habits’. By 1954, the term ‘neglect’ was replaced simply by the definition ‘in need of care.’ Laws pertaining specifically to the removal of Aboriginal children in Victoria were in place until 1957, after this,



within many Aboriginal Victorian communities, it is rare to find families that remain unaffected by the experience of removal and institutionalisation.<sup>22</sup>

Australian Bureau of Statistics surveys conducted in 1994, 2002 and 2008 all conclude that on average, 10% of Aboriginal and Torres Strait Islander people of any age reported being removed as a child.<sup>23</sup> The Royal Commission into Aboriginal Deaths in Custody revealed that of the 99 deaths that were investigated 43 had been removed as children.<sup>24</sup>

The 2014-2015 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) reported that Aboriginal and Torres Strait Islander people with a mental health condition were more likely to have been removed, or had relatives removed, from their natural family (50%) than those with other long-term health conditions (42%) and those with no long-term health conditions (34%).<sup>25</sup>

Additionally, the Victorian Government's Report, *Victorian Aboriginal Affairs Framework 2013-2018: Building for the Future: A Plan for 'Closing the Gap' in Victoria by 2031*, identified that 'a higher proportion of Aboriginal people in Victoria have been directly affected by the Stolen Generations than any other state or territory.'<sup>26</sup>

**The goal should be to address the issues of generational abuse. If you don't fix the cycle you might as well walk away as it will continue.**

## Redress has yet to be addressed in Victoria

For Aboriginal and Torres Strait Islander communities, calls for a redress scheme to alleviate the suffering and provide justice for formerly institutionalised persons is not new. *Bringing Them Home*, the 1997 report which detailed the extent and consequences of removal of Indigenous people, identified 54 recommendations, of which many related to forms of redress.<sup>27</sup>

however, Aboriginal children were included in mainstream child removal laws.

<sup>22</sup> Specifically, in 2008, there were an estimated 26,885 Aboriginal and Torres Strait Islander people nationwide who reported that they were removed from their natural family.

<sup>23</sup> At the 1994 NATSIS, 10% of Indigenous people aged 25 years or over reported that they had been taken away from their natural family. The same result (10%) was recorded for the closest equivalent age cohort group (35 years or over) in 2002. Both the 1994 and 2002 surveys recorded that 8 of Indigenous people aged 15 years or over at the time of the surveys, had been taken away from their natural family.

<sup>24</sup> 'Call for black families inquiry', *The Australian* 16/9/1994

Source: <https://www.creativespirits.info/aboriginalculture/politics/stolen-generations-effects-and-consequences#ixzz4r6LIVrq>


<sup>25</sup> Australian Bureau of Statistics (2016) *National Aboriginal and Torres Strait Islander Social Survey, 2014-15: Table 19. Selected wellbeing indicators, by long-term health conditions* [data cube].

<sup>26</sup> Victorian Government's Report, *Victorian Aboriginal Affairs Framework 2013-2018: Building for the Future: A Plan for 'Closing the Gap' in Victoria by 2031* p7

<sup>27</sup> *Bringing Them Home* (Australian Human Rights Commission, 1997).







So far, however, only the states of Tasmania, South Australia and New South Wales have implemented a scheme specifically for the Aboriginal community in this context, while Western Australia and Queensland have implemented redress schemes for all formerly institutionalised persons (Indigenous and non-Indigenous). This means that the Victoria is the only state not to have a redress scheme that aims to address the removal and institutionalisation of Aboriginal people in any form.<sup>28</sup>

### **Financial assistance will help address the ramifications of institutionalisation today**

Aboriginal children continue to be removed and placed in out-of-home care at far higher rates than non-Aboriginal children, in all states and territories. In Victoria, Aboriginal children are placed in out-of-home care at a rate of over 15 times that of non-Aboriginal children (the highest in Australia).<sup>29</sup> These high rates can in part be attributed to the inter-generational effects of removal and institutionalisation.

Parents who have their children removed were often removed themselves – a legacy of growing up in abusive situations with no parenting models. These difficulties are often compounded by extreme poverty, poor education and employment opportunities, poor mental and physical health and low outcomes across a range of other social indicators.

As such, a well-executed redress plan would assist Aboriginal Victorians and help to lift them out of poverty and address the numerous social stresses that affect their daily lives. Furthermore, a redress scheme will also build a bridge of reconciliation for past injustices. Any redress scheme should also offer appropriate counselling services, as well as cultural healing programs, to address the loss of culture experienced by removed and institutionalised Aboriginal Victorians.

**I still have that sense of not knowing and being Stolen Gen[erations] you still have a lot to learn and you don't want to see your children and grand-children suffer that loss. You don't know your cultural practices, your story, it's a kick in the guts.**

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<sup>28</sup> *The Stolen Generations of Aboriginal Children Tasmania Act (2006) TAS.*

<sup>29</sup> According to a Child Welfare Report released in 2012 by the Australian Government, Victorian Aboriginal children are more than fifteen times more likely to be placed in out of home care than non-Aboriginal children.



## 2. What Would Redress Look Like?

### Who are the applicants?

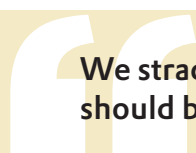
In VALS' model of a redress scheme, we see the following criteria for applicants:

- an Aboriginal and/or Torres Strait Islander person.
- placed in the care of a government or non-government organisation or institutional setting, including boarding schools, children's homes, foster care, and adoption.
- regardless of whether the person was 'given up' or forcibly removed.

The circumstances of placement should not be considered in any application for redress. The fundamental issue is that once in institutional care these children suffered cultural loss.

Given the long lasting impact the removal of children has had on Aboriginal and Torres Strait Islander communities, in the case of deceased persons, family and kin should be able to access the redress scheme.

This acknowledges the inter-generational impact of removal policies and institutionalisation on children into their adulthood, and on relationships with their immediate families – partners, children, siblings, parents and extended kin.



**We straddle two worlds - the one we make for ourselves and the one we should belong to. The rejection stings.**

### Parameters for Eligibility

The Victorian Aboriginal Legal Service is of the view that the parameters for eligibility and the cut-off date should be discussed via community consultation. However, as an example, we would suggest that any Aboriginal or Torres Strait Islander child removed under any Victorian Government policy prior to the introduction of the Aboriginal Child Placement Principle (ACPP) – which aims to keep Aboriginal children with the families and communities – should be eligible for redress.

This would mean anyone removed prior to 1989 when *Children and Young Persons Act* (Vic) was introduced. The Act requires the Department of Health and Human Services



to involve ‘relevant members’ of the child’s Aboriginal community in case planning (section 119(1)(m)(i)).

This acknowledges that prior to the introduction of the ACPP, there was no effort made on behalf of the Victorian Government to ensure that removed Aboriginal children were provided the opportunity to maintain their cultural practices and family and kinship ties.

**Cannot give back what is lost and there is no price. But if it meant it helped my children then so be it. You can pay whatever you want but it will not compensate for the relationship I don't have with my Mother and Father, Uncle and Aunties and Brothers and Sister, there is no monetary value on it.**

### How many people would be eligible?

VALS notes that there are difficulties of ascertaining numbers of removed Aboriginal people:

- Aboriginality was often not recorded due to the assimilationist policy at the time.
- Aboriginality was often not recorded due to the ‘definition’ of Aboriginal at the time.
- Lack of comprehensive records – records were lost or discarded.
- Removed individuals were not aware of their Aboriginality.

However, if the 1989 cut-off date was established, this would include any Aboriginal person 30 years and above. In 2019 this would be a total projected Aboriginal Victorian population of 21,707<sup>30</sup>, of which an estimated 10% were removed (as per ABS data and surveys).<sup>31</sup> This would mean an estimated 2,170 Aboriginal people in Victoria may be eligible for the scheme.

### What would be included in redress?

VALS supports a redress scheme based on equity of payments. Due to the closeness of Aboriginal and Torres Strait Islander communities, differentiating payments can cause

<sup>30</sup> Australian Bureau of Statistics 2016 Population Census

<sup>31</sup> Australian Bureau of Statistics consistently demonstrates that around 10 percent of Aboriginal and Torres Strait Islander people surveyed around the country said they had been removed as children (survey’s conducted in 1994, 2002 and 2008).

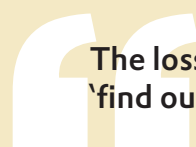




community tension and lead to disputes over the ‘value’ of each person’s loss. Equal payment for all claimants recognises the harm each has been experienced in equal measure.

Financial redress and counselling services should be the main types of redress available; however this should be specifically tailored to the experiences and needs of the person going through the process of redress. Warm referrals to support services are important, as are follow-up procedures and engagement. Financial counselling may also be appropriate to support individuals if they require assistance.

Consultation with Victorian Aboriginal communities also revealed that other methods of redress such as headstones for unmarked graves, education scholarships for children of members’ of the Stolen Generations, care packages, and storytelling and history projects would also be vital in any redress scheme.



**The loss of ties to dance, to history, to language and to the opportunity to ‘find out who I am’ are areas a redress scheme should compensate for.**

### 3. Features of Redress

**The following recommendations are based on consultations with Victorian Aboriginal communities in 2015.<sup>32</sup>**

#### *Simple and Accessible Process*

The redress scheme should have a simple and accessible application process, with multiple entry points. Should the application process be too onerous, or require too much sensitive information, applicants would be re-traumatized or ‘blocked’ from accessing the scheme.

The possible limited literacy of applicants needs to be considered when designing the application process.

The application assessment process should be easily understood so applicants know from the outset whether they are likely to be eligible or not, as opposed to ‘taking a

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<sup>32</sup> Victorian Aboriginal Legal Service, ‘A Victorian Redress Scheme for Institutional Child Abuse: Public Consultation Paper – Victorian Aboriginal Community response’ (October 2015)



chance' and having their application rejected and unnecessarily causing re-traumatisation.

### *Secondary Victims*

In the case of deceased persons who were removed, the redress scheme should include secondary victims (family members) to address impacts of intergenerational trauma.

### *Adoption*

Aboriginal people who had been removed and adopted, and suffered cultural loss as a result, should be able to apply for redress. This is due to state involvement in firstly overseeing the removal and adoption, and secondly, for not ensuring adequate cultural connections were maintained as part of the adoptive process.

### *Documentation*

Survivors should be assisted to find documentation and evidence relating to identity, family history and Aboriginal culture and heritage, both as part of their application process and ongoing, and barriers to accessing records (eg. financial and legal) should be removed.

### *Standard of Proof*

Standard of proof should be low and varied. Given that many people do not have access to records- or do not have records at all – the standard of proof for institutionalisation should be low.

Witness statements or statutory declarations should be accepted as evidence of institutionalisation.

In all accounts, the story of the individual should be believed by redress administrators, without onerous evidence of abusive experiences.

### *Proof of Aboriginality*

The redress scheme should have in place a tribunal of Aboriginal elders who could assist in confirming who is considered an Aboriginal person for the purposes of accessing redress for cultural loss. This complexity arises given that many people who were removed and institutionalised cannot 'prove' their Aboriginality under the three-part Commonwealth best practice model.

### *Cross-jurisdictional Removals*

Aboriginal children were often removed under Victorian legislation but placed in interstate institutions. Conversely, children were also removed under another state's



law and placed in a Victorian institution. In either case, the individual should be able to access the redress scheme given the State of Victoria's involvement in either situation (the initial removal OR the duty of care while in the institution).

#### *Financial Compensation*

Any financial amount should be of a considerable sum, and applicants should have agency over how that money is used and distributed.

While financial and legal counselling should be offered as part of the redress scheme, people should in no way have the payment administered by a government or other agency unless they opt for that to occur.

Any financial payment made should not affect Centrelink or Medicare benefits.

#### *Payment Plans*

Lump sum payments may be damaging to some applicants and that a payment plan administered by an appropriate Aboriginal business would be a better solution. However, it was stipulated that this should be an opt-in plan, and not dictated by the State.

#### *Deeds of Release*

A deed of release should not be a requirement of accepting any financial payment via the redress scheme.

#### *Unsuccessful Applications*

Any unsuccessful application be accompanied by an appropriate explanation (preferably via phone in the first instance) to avoid re-traumatisation.

An appeals process should also be set up as part of the redress scheme to give people a second chance should their application be denied due to incomplete records, or other avoidable reasons.

The principle of respecting the autonomy of, and returning control to survivors of institutional abuse should be paramount in designing these administrative processes.

#### *Prisoner Access*

Prisoners should have access to any redress scheme offered, in recognition of the reality that many inmates were institutionalised as children, and may not have ended up in prison otherwise





## 4. What forms of redress should be included?

### *Counselling*

Access to culturally appropriate and ongoing counselling should be a form of redress. While some people did not consider counselling to be of benefit to them, other participants took the view that ongoing counselling would be of benefit to themselves and their families. Any support services funded by the scheme must also be made available to secondary victims.

### *Story Telling and History Projects*

As an alternative to counselling, it was suggested that history projects by which elders could tell their stories and have them recorded for the community and their families, as a method of healing.

### *Healing Centres*

Healing centres were advocated as forms of redress. This would operate to assist both the individual and the family, acknowledging the ongoing impacts of intergenerational trauma and cultural loss, and the separation of families that is ongoing through current child removal practices. It was suggested that healing centres could be set up and funded through the local co-operatives.

### *Headstones*

The issue of headstones for unmarked graves was raised, in that, there are many Aboriginal people who were removed and now lie in unmarked graves, or graves marked only with a number. It was suggested that funding should be made available to provide headstones in such instances as part of a redress package for Aboriginal communities.

### *Education Scholarships for Children*

At every forum, the issue of intergenerational trauma was discussed, in particular the ongoing effects of child removal and poverty. In most instances, attendees stated that 'breaking the cycle' was of paramount importance. Education scholarships were suggested as a way for children to be able to overcome the intergenerational traumas associated with their parents' experiences.

### *Home Ownership Assistance*

Many attendees agreed that owning a home was a way to move out of poverty and to assist in redressing past traumas. Many suggested that any financial compensation should be put towards assisting people to own a home.



### *Care Packages*

It was also suggested that redress be supplied in the form of a care package that is tailored to suit the applicants unique needs, in part emulating the approach taken by the National Disability Insurance Scheme. This could include counselling, health and education.

### *Prisoner Post Release Programs*

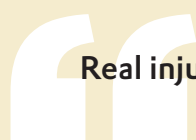
It was also generally agreed that inmates should have more access to support services upon release to ensure that they did not reoffend. This was acknowledged by many inmates, who felt that if they had access to work, education, housing and cultural support from community, they would be less likely to re-offend. This should be considered as a means to break the cycle of institutionalisation.

### *Women's Prisoner Assistance*

It was noted by Dame Phyllis Frost inmates that there were few supports for female prisoners upon release and whilst incarcerated. Again, it was reiterated that post-release programs were essential and that a 'half-way house' was vital to female inmate reintegration with their families and communities, in order to break the cycle of incarceration and for mothers to be better parents to their children. It was also noted that prisoner programs were not gender-specific and more should be done to provide 'women's business' culturally aware programs.

### *An Apology*

There was a lot of cynicism at each forum regarding a potential apology with attendees stating that an apology was an insult without any real practical change. An apology should only be offered alongside a redress package which would provide real assistance to Aboriginal men and women and their families and communities.



**Real injustice put upon my people still reverberates today.**

## **5. What supports will survivors need?**

### *Education and Awareness*

Aboriginal communities in Victoria and inter-state would benefit from an education and awareness campaign should the redress scheme go ahead. This will ensure that community members – and in particular, community members isolated due to social or geographical reasons – would have the necessary support and awareness to access the scheme.



### *Support from the State*

The application process should be accessible and understood by applicants, many of whom have low literacy. This may mean measures like phone support from the redress scheme should be used in order to assist people. There is concern about the lack of adequate and culturally appropriate communication, leaving people re-traumatised and unassisted.

### *Support from the Community*

Support should be provided to people accessing the redress scheme through local Aboriginal co-operatives and agencies. This support should include: assisting people to fill out forms; counselling for people for whom the application process may be re-traumatising; education and awareness raising in the community about the redress scheme; assistance in accessing the redress scheme and providing information about who is eligible.

### *Legal Advice*

The appropriate Aboriginal Legal Services should be funded to provide legal support and advice regarding the redress scheme, as well as assisting with the application process. This should be extended inter-state, given that there may be eligible applicants in other states.

### *Support to Obtain Documentation*

The necessary support should be provided in order to assist applicants to find the relevant documentation to support their application.

### *Access*

Any redress scheme should be simple to access, and have multiple entry points. The scheme should also be culturally relevant for Aboriginal community members. People should be able to tell their story in oral, written or other forms.

### *Service Provision*

Existing support services such as Link Up and the Bringing Them Home/Social and Emotional Wellbeing workers should be better funded as part of any redress package. Other healing services and programs such as the Marumali Healing Program and Red Dust Healing should also be funded and made accessible to community members. Funding for Aboriginal organisations should not be at the expense of the individual or family of the institutionalised person.





### *Prisoner Supports*

Appropriate supports should also be offered to inmates for them to be able to access the redress scheme. This should include administrative and counselling supports, in order to provide information and support due to lack of internet access and general isolation. Given inmates' isolation, an outreach program would be required to ensure that inmates had access to the scheme, and were receiving administrative and culturally appropriate support.

**My daughter didn't know [she was Aboriginal]. The parents that took her in didn't tell her, and when she found out and got in contact with me she broke down because she didn't know her mother was Aboriginal.**

## 6. The Impacts of Removal and Institutionalisation

### Cultural Loss

The *Bringing Them Home* Report describes institutional abuse survivors who were removed as children as suffering from loss of language, denial of cultural knowledge or social inclusion, and an inability to take on positions of cultural responsibility or assert cultural rights.<sup>33</sup>

The Report documents denial of language, total separation from family and breaking of important familial bonds as common experiences of survivors. These were tactics deployed to the effect of stripping of a person's identity.<sup>34</sup>

The *Bringing Them Home* Report notes that 'The loss of language is intimately connected with the loss of identity for those forcibly removed and their descendants'.<sup>35</sup> The Report also notes that in many institutions Aboriginal children were forced to hide their ability to speak language.<sup>36</sup>

Denial of language has the ongoing impact of breaking up cultural identity and connection to community.<sup>37</sup> Those who have lost their ability to speak language or were denied the opportunity to learn their language are survivors of institutional abuse.

<sup>33</sup> *Bringing Them Home Report*, 1997, 256.

<sup>34</sup> *Ibid*, Chapter 10.

<sup>35</sup> *Bringing Them Home Report*, 1997, Chapter 14.

<sup>36</sup> *Ibid*, Chapter 14.

<sup>37</sup> *Ibid*, Chapter 14.



The effects of cultural loss are seen in the separation of individuals from their law, custom and their identity.<sup>38</sup> *Bringing Them Home* witnesses spoke strongly of a sense of ‘not belonging’ to Indigenous communities as a result of their experience of institutionalisation.<sup>39</sup>

The *Bringing Them Home* Report highlights the impacts child removal and institutionalisation have on families and notes that institutionalisation had the effect where most children in care ‘were denied the experience of being parented or at least cared for by a person to whom they were attached’.<sup>40</sup> This severing of the caring relationship manifests in a range of negative outcomes, including loss of culture.<sup>41</sup> Ongoing child removal resulting from inter-generational institutionalisation continues to pose a risk to expressing culture and maintaining connections within families.

**A strong recommendation to be put forward is that government has to be responsible for disproving people were put in institutions.**

## Mental Health and Wellbeing

Identity and culture are important to positive mental health outcomes. Research demonstrates that a strong correlation exists between social exclusion and higher rates of suicide.<sup>42</sup> Social exclusion is an issue particularly relevant to populations vulnerable to discrimination and racism, including Aboriginal and Torres Strait Islander Australians.<sup>43</sup> This is a health factor further compounded for Aboriginal survivors of institutional abuse who may lack a sense of clear cultural identity due to their experience.<sup>44</sup> This could lead to further social exclusion and a sense of not belonging to any community.<sup>45</sup>

Persons of Indigenous background are currently 2.5 times the general population dying by suicide.<sup>46</sup> This rate would likely be compounded for persons also with a history of institutionalisation. Survivors of child abuse have an increased risk of

<sup>38</sup> *Bringing Them Home Report*, 1997, 175.

<sup>39</sup> *Ibid*, 176.

<sup>40</sup> *Ibid*, 193.

<sup>41</sup> *Ibid*, 193.

<sup>42</sup> Alan Woodward, ‘A Strong Challenge to Suicidal Thinking’ in *Mental Health & Wellbeing in Australia*, Mental Health Council of Australia, 2013.

<sup>43</sup> *Ibid*.

<sup>44</sup> *Bringing Them Home*, 1997, 176.

<sup>45</sup> *Bringing Them Home*, 1997, 176.

<sup>46</sup> Alan Woodward, ‘A Strong Challenge to Suicidal Thinking’ in *Mental Health & Wellbeing in Australia*, Mental Health Council of Australia, 2013.



developing various mental illnesses in adulthood.<sup>47</sup> Researchers conclude this may lead survivors to access psychological services for a range of mental health issues, including suicidal ideation and self-harm.<sup>48</sup>

Abuse as a child can lead to disrupted 'formation of sense of self, others and the world'.<sup>49</sup> This compounds the impact cultural loss has on an institutional abuse survivor. Provision of redress to assist in reconnecting culture will undoubtedly assist in improved mental health outcomes for this at-risk population.

**I never had a true name, I never had a date of birth...I need support, counselling.**

## Intergenerational Trauma

Much of what we know about intergenerational trauma is informed by studies of Holocaust survivors,<sup>50</sup> and studies of residential schools in Canada.<sup>51</sup> In the Australian context, the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) and the *Bringing Them Home* Report sought to (among other objectives) record the testimonies of Aboriginal and Torres Strait Islander peoples' trauma-related experiences, and in so doing, helped to illustrate the extent of intergenerational trauma.

The impacts of institutional abuse and associated traumas impact in multiple ways, including individual, family and community trauma.<sup>52</sup> Importantly, historical trauma, left unacknowledged and unattended to 'compounds and compacts'.<sup>53</sup> This results in what has been described as the 'cascading' effects of intergenerational trauma.<sup>54</sup>

<sup>47</sup> Adeline Leea, Stuart Lee, Jan Coles and Jayashri Kulkarni, 'Australian Psychologists' Current Practice, Beliefs and Attitudes towards Supporting Women Survivors of Childhood Maltreatment', *The Australian Community Psychologist* Volume 24 (November 2012) No 2.

<sup>48</sup> Ibid.

<sup>49</sup> Stein, P & Kendall, J; 'Psychological trauma and the developing brain: Neurologically based interventions for troubled children', (Haworth Maltreatment and Trauma Press, New York, 2004).

<sup>50</sup> Theo de Graaf, 'A Family Therapeutic Approach to Transgenerational Traumatization' (2008) 233 *Family Process* 37 (2).

<sup>51</sup> Rosemary Barnes, Nina Josefowitz and Ester Cole, 'Residential Schools: Impact of Aboriginal Students' Academic and Cognitive Development' (2006) 18 *Canadian Journal of School Psychology* 21 (1/2).

<sup>52</sup> Judy Atkinson, Jeff Nelson, Robert Brooks, Carlie Atkinson, Kelleigh Ryan (2010) 'Addressing individual and community transgenerational trauma' in Nola Purdie, Pat Dudgeon and Roz Walker (eds) *Working Together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice* (Australian Government Department of Health and Ageing, 2010).

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.





In the disparities between Indigenous and non-Indigenous Australians there is a continuation of abuse through the generations that suggests contemporary trauma and historical trauma are interlinked and cannot be seen in isolation.

The failure to adequately identify, recognise, challenge such intergenerational trauma has led to an ongoing series of life crises at the individual, family and community level<sup>55</sup> that has led to poor social or health outcomes and greater likelihood of incarceration.

## Sexual Abuse

*Bringing Them Home* also states that ‘almost one in ten boys and just over one in ten girls allege they were sexually abused in a children’s institution’, while ‘one in ten boys and three in ten girls allege they were sexually abused in a foster placement or placements.’<sup>56</sup>

The majority of instances of alleged sexual abuse in institutions outlined in *Bringing Them Home* were not reported to the institution - for males in institutions or foster homes, over 90% of alleged sexual abuses were not reported to the police, institution or caregiver. For females in institutions, over 88% of cases went unreported, while for those in foster homes, the figure was just over 70%.<sup>57</sup>

However, these statistics are based only on instances of sexual abuse that were told to the Inquiry by way of anecdote – specific questions regarding sexual abuse within institutions were not asked as a discrete measure by way of the Inquiry.

The rate of calls to the current Royal Commission into Institutional Responses to Child Sexual Abuse indicated that nearly 10 percent of callers identified as being Aboriginal and/or Torres Strait Islander.<sup>58</sup> This figure indicates that sexual abuse occurred perhaps more frequently than *Bringing Them Home* would suggest, as overall, the rates of sexual abuse the Royal Commission are uncovering across all communities are far greater than what were expected.

**I’d like to see that type of money go towards Aboriginal organisations to correct those wrongs.**

<sup>55</sup> Judy Atkinson and Glen Woods, 'Turning dreams into nightmares and nightmares into dreams', *Borderlands*, 7 (2008) no. 2.

<sup>56</sup> *Bringing Them Home* (Australian Human Rights Commission, 1997) pg 141-142.

<sup>57</sup> *Bringing Them Home* (Australian Human Rights Commission, 1997) pg 141 Given the terms of reference of the current Royal Commission, the rates of sexual abuse in adoptive or work situations have not been commented upon.

<sup>58</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *First Anniversary Fact Sheet*.



## Physical abuse

Former residents of institutions housing removed children tell stories of being flogged with whips and hit by carers, denied adequate food or clothing, and not provided with medical assistance.<sup>59</sup> Physical abuse has been documented broadly, often with official recognition at the time, which can be seen as indicative of the widespread, almost endemic presence of this amongst institutions.<sup>60</sup>

## Emotional/psychological abuse

*Bringing Them Home* documents that many children living in institutions or foster care were told that their parents did not love them and they were unwanted, or their parents were dead.<sup>61</sup> Children were equally told to lie about their background to peers, or simply not told they were Aboriginal.<sup>62</sup>

Child psychiatrists quoted in *Bringing Them Home* refer to the damage caused by these experiences as significant.<sup>63</sup> It has generally been acknowledged in these institutions that the forming of bonds essential to emotional and psychological development in children was disallowed.<sup>64</sup>

**I think compensation should be left to the individual. You were owned by the government and to say then, forty years down the track, here's the compensation and this is how it flows, nothing has changed. It's still the government telling us on our behalf what they think is best.**

## 7. Barriers to Justice

### Barriers Affecting Aboriginal Claimants in Civil Litigation

The Victorian Aboriginal Legal Service understands that there are a number of barriers that prevent removed and institutionalised Aboriginal people from accessing justice. Unlike other States and Territories which have had various redress schemes for former state wards, civil litigation – and to a very limited extent victims of crime compensation – have been the only forms of recompense available to Aboriginal

<sup>59</sup> *Bringing Them Home*, pp 139.

<sup>60</sup> *Bringing Them Home*, pp 226.

<sup>61</sup> *Bringing Them Home*, pp 134.

<sup>62</sup> *Bringing Them Home*, pp 135.

<sup>63</sup> *Bringing Them Home*, pp 137.

<sup>64</sup> *Bringing Them Home*, pp 147.



people in Victoria. Historically, however, Aboriginal people have experienced difficulties accessing justice through both of these avenues, and none of these avenues offer compensation for the loss of culture.

In the context of Aboriginal child removals, there are many barriers to accessing justice. These include, amongst other things, difficulties accessing legal advice and representation, difficulties accessing records, time limitations, identifying persons responsible for the abuse, guaranteeing equality of arms and the standard of evidence required to establish civil claims.

Often, a lack of legal education around victims of crime compensation schemes will have implications such as a delay in making an application. This is also due to the fact that victims will need to see medical practitioners to obtain the necessary supporting documents, which can be a confronting experience as it forces the victim to speak about the acts and how they have affected their life. This is in and of itself off putting for many victims.

Successful cases of compensation via civil litigation for removed Aboriginal people are few and far between. Both Bruce Trevorrow and Neville Austin received compensation via the civil litigation process in South Australia (2007) and Victoria (2011) respectively. Both were able to prove the negative impacts removal had had on their lives. Mr Austin's case was settled out of court – therefore unable to be used as precedent for further cases<sup>65</sup> – while the State of South Australia tried unsuccessfully to appeal the Trevorrow outcome.<sup>66</sup>

In practice it appears that there are common barriers which prevent victims from successfully pursuing statutory victim compensation schemes in the context of institutional child abuse, the main one being time limitations. In 2002, Aboriginal woman Valerie Linow received \$35,000 in damages in the NSW Victims Compensation Tribunal for the 'sexual assault and injuries she suffered after authorities removed her from her family' at aged 16.<sup>67</sup> She had been removed at age 2 and placed under the 'protection' of the NSW Aborigines Welfare Board, and spent her life being transferred through various institutions, including Cootamundra Girls' Home.<sup>68</sup> However, in Victoria, and as noted by the Family and Community Development Committee, the Victims of crime compensation scheme does not favour institutional child abuse victims.

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<sup>65</sup> *The Australian* 'State payout a first to Stolen Generation' (June 24, 2011)

<sup>66</sup> *The Australian* 'South Australia loses appeal against \$775,000 payout to Bruce Trevorrow' (March 22, 2010)

<sup>67</sup> Source: *Stolen Generations Council NSW/ ACT Inc.* website

<sup>68</sup> *The Age* 'Caught up in a scientific racism designed to breed out the black' (Feb 14, 2008)





*Betrayal of Trust* stated that the current avenues to justice for former state wards are in need of reformation. In particular, time limitations were noted as being a hindrance, with recommendations made by the Committee with respect to civil litigation to ‘amending the *Limitations of Actions Acts 1958 (Vic)* to exclude criminal child abuse from the operation of the limitations period under that Act’ (Recommendation 26.3). This has since been amended under the *Limitation of Action Amendment (Child Abuse) Act 2015*. However, despite this, other barriers to justice via civil litigation still remain.

Furthermore, with regards to victims of crime compensation schemes, a recommendation was made to amend the *Victims of Crime Assistance Act 1996 (Vic)* to specify that no time limits apply to applications for assistance of criminal child abuse in organisational settings (Recommendation 27.1). As such, a redress scheme would be beneficial to removed and institutionalised Aboriginal Victorians as a way to negate these barriers and provide an avenue to justice which has long been denied, and one that has the capacity to address the loss of culture.

It needs to be about healing and people must be able to get back to country and connect with culture that is still alive.

## 8. Previous Calls for Redress

### *Bringing Them Home (1997)*

In the *Bringing Them Home* report, the former Human Rights and Equal Opportunity Commission (HREOC, now the Australian Human Rights Commission) made 54 recommendations for action by governments, churches and the community to assist healing and provide justice for removed Aboriginal and Torres Strait Islander people.<sup>69</sup>

A national compensation fund was recommended as an alternative to civil suits for seeking redress (Recommendation 3) as part of an overall reparations scheme. HREOC recommended a one-off lump sum payment of compensation to all those who were removed from their families.<sup>70</sup>

The report also recommended additional compensation for people affected by the policies who could prove types of harm recognised under Australian law, such as

<sup>69</sup> *Bringing Them Home* (Australian Human Rights Commission, 1997), Chapter 13.

<sup>70</sup> *Ibid*, Chapter 14.



labour exploitation, physical and sexual abuse, loss of culture and loss of land rights.<sup>71</sup> Loss of earnings, damage to reputation and dignity, and loss of opportunity were to be included also.<sup>72</sup>

The Report recommended all people affected be able to make a claim, including siblings, descendants, and parents.<sup>73</sup> *Bringing Them Home* also recommended significant restitution (restoring to the state of affairs prior to harm caused) in relation to land, culture and language; as well as financial redress.<sup>74</sup>

**You lose your culture and your identity, and you lose yourself.**

### ***Public Interest Advocacy Centre (PIAC) Tribunal Model (2002)***

Based on PIAC's Moving Forward project PIAC recommended a redress model, with a Tribunal investigating applicants' claims. The Tribunal Model hinges on 4 central principles: acknowledgement, self-determination, prevention of future harm, information and access to the process.<sup>75</sup>

An Applicant's suggested evidentiary burden to access compensation would be limited to: proving Aboriginal or Torres Strait Islander Identity, circumstances of removal, events following removal, and the type of harm caused.<sup>76</sup> PIAC's proposed standard of proof is the balance of probabilities, and the rules of evidence should not apply. The Tribunal is suggested to have an investigate function, so as to do more than rely on an applicant's records or statements.<sup>77</sup>

Who can apply is recommended to cover: individuals removed, their families, groups affected by disintegration and cultural loss due to child removal, descendants of individuals removed.<sup>78</sup> Payments are recommended as payable to groups or individuals, but generally groups in the form of grants.<sup>79</sup> Grants are recommended to cover a broad range of community interest projects, particularly those assisting with healing, and cultural recognition and celebration.

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<sup>71</sup> Ibid, Chapter 14.

<sup>72</sup> Ibid, Chapter 14.

<sup>73</sup> Ibid, Chapter 14.

<sup>74</sup> Ibid, Chapter 14.

<sup>75</sup> Ibid, 54.

<sup>76</sup> Ibid, 58.

<sup>77</sup> Ibid, 58.

<sup>78</sup> Ibid, 58.

<sup>79</sup> Ibid, 17.



The recommended cut-off date should be 1970, representing the date when the HREOC report *Bringing Them Home* framed their investigations.<sup>80</sup> On types of Heads of Damage the PIAC proposal is informed from wide community consultations; and has settled on the inclusion of labour exploitation, physical abuse, psychological harm, and sexual abuse, loss of culture and loss of land.<sup>81</sup>

### ***Stolen Generations Compensation Bill (2008)***

The Bill proposed the establishment of a Stolen Generation Tribunal to provide compensation and acknowledgement to give justice to members of the Stolen Generations and their descendants.<sup>82</sup> The Tribunal is suggested to comprise of half Indigenous and half non-Indigenous experts, who would decide on individual's claims.<sup>83</sup>

The proposed Redress scheme would operate similarly to Canada's, with a Common Experience Payment of \$20,000 to be made to any applicant, with an additional \$3,000 for every year institutionalised.<sup>84</sup> A 7 year window of opportunity would be available to make applications, and all decisions of the Tribunal would be subject to Judicial Review.<sup>85</sup>

Under this proposed scheme justice would be provided primarily through the payment of compensation, however funding for specialised medical facilities (on consultation with Stolen Generations across Australia) would also be made available.<sup>86</sup>

**How do you apologise for a life taken away? It would just make a person wild if they tried to offer an apology.**

### ***Betrayal of Trust (2013)***

In 2013 the Victorian Family and Committee Development Committee released *Betrayal of Trust*, a two-volume report based on findings made during the Inquiry into the Handling of Child Abuse by Religious and Non-Government Organisations. The report outlined the experiences of many Victorian men and women who had suffered abuse while in an organisational or institutional setting, including Aboriginal Victorians, featuring the testimonies of Aboriginal elders Uncles Howard Edwards, Murray Harrison and Jack Charles.

<sup>80</sup> Ibid, 58.

<sup>81</sup> Ibid, 57.

<sup>82</sup> *Stolen Generation Compensation Bill 2008 (Cth)*.

<sup>83</sup> Ibid, s 15.

<sup>84</sup> Ibid, s 11.

<sup>85</sup> Ibid, s 13.

<sup>86</sup> Ibid, s 22.





Betrayal of Trust recommended that a redress scheme be established to compensate victims of criminal child abuse for all Victorians (Recommendation 28.1). So far, however, this recommendation has yet to be implemented. Yet a further discussion paper released in 2015 regarding redress acknowledged the need for cultural loss as a specific head of damage for Aboriginal Victorians.<sup>87</sup>

**We have difficulty trying to access documents. I've been asking for records for a person now for two months. It's frustrating...clients won't pay the dollars to get their birth certificate, and you need identification to go on to that next stage to apply for records. And they don't have the money. We can't access the records in the bureaucracy.**

## 9. Human Rights Framework

### Victoria's Obligations Under the *Charter of Human Rights and Responsibilities Act 2006* (VIC)

The Victorian *Charter of Human Rights and Responsibilities 2006* gives effect to international human rights principles within the state. The Charter recognises a suite of rights in Victorian law, including particular rights for Aboriginal people.<sup>88</sup> Section 19 of the Charter, 'Cultural Rights', states:

- (2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community —
  - (a) to enjoy their identity and culture; and
  - (b) to maintain and use their language; and
  - (c) to maintain their kinship ties; and
  - (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Aboriginal people have been denied access to these rights by way of their removal and subsequent abuse in institutional settings, and the intergenerational trauma that has impacted on families and communities.

<sup>87</sup> Victorian Government, 'A Victorian redress scheme for institutional child abuse: Public Consultation Paper' (2015) p11

<sup>88</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 19.



Although these rights may not be applied retroactively, the Victorian Aboriginal Legal Service would suggest that Aboriginal people today are continually denied these rights due to past policies and practices.

Land, language, kinship ties, culture, identity and spiritual belief systems all continue to be 'at risk' due to the impacts of institutionalisation. As such, a comprehensive and culturally sensitive redress package is necessary to fulfil Victoria's human rights obligations in the modern era.

### International Human Rights Obligations

Australia is also signatory to a number of key international human rights documents that infer obligations on Australia to respect, protect and fulfil the human rights of its citizens.

Of particular interest in informing human rights principles in the context of institutional child abuse in the Aboriginal community, are the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Convention on the Rights of the Child* and the *Declaration on the Rights of Indigenous Peoples*.

Australia's human rights commitments and obligations, in the context of institutional child abuse, provide a clear requirement on the provision of redress. From the perspective of the Victorian Aboriginal Legal Service various human rights instruments provide the nexus for Victorian government redress assisting members of the Aboriginal people who have been institutionalised under Victorian law, and suffered abuse because of this.

The Victorian Aboriginal Legal Service believes these international instruments recognising human rights should guide the work of the Victorian Government in its approach to the righting the wrong of child removal and institutionalisation, and subsequent abuse. The Victorian Aboriginal Legal Service believes specially in the importance of the right to a remedy, clearly articulated in these instruments for international norms.

**Would missions and reserves come under loss of culture? How far back does this go? That's where the loss of culture starts.**



## 10. Redress in Other Jurisdictions

Further information regarding these schemes can be found in previous VALS submissions.<sup>89</sup>

### The Republic of Ireland Redress Scheme (2002)

The *Residential Institutions Redress Act 2002* was legislated to provide compensation to survivors of child abuse within residential schools.<sup>90</sup> From the 19th century British government and, successively the new Republic, had policy supporting the removal of children, and placing them in homes, reform schools, industrial schools, and religious institutions.<sup>91</sup> This would stem from a finding by authorities that a parent was ‘unable or unsuitable to care for them’.<sup>92</sup>

In the 1990s survivor organisations began to campaign politically for, and litigate, compensation from churches and government for suffering caused. In 2000, the government established the Commission to Report on Child Abuse, headed by former Judge Laffoy.<sup>93</sup> This aimed to inquire into abuse that occurred since the 1940s, and how it was allowed to happen.<sup>94</sup> The Commission also sought to listen to survivors, and hear their stories.

The Confidential Committee heard stories, but operated separately to the Board of Redress, which administered payments and heard formal applications after 2002. Out of the work of the Commission the government decided to legislate a Redress scheme in 2002 to compensate survivors. The Commission has been made a permanent statutory body, to work in an ongoing way collecting testimony.<sup>95</sup>

“My kids are now going through the same stuff I went through. It’s not hard to get into a place like this. It’s like a revolving door – passed on to generations. I grew up around drugs and alcohol, it was normal. The psychological stuff – being beat up around as a kid.”

<sup>89</sup> Victorian Aboriginal Legal Service, ‘A Victorian Redress Scheme for Institutional Child Abuse: Public Consultation Paper – Victorian Aboriginal Community response’ (October 2015)

<sup>90</sup> *The Residential Institutions Redress Act 2002*, Republic of Ireland.

<sup>91</sup> Commission to Report into Child Abuse, ‘Establishment of the Commission’, <<http://www.childabusecommission.ie/>>, 5.

<sup>92</sup> Carol Brennan, ‘Facing what cannot be changed: The Irish Experience of Confronting Institutional Child Abuse’, (2007) 29(3), *Journal of Social Welfare and Family Law*, 245, 246.

<sup>93</sup> *The Commission to Inquire into Child Abuse Act 2000*, Republic of Ireland.

<sup>94</sup> Commission to Report into Child Abuse, ‘Establishment of the Commission’, 2.

<sup>95</sup> *The Commission to Inquire into Child Abuse Act 2000*.





## The New Zealand Care-leavers Redress Scheme (2004)

In 2004 New Zealand established a redress scheme for all care-leavers, providing a process of review of the experience of residential care, and appropriate remedies as required.<sup>96</sup> A Care Claims and Resolution unit within the Ministry of Social Development administers the scheme.<sup>97</sup> Between 2004 and 2013 \$6 million was given in compensation to 297 applicants, equating to approximately \$20 000 for each applicant.<sup>98</sup>

The Process for the Scheme begins with initial contact made by an applicant to the Care Claims and Resolutions unit.<sup>99</sup> Within three weeks an allocated social worker meets with the applicant, the social worker evaluates then what help is needed for the process (including assistance accessing records).<sup>100</sup> A Claims Officer then reviews the experience of state care and abuse suffered, and investigation may be carried out. This can include interviewing former staff and reviewing records institution.<sup>101</sup>

On this assessment, in a meeting the applicant they will be told if the care they received was inappropriate, and remedial matters will be discussed, including the giving of an apology. The final outcome for an applicant may include compensation, provision of counselling services, and help to find family members.<sup>102</sup>

**White family, black family, doesn't matter. But they should be told blackfella ways, all we need is to be told who we are, where we come from, to be included in the community.**

## Canadian Indian Residential Schools Agreement Redress Scheme (2006)

The Indian Residential Schools Agreement (IRSA) represents one of the largest class-action settlements in Canada's history. The IRSA was signed by the Federal Government, plaintiff lawyers, Indigenous groups, and all major churches involved in legal claims at the time, and came into existence in 2006.<sup>103</sup>

<sup>96</sup> Ryan Carlisle Thomas Lawyers, 2014, 36.

<sup>97</sup> Ministry of Social Development, 'Historic Claims', < <http://www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/cyf-historic-claims.html> >.

<sup>98</sup> Ryan Carlisle Thomas Lawyers, 2014, 36.

<sup>99</sup> Ibid, 36

<sup>100</sup> Ministry of Social Development, 'Historic Claims'.

<sup>101</sup> Ryan Carlisle Thomas Lawyers, 2014, 36.

<sup>102</sup> Ibid, 36.

<sup>103</sup> Antonio Buti, 'Responding to the Legacy of Canadian Residential Schools', (2001) 8(4), *Murdoch University Electronic Journal of Law*, <[http://www.austlii.edu.au/au/journals/MurUEJL/2001/28.html#Reparations-Demands-And-Responses\\_T](http://www.austlii.edu.au/au/journals/MurUEJL/2001/28.html#Reparations-Demands-And-Responses_T)>.



In a similar history to Australia's, Canada's Indian Residential Schools were founded with the purpose to assimilate Canadian Aboriginal people, and remove language, culture and religion from children taken.<sup>104</sup> Records are incomplete but the scale of this policy was large, with an estimated 130 000 Aboriginal children having lived in one of the many government-funded and church-run schools.<sup>105</sup>

The Assembly of First Nations, as well as several of the tribal-based Grand Councils, were actively involved in reaching the settlement.<sup>106</sup> As well as pushing for full compliance and diligent fulfilment of the Agreement to this day.<sup>107</sup> Overall the Settlement saw large amounts of funding made available for compensatory payments, with more going to programs for assistance and healing.<sup>108</sup> It provided acknowledgement, public education, and a platform for healing and justice.

**I choose not to go to mainstream counselling because that's where it all created...I've had suicide in my life.**

### Tasmanian Stolen Generations Redress Scheme (2006)

The Tasmanian Stolen Generations reparation scheme was introduced in 2006 and provided funds of \$5 million for Ex gratia payments to those removed as children, or the children of deceased members of the Stolen Generations.<sup>109</sup> Of 151 claims made, 106 were assessed as eligible and 84 received a sum of \$58,333.<sup>110</sup> 21 children of deceased members of the Stolen Generations made claims and received either \$4,000 or \$5,000 in compensation.<sup>111</sup> Payments were made with the goal to compensate for the harm caused by removal from family and from culture.<sup>112</sup> This is a wider purpose than compensating for particular cases of abuse due to removal.

A 3-tier system of claims was developed. Category 1 applied to Aboriginal people who had been removed from their families as children between 1935-75 under the Infants

<sup>104</sup> Llyod Hawkeye Robertson, 'The Residential School Experience: Syndrome or Historic Trauma', (2006), 4(1), *Pimatisiwin*, 4.

<sup>105</sup> Omar Ha-Redeye, 'Honourable Frank Iacobucci on Residential Schools', (8 November 2009), *SLAW Online*, <<http://www.slaw.ca/2009/11/08/honourable-frank-iacobucci-on-residential-schools/>>.

<sup>106</sup> Grand Council of the Crees, 'Indian Residential Schools Agreement', <<http://www.gcc.ca/issues/irs.php>>; Assembly of First Nations, 'Indian Residential Schools', <<http://www.afn.ca/index.php/en/policy-areas/indian-residential-schools>>.

<sup>107</sup> Grand Council of the Crees, 'Indian Residential Schools Agreement'.

<sup>108</sup> Ryan Carlisle Thomas Lawyers, Submission on Civil Litigation and the Barriers to Justice for Victims of Institutional Abuse, *Royal Commission into Institutional Responses to Child Sexual Abuse*, 17 March 2014, 36

<sup>109</sup> Office of the Stolen Generations Assessor, 'Report of the Stolen Generations Assessor: Stolen Generations of Aboriginal Children Act 2006', 2008, 2.

<sup>110</sup> Assessor's Report, 2006, 2.

<sup>111</sup> Ibid, 2.

<sup>112</sup> Ibid, 2.



Welfare Act 1935 or the Child Welfare Act 1960, and who became wards of the state.<sup>113</sup> This applied to Aboriginal people who had been removed for more than 12 months, usually under application to the Courts to have a child declared ‘neglected’.<sup>114</sup>

Category 2 applied to Aboriginal people who had been removed from their families between 1935 and 1975 under ‘active intervention of a state government agency’.<sup>115</sup> Category 3 applied to descendants of a deceased person who would have satisfied either Category 1 or 2 requirements.<sup>116</sup> Category 3 claims were limited to \$5,000, and \$20,000 per family group. Category 1 and 2 claimants were granted the remainder equally divided of the fund after Category 3 sums were granted.<sup>117</sup> The window for making claims was 6 months from 15 January 2007 when the Act commenced.

The Assessor hearings/interviews with applicants were held without the rules of Evidence.<sup>118</sup> Hearings were informal, and claimants were encouraged to bring a support person.<sup>119</sup> The Assessor took responsibility to liaise with government departments on the provision of relevant documents, and this supporting information was not required for claim to be lodged.<sup>120</sup>

**I didn’t know who I was or what I was or where I was from. Not even the carers told me what I was but I put two and two together.**

### The Queensland Redress Scheme (2007)

In 2007 the QLD government introduced a Redress Scheme for survivors of institutional child abuse.<sup>121</sup> This was in response to the recommendations made by the 1999 Forde Inquiry.<sup>122</sup> Reparations were made as Ex Gratia payments ranging from \$7,000 to \$40,000, with \$100 million set aside for the scheme.<sup>123</sup> A 2-tiered system of payments was instituted, with Level 1 requiring applicants show they were living within a government or non-government institution, and had experienced institutional

<sup>113</sup> *The Stolen Generations of Aboriginal Children Tasmania Act (2006) TAS, s 5. ('The Act')*

<sup>114</sup> Assessor’s Report, 2006, 7.

<sup>115</sup> The Act, s 5.

<sup>116</sup> Assessor’s Report, 2006, 7.

<sup>117</sup> Ibid, 8.

<sup>118</sup> Ibid, 9.

<sup>119</sup> Ibid, 10.

<sup>120</sup> Ibid, 9.

<sup>121</sup> Ryan Carlisle Thomas Lawyers, Submission on Civil Litigation and the Barriers to Justice for Victims of Institutional Abuse, *Royal Commission into Institutional Responses to Child Sexual Abuse*, 17 March 2014, 31.

<sup>122</sup> Ryan Carlisle Thomas Lawyers, 2014, 31.

<sup>123</sup> Ibid, 31.





abuse or neglect.<sup>124</sup> Level 2 required an independent panel of experts find more serious harm had been suffered.<sup>125</sup> On accepting an offered payment, applicants were to sign a Deed of Release to indemnify the government from further litigation.<sup>126</sup>

Overall 10 200 applications were made under the scheme.<sup>127</sup> As part of the redress scheme, the government funded several commemorative projects. This includes an annual care-leavers remembrance day.<sup>128</sup> On 25 August 1999 the State Premier, with representatives of the residential institutions, issued a formal apology for the harm caused.<sup>129</sup> Significant resources were allocated for assistance and support to care-leavers.<sup>130</sup>

This was implemented in the form of the Lotus Palace program that created a service center specifically for care-leavers. This houses four bodies funded by the Government; the Forde Foundation, the ARC (Queensland), the Esther Centre and the Historical Abuse Network (HAN).<sup>131</sup> All four provide specific services to care-leavers, including information and referrals, as well as small financial grants.

“My nan was Stolen Gen, she was taken away. I was taken away then went back to my dad. My kids were taken away. It’s definitely a generational thing. My daughter had her first baby and in 24hrs they’d taken that kid away. She wasn’t given a chance. My daughter’s here [at DPFC] now. That’s the generational stuff.

### The Western Australian Redress Scheme (2008)

In WA the Redress Scheme came about in the context of growing public concern and awareness of the issues faced by child migrants, and wards of the state in institutional care.<sup>132</sup> This awareness developed mainly in the 1990s and early 2000s. With a 1998 apology from the Premier to Child Migrants, and the publication of a 2003 Federal Senate report on abuse in institutional care, the foundations were laid for a redress scheme for a group of survivors that became known as the Forgotten Australians.<sup>133</sup>

<sup>124</sup> Ibid, 31.

<sup>125</sup> Ibid, 31.

<sup>126</sup> Ibid, 31.

<sup>127</sup> Senate Community Affairs Reference Committee, Parliament of Australia, *Lost Innocents and Forgotten Australians Revisited* (2009), 39. ('Forgotten Australians Report')

<sup>128</sup> Forgotten Australians Report, 2009, 11.

<sup>129</sup> Ibid, 35.

<sup>130</sup> Ibid, 69.

<sup>131</sup> Ibid, 77.

<sup>132</sup> Senate Community Affairs Committee, Australian Parliament, 'Forgotten Australians' and 'Lost Innocents': child migrants and children in institutional care in Australia, 2009. ('Forgotten Australians Report')

<sup>133</sup> Forgotten Australians Report, 2009.



This time period corresponds to the release of the Bringing them Home report on Stolen Generations in 1997.<sup>134</sup> In that year the Leader of the Opposition Geoff Gallop moved a motion supported by Premier Richard Court on behalf of WA apologising to the Stolen Generations.<sup>135</sup> The Redress Scheme however, when announced, was couched in general terms and did not refer specifically to the suffering of Stolen Generations in state care as Forgotten Australians.<sup>136</sup> While it was clear Aboriginal people would make applications under the scheme, by the language employed, Redress WA did not specifically seek to provide redress to the Stolen Generations.

**Cannot give back what is lost and there is no price. But if it meant it helped my children then so be it. You can pay whatever you want but it will not compensate for the relationship I don't have with my Mother and Father, Uncle and Aunties and Brothers and Sister, there is no monetary value on it.**

### South Australian Stolen Generations Redress Scheme (2016)

The South Australian Stolen Generations Reparations Scheme, *Next Step*, commenced in March 2016 and applications closed in March 2017. The South Australian scheme follows the 2010 Trevorrow judgement, the *Stolen Generations Reparations Bill 2010* and the *Stolen Generations (Compensation) Act 2014*. Much of the motivation for the South Australian scheme came from the landmark Trevorrow judgement when in 2010 the South Australian Supreme Court awarded Bruce Trevorrow \$775,000 in compensation for damages caused by his removal from family. The case was estimated to cost the government \$2 million in legal fees and prompted others to pursue compensation claims in the courts.

The South Australian redress scheme provided a \$6 million fund for ex gratia payments to members of the South Australian Stolen Generations and a \$5 million fund for community reparations. Ex gratia members were capped at \$50,000 and were made to an Aboriginal person removed without a court order from their family as a child prior to 31 December 1975, where their normal place of residence was South Australia, or they were removed by South Australian authorities.

<sup>134</sup> Ronald Wilson and Mick Dodson, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997. ('Bringing them Home Report')

<sup>135</sup> Parliament of Western Australia, House of Assembly, 27 May 1997, (Geoff Gallop, Leader of the Opposition).

<sup>136</sup> Care Leavers Australia Network, 'Redress WA', <<http://www.clan.org.au/redress-by-state.php?stateID=5>>.



Other responses to the Unfinished Business report include a Stolen Generations Advisory Committee, a healing fund to address intergenerational trauma, financial support for survivors' groups, memorials, streamlined access to Aborigines Welfare Board records, and a Stolen Generations Funeral Assistance Fund, that will provide \$7,000 to the costs of funerals for members of the Stolen Generations.<sup>137</sup>



**Community healing programs should be run by, or in consultation with, the Victorian Aboriginal community.**

### **NSW Stolen Generations Redress Scheme (2017)**

The NSW Stolen Generations Redress Scheme was introduced in December 2016 in response to the Unfinished Business report on reparations for the New South Wales Stolen Generations.<sup>138</sup> The New South Wales scheme follows other redress schemes underway or concluded in Tasmania, Queensland, Western Australia and South Australia. Unfinished Business investigated ways to address the effects of past government practices on the Stolen Generations.

The terms of reference included inquiring into the NSW Government's response to reparations recommendations in the 1996 Bringing them Home Report, and potential legislation and policy to make reparations to members of the Stolen Generations and their descendants.<sup>139</sup> The report adopted the definition of 'reparations' in the Bringing them Home report, which includes: acknowledgement and apology, guarantees against repetition, measures of restitution, measures of rehabilitation, and monetary compensation. The report made 35 recommendations, most of which were adopted by the NSW government in the Stolen Generations reparations scheme.

The redress scheme was influenced by both the Tasmanian and South Australian redress schemes, and by the Aboriginal Trust Fund Repayment Scheme, which concluded in 2011. The NSW scheme provides over \$73 million in funding to support the estimated 1,079 survivors of the Stolen Generations in NSW, and provides ex gratia payments capped at \$75,000 to survivors. The reparations payments are to compensate for the loss of culture, identity, family and community suffered as a result being removed or committed by the Board.<sup>140</sup>

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<sup>137</sup> Ibid

<sup>138</sup> General Purpose Standing Committee No 3, NSW Legislative Council, Report on Reparations for the Stolen Generations in NSW: *'Unfinished Business'*, 2016.

<sup>139</sup> Ibid.

<sup>140</sup> Government Response to Unfinished Business: Status Update Factsheet, Aboriginal Affairs NSW, 2016.





Other responses to the Unfinished Business report include a Stolen Generations Advisory Committee, a healing fund to address intergenerational trauma, financial support for survivors' groups, memorials, streamlined access to Aborigines Welfare Board records, and a Stolen Generations Funeral Assistance Fund, that will provide \$7,000 to the costs of funerals for members of the Stolen Generations.<sup>141</sup>

The Stolen Generations survivor reparations scheme will provide ex gratia monetary payments of up to \$75,000 and a personal letter of apology from the Premier and Minister for Aboriginal Affairs. Eligibility will be based on the act of removal or committal to the Aborigines Welfare Board between 1925 and 1969, which includes 'all those removed from homes, fostered or adopted.'<sup>142</sup>

The scheme is planned to commence in July 2017 in two phases. The first phase of the scheme will fast track monetary payments to survivors that participated in the Stolen Generations Group Action. The second phase will be advertised and will invite any Indigenous person who was removed or committed to the Aborigines Welfare Board to apply to the scheme. The scheme will be operational for at least five years and will accept a broad range of evidence as proof of removal, including statutory declarations, oral evidence, photos and corroborative evidence.

## Previous VALS' Submissions on Redress

### *Betrayal of Trust* Victorian State Government

- Recommendation 28.1 State Redress Scheme (January 2015)
- A Victorian Redress Scheme for Institutional Child Abuse Public Consultation Paper: Victorian Aboriginal Community Response (October 2015)

### Royal Commission into Institutional Responses to Child Sexual Abuse

- Issues Paper 5: Civil Litigation (joint Human Rights Law Centre submission, March 2014)
- Issues Paper 6: Redress Schemes (June 2014)
- Issues Paper 7: Victims of Crime Compensation Schemes (July 2014)

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<sup>141</sup> Ibid

<sup>142</sup> Government Response to Unfinished Business, 17



## Notes





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