

	Northern Territory Stolen Generations Aboriginal Corporation	
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Justice Peter McClellan AM
Chair Royal Commission into
Institutional Responses to Child Sexual Abuse

Via email: solicitor@childabuseroyalcommission.gov.au

Dear Justice McClellan

As you know, the Stolen Generations Aboriginal Corporation (NTSGAC) is the peak Aboriginal organisation established to work in the best interests of Aboriginal people in the Northern Territory who were in some form or another removed from their mothers, families and country under government policies from the period 1911 to 1971. As the peak organisation for Aboriginal people affected by such removal, we are authorised to respond to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

NTSGAC would like to thank the Royal Commission for the opportunity to make this Submission and for the extension in time for which to lodge this.

We now submit the NTSGAC's Submission in response to the Royal Commission's Issues Paper 6 – Redress Schemes.

Yours sincerely



Frank Spry

Chief Executive Officer
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Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

Executive Summary

The Northern Territory Stolen Generations Aboriginal Corporation (NTSGAC) welcomes the opportunity to provide a Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to the release of Issues Paper No. 6 – Redress Schemes.

The focus of NTSGAC is to address the political and social disadvantage of our members. The issues of Healing, Truth and Justice are the foundations in building a strong and healthy future for those who were removed, and their descendants; all of who continue to maintain their identity as Stolen Generations people.

NTSGAC aims to:

1. Promote and represent the NT Stolen Generations clients and their families' interests to Territory, State and Commonwealth governments and their agencies and international non-government organisations, including international organisations on any issues in relation to NT Stolen Generations clients and their families.
2. Document the Stolen Generations history for future generations and to provide educational awareness in the wider community.
3. Investigate and pursue legal remedies to the Stolen Generations concerns at a Territory, national and international level, including but not limited to litigation, legislative or constitutional reform and international legal remedies.
4. Assist and support Stolen Generations and their families in their social, spiritual, cultural and economic aspirations through a culturally appropriate healing centre established for the purpose of appropriate program activities.
5. Provide and promote the Stolen Generations with ongoing assistance and support. Build partnerships with government and non-government agencies so as to achieve social and economic equity for Stolen Generations and their families.
6. Provide family tracing, research, reunions and continuous support.
7. Develop culturally appropriate protocols that are inclusive of Stolen Generations values and aspirations.
8. Monitor the implementation of the recommendations of the Human Rights Commission National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their families.
9. Take whatever lawful action the Corporation considers necessary, including the entering into contractual or other legal relations with other organisations or individuals, to advance the interests and welfare of the Corporation, members and clientele.
10. Access the necessary resources to effectively and efficiently carry out the objects of the Corporation.

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

Many enquiries and reports from a national level have been written addressing issues of the stolen generations including *the Long Road Home* and [Bringing them home](#). Many conferences and/or Forums have also done the same including a public hearing in Darwin on the [Stolen Generation Compensation Bill 2008](#).

The paper by Linda Zhang prepared for the Northern Territory Senator Trish Crossin entitled '[Compensating the Northern Territory Stolen Generations: A Commonwealth Responsibility](#)' (the Crossin report), goes to the core of reparation for NTSGAC members. This paper takes into account all past reports and forums and is representative of all stolen generation people in the Northern Territory including our members from the Khalin Compound, Retta Dixon Home, Croker Island, Groote Eylandt and Garden Point Missions. So rather than restating all of our concerns we trust the Royal Commission will consider the paper on our behalf.

NTSGAC is looking forward to the Royal Commission examining past practices in these Institutions and perhaps recognise the need to find Justice for the Stolen Generations people – all our members want at the end of the day is recognition that Justice has finally come for violations of their human rights.

Specific questions raised in the Royal Commission's Discussion Paper 6:

What are the advantages and disadvantages of redress schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts, particularly in comparison to claims for damages made in civil litigation systems?

NTSGAC considers for proper healing processes to take effect a redress scheme is necessary. Inclusion of a monetary compensation element of the scheme is an important step in that process.

Advantages of a redress scheme include:

- Will complements the recognition of the wrong done in the apology by acknowledging that the individuals and institutions responsible for the harm done are properly being held to account in the public eye and by the proper processes;
- It can allow for individual and group redress for the harm done has had ongoing adverse effects that can be in part ameliorated;
- A redress scheme can include individual compensation;
- A legislated, funded scheme can provide redress enables claimants to obtain redress without being required to do all the work required to verify the veracity of their claim;
- Such a scheme also avoids claimants being re-traumatised by having to provide detailed account of their institutionalised history; and
- Such a scheme especially avoids re-traumatisation of people who do not wish to pursue civil litigation and be put through contentious cross-examination procedures

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

- A redress scheme could potentially address the unique needs of NTSGAC members.

The disadvantages of a redress scheme may lie more in its potential for its outcomes to not be achieved. This may include administrative mismanagement, inadequate levels of funding for redress measures, ineffective means of access to the scheme among others.

What features are important for making redress schemes effective for claimants and institutions? What features make redress schemes less effective or more difficult for claimants and institutions?

One feature is a rationale for the redress scheme that includes admission of responsibility by the Commonwealth. The Government has to explain why it happened. What was the intention? Our members want to know why they were removed. They have to know why they were given the life they had been given and why they are scarred today. Yes, Prime Minister Kevin Rudd on behalf of the Australian Parliament did say ‘Sorry’ to the Stolen Generations and their families – and we thank him for that.

No Government of any political persuasion has accepted total responsibility to the point of truly recognising the harms done.

Some governments have established redress schemes – WA, Qld, and SA. The Commonwealth (or the Northern Territory Government) have not established any redress schemes. The schemes have varied in their coverage and benefits. The schemes have included some individual financial compensation. No Government has ever provided redress, including individual financial compensation.

The apology given by the Australian Government to the Stolen Generations has not affected the ability of Stolen Generation members to pursue compensation against the Commonwealth. Despite the apology the legal barriers to litigation remain: actions barred by the statute of limitation, state of the law in relation to the liability of institutions or governments for the criminal acts of employees or volunteers and the length of time that civil claims take. In the case of NTSGAC members the limitation period (and lack of evidence) has meant that they have not been able to successfully use civil litigation to achieve justice. The apology to the Stolen Generations did not expressly admit any act of illegality or negligence. Hence the apology does not expose Governments or institutions to any liability. Symbolism is a cop-out it must be linked to something positive like financial reparation.

While acceptance of responsibility for redress including financial compensation goes against the political will of the Commonwealth regardless of which political party is in power and against past arguments mounted in the Courts, the Royal Commission enables this failing to be rectified.

Millions of dollars was allocated under the Howard Government for practical compensation allowed for Link-Up and counselling services through the Emotional and Wellbeing programs in the NT. The NTSGAC provides both services to our members but that does not allow for any moneys at the grass roots level. For example, in the case of the Northern Territory Stolen Generation one consequence of removal, and the resulting social exclusion, was lack of ability to be recognised as a traditional owner of land under the [Aboriginal Land Rights \(Northern Territory\) Act 1976](#) – Link-Up services do not bridge that divide. Removed children

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

remain alienated from their traditional lands and can't call their mothers' country their own. Few are freehold land owners in urban centres.

It is clear that the Royal Commission's work will thus involve taking evidence on, investigating and reporting on the physical component of sexual abuse. The same is true of use and role of severe emotional and mental abuse as an element of and vehicle for sexual abuse. Previous reports give abundant evidence and the Terms of Reference encourages the Commission to take the findings of previous reports into account. The corollary may also be revealed in the Royal Commission's work, that an absence of serious physical and mental abuse and of sexual abuse is similarly linked.

The nature of loss and harm experienced by members of the Stolen Generation includes:

- Loss of identity, family bonds, relationships and difficulties with parenting skills;
- Loss of cultural knowledge, including language and traditional inherited rights;
- Loss of opportunity to be recognised as a traditional owner, and member of a land trust, under the [Aboriginal Land Rights \(Northern Territory\) Act 1976](#) and [Native Title Act 1993](#);
- Lack of opportunity to own land, unlike non-Aboriginal Australians priding themselves in providing inheritance to their children;
- Lack of opportunity to gain formal and informal (life) skills that could equip children to lead a meaningful and resilient lives outside of an institution;
- Generational cycles of homelessness, alcohol and drug abuse, domestic violence, poor health and shorter life expectancy; and
- Systemic representation before the criminal justice system

Lost opportunities in having a good education and training to hold down good decent jobs in the workforce has meant few stolen generations people have assets or the ability to pass inheritance onto their children and grandchildren. There are instances where they have been tenants of NT Public Housing for 40 years and on their passing the Northern Territory Government evicts the adult children and their children out on the street as the family have no claim to continue with the rental lease. Many have been made homeless as a result. Monetary compensation will for most claimants, be their only opportunity for home ownership – something that can be called 'their home' proper.

What forms of redress should be offered through redress schemes? Should there be group benefits available to, say, all former residents of a residential institution where abuse was widespread? What should be the balance between individual and group redress?

Group redress is paramount.

Individual compensation element of a redress scheme is a separate matter. One-off ex-gratia payments to all people institutionalised is supported.

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

The numerous reports highlight many aspects and forms of redress schemes.

What are the advantages and disadvantages of establishing a national redress scheme covering all institutions in relation to child sexual abuse claims? If there was such a scheme, should government institutions (including state and territory institutions) be part of that scheme? How and by whom should such a scheme be funded?

There may be possible overall support then to look at establishing a national scheme independent of the States. Suggest therefore we propose a Commonwealth scheme and not a national scheme.

The disadvantage in doing so remains that former institutional residents fall into varying kinds of institutionalisation and under various policies and controls - for example, church based versus government controlled, state versus commonwealth and so forth. One option is for a redress fund to be established by the Governments who established the institutions or authorised non-government institutions to operate establishments which they independently owned and may have operated prior to Governments sending children to their control.

The Royal Commission can consider recommending (a method for distinguishing) responsibility for abuse between non-Government (churches etc.) institutions and Governments or Government agencies. To what extent was an institution responsible for the abuse, through negligence, acceptance, cover-up, ignorance etc. of abuse and to what extent was the Government authority or agency responsible?

The size of a fund would be determined by:

- An estimate of the number of people/claimants to be compensated;
- The amount of compensation to be allocated to each claimant, which would vary according to the claims made; the redress scheme may have categories of claim, for example based on direct abuse and more systemic abuse. In at least some establishments, children lived in a constant fear of being abused and suffered damage as a result both while incarcerated and in an ongoing manner. The [*Bringing them home*](#) report makes reference to the latter.

Should establishing or participating in redress schemes be optional or mandatory for institutions?

The Commonwealth should participate in any redress scheme that is proposed. There are a number of arguments for this position.

The Commonwealth was responsible for the administration of the Northern Territory from 1911 to 1978 and provided direct and indirect support (including financial support) for institutions in the Northern Territory (such as Retta Dixon Home for children). Moreover the Commonwealth was responsible for the legal and policy frameworks which facilitated the placement of children into institutions in the Northern Territory in this period of time.

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

Some of the institutions (such as the Retta Dixon home for children) where children were placed no longer exist, and some organisations which operated the institutions (such as the Aboriginal Inland Mission which operated Retta Dixon) no longer exist or have been taken over by an organisation that does not have any redress scheme, or it is unclear what the capacity of those organisation is to provide redress.

Should seeking redress or compensation through a redress scheme be optional for claimants? Should claimants retain the ability to pursue civil litigation if they wish?

People are responsible for their own choices – NTSGAC continues to support all members seeking redress.

A redress scheme that takes away the right of victims of abuse to civil litigation is not supported. The scheme can make allowance for individuals who wish to pursue litigation to do so and to provide appropriate legal support as part of any individual compensation.

The successful suing of the South Australian government by a member of the Stolen Generations proves claimants can go down the path of civil litigation. The claimants' success in this case relied heavily on his ability to access all the relevant records/documentations to prosecute the case. Most NTSGAC claimants have been denied access to such documentation for various reasons – many being damaged and/or lost.

Two previous cases were litigated here in the Northern Territory Courts and both failed for many of those reasons. It was also evident that due to lack of financial resources (Aboriginal Legal Aide was the only service available) both cases were doomed from the start. So, yes claimants should be able to retain the ability to take matters to court but to do so they should be able to have the support to do successfully.

How should fairness be determined in redress schemes when some institutions have more assets than others? How should fairness and consistency between survivors be achieved in these circumstances? What should be the position if the institution has ceased to operate and has no clear successor institution?

To what extent have current assets of institutions been derived from moneys earned, directly from operating institutions or indirectly as a result of operating institutions and then having the status and corporate capacity to gain funds from government, philanthropic and any other sources that have ultimately led to the accumulation of assets.

In any event, the responsibility for pursuit of outcomes from any redress scheme cannot be imposed on the individual victims or on the members of individual or collective institutional groups.

The responsible institutions or the over-arching bodies ultimately in control of the institutions responsible for the harm suffered by people in their care

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

What are the advantages and disadvantages of offering compensation through a redress scheme which is calculated on the same basis that damages are awarded by courts in civil litigation systems? Should affordability for institutions be taken into account? If so, how?

An argument by the Commonwealth for a redress scheme in the past was the lack of a legal framework and difficulties in estimating the monetary value of losses. However analogies can be drawn against other cases presented before the courts. Courts look into the context of negligence; compensation is available for non-economic and economic losses such as pain and suffering, loss of expectation of life, loss of earning capacity and loss of opportunity. The Court's framework works in providing compensation for those who have suffered injury. In the absence of any other compensation framework, NTSGAC would support this.

A precursor in offering compensation through a redress scheme is other States which the Royal Commission should look into.

Yes, institutions should be made responsible regardless of affordability to the extent possible to be determined by the Royal Commission.

What sort of support should be available for claimants when participating in a redress scheme? Should counselling and legal advice be provided by any redress scheme? If so, should there be any limits on such services?

A separate scheme for the Northern Territory for which the commonwealth is responsible is favoured. The Crossin report, part 4.5 refers to administration of schemes by a Tribunal or by an assessor.

Two options are for the Northern Territory scheme to have an assessor for each Stolen Generations institution. This is favoured. The Crossin report indicates that a smaller number of claimants is suited to administration by an assessor and has advantages over a Tribunal.

A Tribunal would probably be required if there was one scheme for all Northern Territory institutions.

If a claimant has already received some financial compensation for the abuse through one or more existing schemes or other processes, should the financial compensation already received be taken into account in any new scheme?

This may not be applicable in the Northern Territory as few or if any among our members have received financial compensation either through litigation or a redress scheme.

The Northern Territory continues to be the only state/territory without access to government/church based redress schemes.

This would be a matter for each individual as no two cases of abuse and paid compensation are the same. Likewise for the redress scheme, eligibility for claim.

Submission from the Northern Territory Stolen Generations Aboriginal Corporation

Issues Paper No. 6 - Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

Conclusion

Each of the Terms of Reference of the Royal Commission clearly state, that the Commission is charged with enquiring into sexual abuse and related matters. Previous enquiries demonstrate that physical abuse is an integral part of sexual abuse. Witnesses have indicated that they wish to give witness on the physical abuse that was part of the sexual abuse, that there is no delineation between them, that they are part of one thing, abuse that can and did manifest itself in forced acts involving sex.

NTSGAC notes the Commission has been examining many issues within and outside church structures. In relation to the Roman Catholic activities, Cardinal Pell has acknowledged in statements to the Commission that there should be a (Church-based) legal entity capable of being sued where people/children who were (arguably) the victims of crime and whose care, wellbeing, safety and protection were the responsibility of an entity essentially under the control of the Church. Statements such as that must be extended to include the Commonwealth in cases where the Commonwealth was similarly, ultimately responsible. This cannot continue to be ignored.

NTSGAC is of the belief the strong reason for establishing a redress scheme is that many survivors of abuse in the Northern Territory do not have access to any redress scheme – so far only the Anglican Church, Catholic Church and Salvation Army have established schemes.

Human Rights and Equal Opportunity Commission (HREOC) made a submission to the [*Inquiry into The Stolen Generation Compensation Bill 2008*](#) recommending:

1. That the Commonwealth, through the Councils of Australian Governments, engage with State and Territory governments to develop a consistent approach with joint funding mechanisms in the provision of financial redress for the Stolen Generations; and
2. That the Commonwealth encourages State and Territory governments, churches and non-government agencies that played a role in the removal of Aboriginal children from their families to generously contribute to the funding of any healing centres established for the Stolen Generations under the Bill.

Finally in quoting the Tasmanian Anti-Discrimination Commissioner, Robin Banks - *'Reparations and compensation is different: This [reparation] is about justice. As long as members of the Stolen Generations are denied reparations while governments spend millions of dollars defending Stolen Generations litigation, the injustice continues'*.