NSW GOVERNMENT | Aboriginal Affairs

Stolen Generations **Reparations Scheme**

Interim Report

1 July 2017 – 31 December 2020

‘The 1997 report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families marked a turning point in Australia’s history. *Bringing them Home* laid bare evidence and personal testimonies of heart wrenchingly honest accounts of the forcible removal of Aboriginal children under a government policy of assimilation and the enduring trauma it caused to individuals and communities.

‘The report rightly called for reparations, for acknowledgement and apology, measures of restitution and rehabilitation, monetary compensation and guarantees against repetition. It has taken far too long for successive governments to respond to the challenges raised in that report. Today, some 20 years on, we can finally say that New South Wales is rising to the challenge and taking the next steps.’

Statement by the Hon. SARAH MITCHELL, Minister for Aboriginal Affairs, on the occasion of the 20th anniversary of the tabling of the Bringing them Home report, 26 May 2017

‘The Stolen Generations of New South Wales … were forcibly removed from their families and their communities as a result of past government policies of assimilation. We recognise those past wrongs and the grief, suffering and loss endured by the Stolen Generations. We recognise the ripple effect of forced Aboriginal child removal across Aboriginal families and communities that is still felt today… I pay my deepest respects to all Stolen Generations survivors, including those leading the Stolen Generations organisations, who are active Elders involved in leading generational healing for themselves, their families and communities.’

Statement by the Hon. DON HARWIN, Minister for Aboriginal Affairs, on 13 May 2021, commending Members of the Legislative Council to take time to commemorate and reflect on Sorry Day, 2021

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Foreword by the Independent Assessors

Every Aboriginal family in New South Wales has been impacted directly or indirectly by the cruel legacies of former government policies and practices of forcibly removing their children.

The NSW Stolen Generations Reparations Scheme was established to provide reparations to people who suffered detriment as a result of the policies of assimilation that were legally permitted under the *Aborigines Protection Act 1909.* For many, the Scheme provides a mechanism for validating the stories and realities of those Aboriginal people who for so long have remained unheard, silenced, dismissed by government and by society at large. The assessment process pulls together heartbreaking stories of removal, dislocation and disconnection – from family, from traditional lands, from language and culture and, for some, disconnection from Aboriginal identity. The impact of the policies of the Aborigines Protection Board and later, the Aborigines Welfare Board, were so sweeping, and invaded all aspects of family life, and continued through many generations.

Our role is to review the facts, assess claims in accordance with the Scheme's guidelines and advise the Minister about the eligibility of claims. We are not judges. We are not government officials. We are Independent Assessors of claims for reparations for Stolen Generations. We bring our knowledge and experience as Aboriginal people and take into account the difficulty people may have in making their claims because much time has passed since they were taken as children. We know that oral evidence is important because the official records are often poor or incomplete. We know the urgency of hearing people's testimony, especially older claimants who have waited a long time for someone to hear them.

Each claim represents a person. Each claim represents their life story, providing glimpses into families and communities fractured by government policies of assimilation. We can't really know what happened or fully understand the heartache and despair. Through records and testimony, the claimant gives us their account. Our task is to consider whether the circumstances of their removal satisfy the eligibility criteria set out in government guidelines developed before we began this work.

The claim assessment process is like looking through the grubby windows of a ransacked museum. There are lots of old things from the past. There are dusty papers bursting out of old filing cabinets. There are staircases that seem to go nowhere. The evidence is pieced together from records, handwritten notes, newspapers or Dawn magazine articles, photographs, certificates, forms from old court houses, notes scribbled at police stations or by government officials who made decisions. The language is often harsh and dismissive, offensive and even abusive. In many cases we read personal accounts heavy with immeasurable hurt.

We read these stories. We listen. We know the gravity of our role. At many points it can be difficult and painful to then consider the claim through the lens of strict criteria.

While the Scheme provides some monetary compensation, it does so as a gesture. No sum of money can ever repay the years of trauma, loss, heartache, mental and emotional scarring that acts of removal caused individuals, their families and the Aboriginal community.

The formal apology process also provides a level of accountability and respect-in-action for survivors to feel validated and their stories heard, believed and accepted. Of the 720 survivors whose claims have been successful, about half have so far chosen to receive personalised apologies. With the help of Aboriginal facilitators, some survivors have opted for a government representative to apologise to them in a personal ceremony, where family or loved ones support them and bear witness to the apology. This brings heart to the process. We hope that all the people affected hear the acknowledgement of their personal strength and resilience and have a chance to heal.

One of the most difficult experiences of being an Independent Assessor is reading the accounts of survivors whose claims fall outside the scope of the guidelines and then having to advise against recommending reparations. The fear is that the refusal of a claim may be construed by the applicant that their story, their lived experience, their removal, was not validated by the Scheme or by those making recommendations. Whether or not an application is successful does not define a person as a Stolen Generations survivor. The Scheme's criteria only applies to how reparations payments can be administered. A claimant's identity as a Stolen Generation survivor is their business.

We are pleased that the Scheme allows applicants whose claims were unsuccessful to ask for review. As more evidence becomes available, this opens the Scheme to claims that had previously been unsuccessful. The success of claims is dependent on evidence coming to light, on the availability of records. This is good for claimants whose records can be found. For others, there might be no records or the records are inadequate. Some archives controlled by non-government entities remain closed to survivors and the Scheme.

This is frustrating and limits the Scheme's capacity to respond to the concerns of the Stolen Generations. Evidenced by the number of claims that have been unsuccessful, it is clear that many claimants expected far more than the Scheme was capable of delivering under the guidelines.

Despite this, with the information found during the assessment of claims, we hope that Stolen Generations people and organisations can be empowered with information, histories of place and institutions, geographical variations in policy implementation and family information and stories. As Stolen Generations organisations come together to develop projects such as research, film and interpreting geographical sites, this information will be valuable to them. It will also help with future policy work. It can help with the unfinished business. It can help the truth to be told.

What we are learning through this Scheme can also be adapted for education, in developing resources for teaching but also professional development for teachers, those responsible for developing curriculum and for leaders in education. The Scheme provides an opportunity for people's stories to be mapped against a timeline which will show different phases and interpretations of the purpose behind the policies of removal and assimilation, how they manifested, and the changing definitions of who was deemed to be Aboriginal. There is yet another picture that becomes visible from mapping the places where children lived and were removed, and who was responsible. Patterns of forcible removals reveal the Board's influence over non-government institutions, including church groups, and the delegation of Board powers to other agencies.

The records must be made available to survivors and their families. The records can assist with recreating family and community connections. These stories must remain in families who are their keepers. They can tell them their own way. It is their story, and we cannot take that away.

As Independent Assessors, we often hear stories of people and families that are devastating and sometimes hard to take in. We offer our respect to all claimants and their families, whether their claims are successful or not. The world needs to hear these stories even though they are painful. We do not want this harm repeated.

Terri Janke, Anita Heiss and Aden Ridgeway
Independent Assessors

Executive Summary

The Stolen Generations Reparations Scheme was established by the NSW Government to acknowledge and make reparations for the forcible and wrongful removal of Aboriginal children from their families and communities under former government policies of 'protection' and assimilation, using the racist provisions of the *Aborigines Protection Act 1909*. The legacies of these forcible removal practices have caused immeasurable trauma, lasting social and economic harms and, for many survivors, loss of connection to family and culture.

This Interim Report, written in consultation with the Scheme's three Independent Assessors, is to inform the NSW Government of the progress in implementing a reparations scheme for Stolen Generations survivors. This scheme was one of the crucial commitments the government made in response to *Unfinished Business*, the report of the NSW Parliamentary inquiry into reparations for the Stolen Generations in New South Wales. The inquiry made 35 recommendations aimed at addressing the enduring effects of past government practices of wrongful removal of Aboriginal children in New South Wales. The majority of these recommendations were accepted by the government in December 2016 and the five-year Stolen Generations Reparations Scheme formally commenced on 1 July 2017.

The Scheme's guidelines and the government's ex gratia payments policy recognise those who were *'removed by, committed to, or otherwise came into the care of the New South Wales Aborigines Protection or Welfare Boards under the Aborigines Protection Act 1909'* until the Board was abolished and the Act repealed on 2 June 1969. There is also scope for reparations to be granted to survivors where it is clear that their removal was as a result of past government policies and practices of assimilation.

The Scheme provides reparations payments of up to $75,000 to eligible survivors in recognition of their wrongful removal and funeral assistance of $7,000. Providing reparations and funeral assistance, as well as formal apologies to individual Stolen Generations survivors, aims to not only recognise past harms to Aboriginal people as a result of their removal, but also the need for healing and social change.

This report begins by setting out key points in the history of Aboriginal child removals in New South Wales as they relate to the framing of the Scheme. It then details the operation of the Scheme, including the number of claims and how they are assessed and determined.

The report identifies what has been learned about patterns of forcible removals during the assessment of claims for reparations, and the extensive reach and influence of the Aborigines Welfare Board, often acting in concert with other government and non-government agencies. This deeper understanding is one of the important lessons learned from implementing the Scheme.

As a result of this understanding of the broader context of forcible removals, many more Stolen Generations survivors have been assessed as eligible for reparations than was anticipated when the Scheme was established. The types of situations which might warrant discretion are described in the report.

The Stolen Generations Reparations Scheme has been supported through partnerships with government and non-government organisations. The Stolen Generations Advisory Committee, established to oversee the NSW Government's response to the *Unfinished Business report*, has provided guidance and advice about survivor expectations.

The report highlights issues to be addressed in the remainder of the Scheme. When applications close on 30 June 2022, the Scheme will have just six months to assess and finalise all remaining claims, as well as any further review requests and requests for personalised apologies.

The records created by the Scheme contain important lessons about the shameful legacy of past government policies of assimilation, the Aborigines Welfare Board and the forcible removal of Aboriginal children over many years. There is a need to ensure the history of past forcible removal policies and practices and the continuing impact on Aboriginal people is never forgotten.

Introduction: Establishing a Stolen Generations Reparations Scheme in New South Wales

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'Indigenous children have been forcibly separated from their families and communities since the very first days of the European occupation of Australia.'[1]

The term the 'Stolen Generations' is generally used to refer to the Aboriginal and Torres Strait Islander children who were forcibly removed from their families and communities between the late 1800s and 1970s.

The forcible removal of Aboriginal children in New South Wales, 1909 to 1969

The stated purpose of these forcible removals varied across time from exploitable labour to 'protection' and segregation, to 'merging' and 'absorption' and assimilation.

This section sets out key points in the history of Aboriginal child removals in New South Wales as they relate to the framing of the NSW Stolen Generations Reparations Scheme. Where it is necessary for historical accuracy, the language of the time is used. It is acknowledged that much of this language is offensive, particularly to Aboriginal people.

'Protection' in New South Wales

In New South Wales, the *Aborigines Protection Act 1909* gave the Aborigines Protection Board (APB) the power to assume full control and custody of any Aboriginal child if the court found the child to be 'neglected'. However, the APB had to ask the State Children's Relief Department to take children before a court and then had to prove to the court that the child was neglected. As this was time-consuming and often allowed parents to move their children beyond the APB's reach, the APB sought to extend its powers.

In 1915, the sought-for extension of powers was granted through an amendment to the Aborigines Protection Act, which provided that:

> **s. 13A**. The Board may assume full control and custody of the child of any aborigine, if after due inquiry it is satisfied that such a course is in the interest of the moral or physical welfare of such child…[and] may thereupon remove such child to such control and care as it thinks best.

This amendment critically increased the power of the APB over Aboriginal children: it no longer had to prove neglect in order to remove children. Furthermore, parental consent or court hearings were no longer necessary, and officers authorised by the APB or police officers could also order removals. These powers were far in excess of those given to mainstream child welfare authorities, enabling children to be taken from Aboriginal reserves and placed into 'apprenticeships' or 'training homes'.

By 1921, the APB praised its 'excellent work' in 'keeping the Reserves free of girls and boys above fourteen years of age', asserting 'it would be difficult to find any child over school age out of employment, or not an inmate of the Board's Homes'.[2] Research conducted during the assessment of reparations claims indicates that, in some families, entire generations of children were removed in the two decades following the granting of these powers.

The explicit policy of the Aborigines Protection Board in the 1920s was to permanently separate children from their families. Aboriginal children taken from their families were usually placed in 'training homes' – the Cootamundra Aboriginal Girls' Training Home, the Singleton Boys Home and its successor, the Kinchela Aboriginal Boys' Training Home. Younger children were placed in homes run by religious organisations, including the Bomaderry Aboriginal Children's Home. As soon as children in the training homes reached minimum school leaving age, the APB indentured them to work in non-Aboriginal households until they turned 18 years old. As the Coota Girls Corporation told the *Unfinished Business* inquiry, the intention of this policy was to 'remove, train and indenture Aboriginal children as domestic servants and farm labourers and to prevent their return to Aboriginal stations and reserves'.[3]

By the late 1930s, the APB's institutions could no longer accommodate the numbers of children being removed.[4] At this time the APB policy was to make 'uncontrollable' children the responsibility of the Child Welfare Department, which then sent them to state corrective institutions.

1 Australian Human Right Commission *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* 1997:22

2 Aborigines Protection Board Annual Report, 1921, p.1.

3 General Purpose Standing Committee No. 3 Report into Reparations for the Stolen Generations, *Unfinished Business*, p32.

4 NRS-27, Indexes to Ward Registers 1916-1938. Between 1916 and 1938, at least 1454 Aboriginal Children were removed from their families and communities and placed in Homes or sent directly into indentured employment.

The shift to 'assimilation'

In 1937, a conference of Commonwealth and State authorities decided that official policy regarding Aboriginal people should shift from 'protection' to 'assimilation'. Aboriginal people of mixed descent were to be assimilated into white society, those not living tribally were to be educated and all others were to stay on reserves.

In 1940, the Aborigines Protection Act was amended to dissolve the APB and constitute the new Aborigines Welfare Board (the Board), with reduced powers. In order to remove a child, the Board once again had to proceed under mainstream child welfare legislation and establish to the satisfaction of the Children's Court that a child was 'neglected' or 'uncontrollable'. Our assessments of reparations claims found that such charges against Aboriginal children were commonly peppered with overtly racist comments and derogatory assessments of the family's 'caste'. The view of Aboriginal parents and parenting held by most welfare officers, police and the courts was generally negative, often disparaging parents' capacity to care for or 'control' their children.[5] The definitions and interpretations of terms such as 'incompetent guardianship' assumed a white middle class model of child-rearing and regarded poverty as synonymous with neglect.[6]

Although removal under the *Child Welfare Act 1939* provided safeguards against arbitrary and discretionary decisions, many Aboriginal communities were located far from Children's Courts and, in practice, the lack of any legal assistance for parents often impeded their ability to contest or appeal against removals. In remote areas where court sittings were infrequent, committal orders were typically made by two justices of the peace 'exercising the jurisdiction of a children's court'.[7]

Arbitrary determinations of Aboriginality

An amendment to the Aborigines Protection Act in 1918 had effectively resulted in the 'assimilation' of much of the Aboriginal population of New South Wales by redefining what it was to be Aboriginal.[8] The Act's amended definition of Aboriginality as "any full-blooded or half-caste aboriginal" meant that most light-skinned Aboriginal children were dealt with in the mainstream child welfare system.

The records of claimants assessed by the scheme show there was no clear or consistent basis on which the Board determined the Aboriginality of families. Welfare officers or police acting as agents of both the Child Welfare Department and the Board often made arbitrary determinations of Aboriginality or 'caste' – often without any knowledge or understanding of the family background of the children concerned.[9] On this basis, many lighter skinned Aboriginal children were referred to the Child Welfare Department. In what might be considered the perfect embodiment of the assimilation policy, many were fostered or adopted into white families with the expectation that they would never know about their Aboriginality, their family, their language or cultural heritage. The 'success' of this approach is reflected in the child welfare records of many reparations claimants, which do not record Aboriginality, and in their own testimonies that they only became aware of their Aboriginality later in life.

5 These records lend weight to research highlighting systematic racial bias in the way these laws were applied against Aboriginal children. See section on 'Systematic racial discrimination' in Australian Human Right Commission *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* 1997: Part 4 – Reparation.

6 See 'Removal of Indigenous children under child welfare legislation', *Bringing them Home*: Part 2 – National Overview.

7 Section 4, *Child Welfare Act 1939.*

8 A census taken by Aborigines Welfare Board field staff in the mid-1960s indicated that, of 15,440 Aboriginal people in New South Wales living outside of metropolitan Sydney, there were 8,506 who less than "half-caste". Report of Joint Committee upon Aborigines Welfare, 1967, p.7.

9 In its 1967 Report, the Joint Committee upon Aborigines Welfare concluded that the Aborigines Welfare Board was not adhering to this definition in its administration of the Act. It stated that it was 'firmly of the opinion that it is virtually impossible for the Aborigines Welfare Board or its field officers to accurately determine the degree of Aboriginal blood in any person claiming to be Aboriginal or part-Aboriginal'. Report of Joint Committee upon Aborigines Welfare, 1967, p.7

Broadening placement options

A 1943 amendment to the Aborigines Protection Act empowered the Aborigines Welfare Board itself to arrange for Aboriginal children to be boarded out to foster families as an alternative to placement in its training homes. In 1950, the Board advertised for foster parents for 150 children and by 1958, 116 wards were fostered, 90 with white families. By 1960, there were more than 300 Aboriginal children in foster homes and approximately 70 in its Cootamundra and Kinchela homes.[10] However, through assessing reparations claims we also found many examples in which the Board either made or turned a blind eye to informal foster placements and undocumented 'adoptions' of Aboriginal children with non-Aboriginal families.[11]

The Aborigines Welfare Board had no power to authorise adoptions. This was a Child Welfare Department responsibility. Nonetheless, the Board was active in obtaining consent from Aboriginal mothers. The *Adoption Act 1965* allowed for consent to be waived under certain circumstances, which the Board sometimes did if, for example, it was difficult to locate the mother or gain her consent.

Mothers were often coerced to relinquish newborn children for adoption. Assessments by the scheme found that young mothers who were current or former wards of the Board often showed deference to the Board's welfare officers in decisions related to the surrender of their children. Most were young when they first became pregnant. Isolated employment situations, loss of connection to family and kinship networks, coupled with a lack of exposure to any form of parenting techniques as a result of removals, including across generations, further eroded their ability to resist pressures to relinquish care. Records relating to the families of a number of reparations claimants show up to three generations of family decimated by assimilationist removal policies.

Abolishing reserves and attempts at desegregation

The official records and oral histories of reparations claimants show other 'indirect' ways in which assimilation policies and practices impacted Aboriginal families. From the late 1940s, the Aborigines Welfare Board adopted a policy that aimed to shift residents off small reserves onto stations or disperse them into houses in rural towns. Between 1957 and 1964, there were 33 revocations of reserves in New South Wales.

This policy of desegregation faced resistance from white residents, who often withdrew blocks of land from sale once the Board expressed interest. Between 1946 and 1960, the Board built only 39 houses within municipal boundaries.[12] This, combined with scarce and substandard housing on Aboriginal stations led many people to settle in shanty towns and riverbanks. They were joined by people expelled from stations and reserves and those seeking to escape the extensive control exercised by the Board over every aspect of life on an Aboriginal station. However, the living conditions were such that they attracted the attention of authorities. In the 1960s, at the urging of the Aborigines Welfare Board, local shire councils demolished many of these settlements. Whole communities became homeless, heightening the risks of their 'destitute' children being taken.[13]

10 *Bringing them Home* Report, 1987, p.41.

11 Evidence that such arrangements were outside or inconsistent with the laws and policies of the time were often in the form of subsequent child welfare reports critical of the Aborigines Welfare Board's slipshod decision-making, inadequate placement supports and the lack of judicial oversight.

12 Goodall, Heather, *Invasion to Embassy: Land and Aboriginal Politics in New South Wales, 1770-1972*, Allen and Unwin, Sydney, 1996, pp 331-333.

13 Aborigines Welfare Board Annual Report, 1960, p.9. "The Board is firmly of the opinion that Councils, as the local authorities under the Public Health Act, should enforce the provisions of such Act in relation to health, sanitation and hygiene, which are enforced in the community, but have not been used to the extent necessary in respect of the Aboriginal part of the community. The Board feels that the Councils' attitude in regard to the enforcement of the Public Health Act in respect of the Aboriginal community is inconsistent with its policy of assimilation and that the aboriginal people should not be subjected to any differentiation as against the remainder of community in respect to rights and obligations."

Shifting responsibilities away from the Aborigines Welfare Board

The Board's records indicate that throughout the 1960s it became increasingly aware of its impending dissolution. In 1965, at the recommendation of the Board, an interdepartmental committee was convened by the Chief Secretary and the Minister for Child Welfare and Social Welfare to determine the future approach to the care and training of Aboriginal children admitted to the Board's care and accommodated in its homes. The committee concluded that the system perpetuated segregation rather than assimilation and that measures should be put in place to transfer all wards resident in Board homes to Child Welfare Department homes, as soon as accommodation became available.[14]

The assimilation era in New South Wales formally ended with the repeal of the Aborigines Protection Act and abolition of the Aborigines Welfare Board on 2 June 1969. Wards of the Board transferred into the care of the Child Welfare Department, and several Board staff were taken on as child welfare officers. Despite the NSW Government explicitly renouncing assimilation, there are concerns that racist attitudes continued to shape decisions about the care of Aboriginal children. The introduction of the *Racial Discrimination Act 1975* strengthened the grounds for families to challenge racist laws and policies. But it was not until the Aboriginal and Torres Strait Islander Child Placement Principle was formally adopted in 1984 that child welfare agencies began to embrace the need for children to stay connected to their family, community, culture and country.[15]

The *Bringing them Home* report

Bringing them Home is the name of the final report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families conducted by the Human Rights and Equal Opportunity Commission (now called the Australian Human Rights Commission).

The National Inquiry was established by the Attorney General in 1995 and was conducted over two years. Oral and written testimony was given by more than 500 Aboriginal and Torres Strait Islander people across Australia, as well as by Indigenous organisations, foster parents, State and Territory Government representatives, church representatives, other non-government agencies, former mission and government employees and individual members of the community. The final report was tabled in Parliament on 26 May 1997. It includes many personal testimonies as well as 54 recommendations to support healing and reconciliation for the Stolen Generations, their families and the Australian public more broadly.

The National Inquiry provided the first chance for many of the people forcibly removed from their families as children to tell their stories, and have their pain publicly acknowledged. The Inquiry found that most Aboriginal and Torres Strait Islander families have been affected in one or more generations by the removal of one or more children. The inquiry concluded that, nationally, between one in three and one in 10 Indigenous children were forcibly removed from their families and communities between 1910 and 1970. Stolen Generations survivors and their families continue to be affected by the trauma caused by forced removals, not least because of the loss of family, community, culture and identity.

The National Inquiry concluded that the forcible removal of Indigenous children was a gross violation of their human rights. It was racially discriminatory and continued after Australia, as a member of the United Nations from 1945, committed itself to abolish racial discrimination. It also concluded that forcible removal was an act of genocide and that legal rights were denied solely on racial grounds to Indigenous families.[16]

14 Aborigines Welfare Board Annual Report, 30 June 1965

15 Secretariat of National Aboriginal and Islander Child Care (SNAICC), Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements, June 2013, p.2. "The Child Placement Principle was accepted in 1984 at a Social Welfare Ministers Conference, with states and territories agreeing that Aboriginal and Torres Strait Islander children should be raised in their own families and communities, and if placed in out-of-home care for protective reasons, should be placed with Aboriginal and Torres Strait Islander carers."

16 Genocide was first defined in a detailed way in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and confirmed as a crime against humanity. Australia ratified the Convention in 1949 and it came into force in 1951. Under Article II of the convention, "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group … [including] forcibly transferring children of the group to another group".

On 18 June 1997, the NSW Parliament was the first Australian state parliament to formally apologise to Aboriginal people for the *'systematic separation of generations of Aboriginal children from their parents, families and communities'*. Over time, all Australian parliaments have apologised to Aboriginal and Torres Strait Islander people for the injustice they suffered, and for the hurt and trauma that many Indigenous people continue to suffer as a consequence of this injustice. However, many of the report's recommendations have not yet been implemented. In marking the Twentieth Anniversary of the tabling of the *Bringing them Home* report, the Hon. Sarah Mitchell, Minister for Aboriginal Affairs, moved a motion in the NSW Parliament noting the anniversary and that the report *'shone a spotlight on the intergenerational impact of forcible removal of children and grandchildren of the stolen generations…'.*

The Minister stated that it had taken *'far too long for successive governments to respond to the challenges raised in that report'* but that New South Wales had risen to the challenge and was taking the next steps. [17] The Minister referred to the inquiry conducted by the NSW Legislative Council General Purpose Standing Committee No. 3 *'which was tasked with inquiring into and reporting on the Government's response to* Bringing them Home'.[18] *Unfinished Business* is the report of that inquiry, released in July 2016.

The *Unfinished Business* report

The General Purpose Standing Committee No. 3 inquiry into Stolen Generations reparations handed down its report in June 2016. The Committee adopted the definition of 'reparations' contained in recommendation 3 of the *Bringing them Home* report: that reparations should consist of: (a) acknowledgement and apology, (b) guarantees against repetition, (c) measures of restitution, (d) measures of rehabilitation, and (e) monetary compensation. However, the Chair of the Inquiry stated:

> While the word 'reparation' means making amends for a wrong that has been done, it is clear that no amount of financial or non-financial reparations can ever fully restore what people have lost as a result of past forcible removal policies and practices. Reparations will not heal the loss of identity, culture and community that they have experienced, nor will it mend the relationships and connections within families and communities that were broken.
>
> Reparations will, however, make a difference to the future of Stolen Generation survivors and their families. Providing reparations will not only demonstrate the government's acknowledgement of the harm caused by forcible removal policies, it will also show a genuine commitment to addressing this harm.[19]

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

The Inquiry made 35 recommendations aimed at addressing the enduring effects of past government practices in relation to the Stolen Generations. Recommendation 2 is:

> That the NSW Government establish a reparations scheme for Stolen Generation survivors, in accordance with the principles of self-determination and doing no further harm, with the scheme to:
>
> - be developed in close consultation with Stolen Generation survivors
> - complement the current group action involving Stolen Generation survivors
> - provide appropriate communal and individual responses, including a personal letter of apology from the Premier and Minister for Aboriginal Affairs
> - include a right of appeal
> - consider learnings from the South Australian and Tasmanian reparation schemes.

17 NSW Parliament 2017, Parliamentary debates: Legislative Council: official Hansard, 25/05/2017 p18.

18 Ibid p19

19 General Purpose Standing Committee No. 3 Report into Reparations for the Stolen Generations, *Unfinished Business*, Chair's Foreword at xiii

NSW Government's response to the *Unfinished Business* report

In December 2016, the NSW Government accepted the majority of the recommendations set out in *Unfinished Business*. Its response to the recommendations was developed in consultation with Stolen Generations Organisations *'to ensure it was properly informed and reflected survivor expectations'.* [20]

The Government committed more than $73 million in new funding over the first four years ($94 million over 10 years), with the bulk of funds allocated for both individual and collective reparations. Its response included measures to:

- formally recognise the damaging and enduring impact of removal on survivors and their families
- provide ex gratia payments to survivors in recognition of the damage caused by the act of removal
- provide improved access to support services, including a funeral fund for survivors
- reform service delivery to guard against repetition, and
- support cultural renewal through language revitalisation and improved access to family records.

The NSW Government's decision to establish the Stolen Generations Reparations Scheme recognised and acknowledged the direct role of government in past forcible removal practices that resulted in poor health, social and economic outcomes for Stolen Generations survivors. The inclusion of healing and truth-telling measures in the government's response to *Unfinished Business* aims to not only recognise past harms to Aboriginal people, but also the need for social change and systemic reform.

The NSW Stolen Generations Reparations Scheme is not the first scheme in Australia to recognise the painful legacy of forcible removal of Aboriginal children. Tasmania in 2006 and South Australia in 2015 each established schemes to make reparations to survivors from those states. The NSW scheme is, however, the first to provide formal personal apologies by the government to individual survivors, part of the essential truth-telling process whereby survivors can tell their individual and family stories in their own words, and have the impacts of their removals formally acknowledged. Apologies recognise deeply personal and painful intergenerational harms, as well as stories of survival and resistance.

The NSW Government committed to providing collective reparations funding to Stolen Generations survivors and their descendants, in recognition of the intergenerational harm caused by forcible removal policies and the need for collective healing. This includes funding for the four Stolen Generations Organisations – Coota Girls' Aboriginal Corporation, Kinchela Boys' Home Aboriginal Corporation, the Children of the Bomaderry Aboriginal Children's Home Incorporated and the NSW/ACT Stolen Generations Council – to support timely, flexible and enduring individual and collective healing activities, in a manner determined and led by survivors. A Stolen Generations Healing Fund also provides funding for activities, healing gatherings and reunions, recording of testimonies, and establishing memorials and keeping places.

The NSW Government also established the Stolen Generations Advisory Committee, comprised of a majority of Aboriginal representatives including two members of each Stolen Generations Organisation. Initially established for two years, the committee advises the Premier and Minister for Aboriginal Affairs on any matters related to the Stolen Generations, and in particular the implementation of the government's response to the *Unfinished Business* recommendations. The first Progress Report to Parliament in July 2018 included advice from the Advisory Committee which influenced, for example, a government decision to broaden the scope of information routinely considered by the Independent Assessor and Minister when assessing claims to the Stolen Generations Reparations Scheme. The Committee has since been extended to 2023.

20 *Unfinished Business* NSW Government Response to the General Purpose Standing Committee No. 3 Report into Reparations for the Stolen Generations, December 2016

‘With this response, the NSW Government officially acknowledges the real and heartbreaking trauma caused by historic government policies and practices of removing Aboriginal children from their kin and country…

‘It is my sincerest hope that by acknowledging the wrongs of the past and providing enduring and meaningful support for the future, we can avoid such a tragedy ever being repeated.’

Statement by the Hon. Leslie Williams,
Minister for Aboriginal Affairs, 2 December 2016

‘The Advisory Committee is not only focused on ensuring survivors are heard, it is also focused on working with survivors in ways that respect and value healing. This includes working to grow survivors’ trust in government, and valuing the experiences and expertise of survivors. This is a new way of doing business, and has not been done in any other jurisdiction in Australia.’

Comment by Stolen Generations Organisations representatives,
Unfinished Business Progress Report to Parliament, July 2018.

The Stolen Generations Reparations Scheme

The Stolen Generations Reparations Scheme

The Stolen Generations Reparations Scheme (SGRS) was established to acknowledge and make reparations for the forcible removal of Aboriginal children from their families and communities under former NSW Government policies of 'protection' and assimilation, using the racist provisions of the *Aborigines Protection Act 1909*.

The SGRS sits within Aboriginal Affairs NSW, as the Minister for Aboriginal Affairs has responsibility for the legacies of the Aborigines Protection Act. The scheme began receiving applications from early 2017 and formally commenced in July 2017. It provides ex gratia payments of $75,000 to living survivors who were removed as children by the Aborigines Welfare Board or its predecessor, the Aborigines Protection Board, in recognition of their wrongful removal and subsequent loss of connection to family and culture. Each claim is considered based on individual circumstances. All successful claimants receive the same sum.

All eligible claimants receive a general written apology from the Minister at the time their payment is approved and may also request a personalised apology. Apologies – written and face-to-face – are a central feature of the scheme. An acknowledgement and apology from the government for its role in the many hardships survivors and their families experienced can be an essential step towards healing.

There are also one-off payments of $7,000 to assist with the cost of funerals. The Funeral Assistance Fund was established in recognition of the impact forcible removal had on contributing to entrenched economic and social disadvantage, resulting in many Stolen Generations survivors having fewer resources and less support around funerals.

The scheme runs for five years, with applications closing 30 June 2022.

The scheme does not compensate for harms incurred by survivors as a result of their removal, preserving the right of survivors to seek compensation for mistreatment, neglect and abuse suffered while in care. Before the scheme commenced, legal action initiated by Stolen Generations survivors had already begun to result in the State of New South Wales paying damages for negligence and breaching its duty of care. Aboriginal Affairs and the then Department of Family and Community Services were identified as the respondent agencies in these Stolen Generations Group Action claims. The first claim was settled in early 2015, with about 150 matters settled to date. The action remains open, although it is expected that the bulk of the claims have now been settled.

A year after the reparations scheme commenced, the National Redress Scheme for Institutional Child Sexual Abuse created another avenue for some survivors who were abused while in care to seek compensation. The redress scheme was established in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. As it deals with harms incurred by survivors after their removal, any reparations paid for the act of removal have no bearing on redress claims.

Eligibility for reparations

To be eligible, the Stolen Generations Reparations Scheme Guidelines state that a person must:

a. have been removed by, committed to, or otherwise have come under the care of the Aborigines Protection or Welfare Boards, up until the *Aborigines Protection Act 1909* was repealed on 2 June 1969

b. be living, and

c. have lodged a valid application to the scheme (see Appendix B).

If a claimant makes an application but dies before a decision is made, that application may still be assessed. If found eligible, reparations are paid to the claimant's estate.

Eligibility date for the Stolen Generations Reparations Scheme

The Aborigines Protection Act repeal date was previously understood to be 20 March 1969 – the date that the new *Aborigines Act 1969* was thought to have commenced. However, an internal Aboriginal Affairs review found that, although assented to on 20 March, the Aborigines Act did not commence until 2 June 1969. The formal abolition of the Aborigines Welfare Board and the repeal of the Aborigines Protection Act therefore also occurred on 2 June, not 20 March. The published SGRS Guidelines were updated in 2019 to reflect this correction.

Aboriginal Affairs identified and re-assessed 16 applications that were previously deemed to be out of scope because the applicants were removed from their families after 20 March 1969 and before 2 June 1969. Half were successful following reassessment, including claims from a group of five siblings who were committed to wardship in Coffs Harbour on 13 May 1969. Two other siblings from that family have since come forward, including one whose finances are managed by the NSW Trustee and Guardian.

Aboriginal Affairs is also updating the Stolen Generations Reparations Scheme communications strategy to target potential eligible applicants who are not currently aware of the scheme. This will include measures to target people removed between March and 2 June 1969.

Discretion to depart from the guidelines

The scheme is underpinned by the NSW Government's Ex Gratia Payments Policy. Ex gratia or 'act of grace' payments enable Ministers of the Crown to provide payment to individuals who have suffered detriment as a result of the workings of government where there is no legal remedy available.[21] This recognises that:

> … there is no legal recourse for survivors to claim compensation for the act of removal as the decisions of the Board to remove Aboriginal children – while entirely at odds with current child placement principles that recognise the central importance of family, kinship, connection and culture – were permitted under the *Aborigines Protection Act 1909*.[22]

Only Ministers have the authority to approve ex gratia payments. Each claim must be considered on its own merits. This power cannot be delegated. Nor can ministerial discretion be fettered. This discretion is reflected in the Stolen Generations Reparations Scheme Guidelines:

> **1.8** These Guidelines are not binding upon the Independent Assessor or the Minister and either the Independent Assessor or the Minister may depart from these Guidelines if they are satisfied that it is in the interests of justice and equity to do so.

Although the scheme was established to make reparations to a particular group of Stolen Generations survivors – people removed by, committed to or who otherwise came to be in the care of the Aborigines Protection or Welfare Boards using the racially discriminatory powers of the *Aborigines Protection Act 1909* – the Guidelines and the Ex Gratia Payments Policy provide scope for reparations to be granted to survivors where it is clear that assimilation practices were a factor in their removal.

In its first year, the scheme confirmed that both the Aborigines Welfare Board and the Child Welfare Department were active in bringing Aboriginal children before the courts. Sometimes committals to institutional care were also initiated by police.

Following the assessment of more than 1,500 claims, patterns of removal and interactions between the Aborigines Welfare Board and other authorities emerged, enhancing the scheme's ability to identify Child Welfare Department and other child removals that were influenced by the Aborigines Welfare Board and its officers.

Subsequently, where there is evidence that child removal powers were used to further the government's policies of assimilation and/or in a racially discriminatory way – for example, records showing Child Welfare officers acted on the advice of the Aborigines Welfare Board – the Independent Assessors and the Minister are asked to take this context into account when determining whether a claim should be treated as if it were a removal under the *Aborigines Protection Act 1909*. This type of broader contextual information has been used to support assessments since mid-2018. The Minister, acting on the advice of the Independent Assessors, makes these determinations on a case-by-case basis.

The types of situations that might warrant the use of the use of discretion in departing from the scheme's Guidelines are discussed later in this report – see 'Exercising discretion'.

21 Treasury Circular NSW TC 11/02, 1 February 2011.

22 *Unfinished Business* NSW Government Response to the General Purpose Standing Committee No. 3 Report into Reparations for the Stolen Generations p17

Minister's decision

The Minister for Aboriginal Affairs has absolute discretion on whether reparations should be paid. This is reflected in the scheme's Guidelines and the government's Ex Gratia Payments Policy.

The Minister makes the decision based on recommendations made by the Independent Assessors. If there are questions or concerns about a particular claim, it is referred back to the Independent Assessor or the Stolen Generations Reparations Unit for clarification or further investigation.

Role of the Independent Assessors

Crucial to ensuring claims are considered fairly, transparently and in a culturally appropriate way is the advice and leadership of the scheme's three Aboriginal Independent Assessors – all highly respected members of the Aboriginal community with a breadth of experience and expertise. The Governor of New South Wales appointed the Independent Assessors for the duration of the scheme.

The Independent Assessors review all assessments prepared by the Stolen Generations Reparations Unit (SGRS Unit), using all available evidence, including Statutory Declarations and oral evidence. They then make recommendations to the Minister in relation to approving reparations.

In effect, the Independent Assessors provide independent and culturally appropriate oversight of the scheme, ensuring Indigenous views and perspectives are reflected in the operation of the scheme and that ethical principles of fairness, openness and transparency are applied.

Assessing and determining applications

Assessing and determining applications

Identifying relevant records

The Stolen Generations Reparations Scheme is designed to be as simple as possible for claimants, requiring only proof of identity and permission to search the Aborigines Protection Board and Aborigines Welfare Board records, and any other available records, for evidence of removal based on assimilation policy and practices. Reasons for putting the onus on the SGRS Unit to conduct these initial searches, include:

- the advanced age of many Stolen Generations survivors
- the heightened risks of causing hurt and trauma for survivors if they were to be required to provide a detailed account of the circumstances of their removal
- many survivors were very young when they were removed
- recognition that specialist searches are often needed to identify and piece together relevant information from disparate sources, and
- the paucity of records including poor record-keeping standards by the Aborigines Protection/Welfare Board collections or lost or damaged files.

Most government and many non-government custodians of survivors' personal records now provide the scheme with streamlined access to claimants' records for the purpose of assessing claims.

Documentary evidence

Once a claim has been lodged, the onus is on the Stolen Generations Reparations Unit to search for evidence of forcible removal from parents, family and community. Permission for authorised officers of the SGRS Unit to undertake searches of relevant government and non-government records is given by applicants when they complete the application form.

The initial searches focus on the Aborigines Protection Board and Aborigines Welfare Board archives managed by Aboriginal Affairs. If there are no Board records or the records are inconclusive, the SGRS Unit then searches for any relevant records held by other agencies. Sources include former Child Welfare Department records, archives managed by various church-run or private institutions, and adoption records. Newspaper archives, government gazettes, war service records and other publicly available sources are also checked where necessary.

As discussed in 'Accessing records and evidence', access to additional government and non-government archival collections has enhanced the ability to assess claims that were previously unsuccessful due to a lack of records.

Protocols established with each institution ensure that any personal information provided can only be used for the purpose of assessing claims and cannot be disclosed to any third party, including the survivor. This means the duty to give survivors access to their personal records, and to explain the sometimes deeply insensitive contents of those records, remains with the agency that created them.

The research can be difficult and time-consuming as archival records are often incomplete due to loss, destruction or poor recordkeeping practices.

If a reparations claim cannot be finalised because of a gap in the records, claimants are encouraged to consider providing evidence in the form of statutory declarations, oral evidence and other documentary sources, including photos, and corroborative evidence from other survivors. Several legal services – especially Legal Aid NSW and Redfern Legal Centre – provide invaluable support in assisting claimants to provide first-hand accounts of the circumstances of their removals.

Assessments of claims to date

As at 31 December 2020, the scheme had received 1,874 applications. Figure 1 shows 720 of these were successful. This includes many from Group Action claimants whose applications were fast-tracked and paid in the first weeks of the scheme, and 183 from survivors whose claims were initially assessed early in the scheme as ineligible or out of scope but then succeeded following reassessment or review.

Figure 1: SGRS claims to 31 December 2020

Status	% claims	Total
Applications received		**1,874**
Currently being assessed	20%	**375**
Successful	38%	**720***
Unsuccessful	24%	**441**
Out of scope	18%	**338**
Closed or withdrawn	0.7%	**14**

1.* Includes 143 'fast-tracked' Group Action claims

Fast-tracked applications

In the period between December 2016 when the NSW Government announced its decision to establish the five-year scheme, and the scheme formally commencing on 1 July 2017, there were 151 applications, mostly from former Aborigines Welfare Board wards and former residents of the Board's Kinchela Boys and Cootamundra Girls homes. Former wards of the Aborigines Welfare Board who had received settlements as a result of the Stolen Generations Group Actions had their reparations payments fast-tracked. The expedited process recognised they had already provided sufficient documentation of the Board's involvement in their forcible removals.

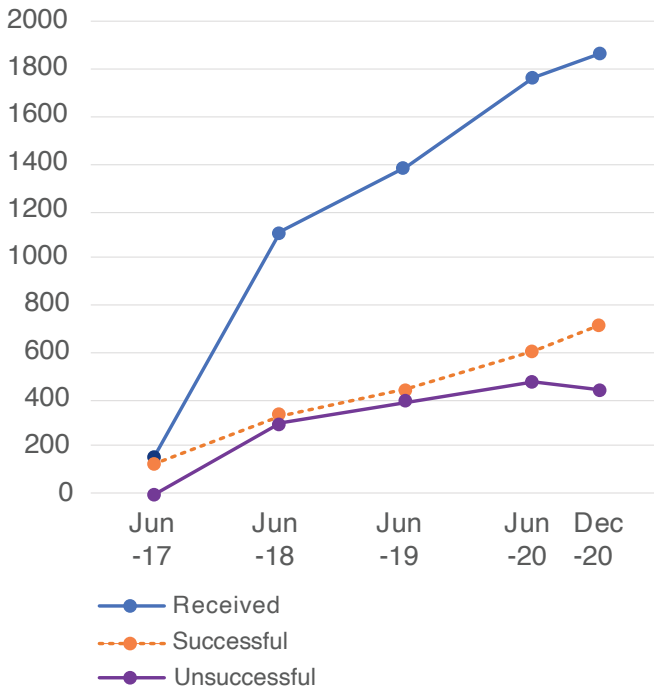
Applications received

When the Stolen Generations Reparations Scheme commenced in mid-2017, a further 329 claims were registered in the first month. As Figure 2 shows, by the end of the first year (to 30 June 2018), a total of 1,109 claims had been received. An additional 275 claims were received in 2018–19, 388 in 2019–20 and 102 in the six months to 31 December 2020 – bringing the total claims received to 1,874.

That more than half of all claims received were registered in the first year of the scheme may be attributable to a combination of factors, including:

- Strong community interest in an avenue for Stolen Generations survivors to receive recognition for the harms inflicted by past government policies of assimilation
- Publicity about the scheme, first when the Government committed to establishing it in December 2016, then when the scheme formally commenced in July 2017
- The ease of the application process, with no requirement for applicants to make statutory declarations or undertake preliminary record searches, and
- The fast-tracked approval process for claimants who had already established their eligibility through the records supporting their Stolen Generation Group Action claims.

Figure 2: SGRS claims received, successful and unsuccessful – cumulative totals to Dec 2020



Does not include claims out-of-scope or being assessed.

Assessments finalised

Figure 2 also shows the cumulative number of reparations claims found eligible and ineligible to date. Of the 720 reparations claims that were eligible in the first 3½ years of the scheme, about half were assessed and paid in the first year. The fast-tracked approval process was clearly a factor in the high number of claims found eligible early in the scheme.

Another factor was the scheme's initial focus on identifying court orders or Board records showing the *Aborigines Protection Act 1909* was used, or confirming direct Aborigines Welfare Board responsibility. This expedited process enabled the rapid determination of hundreds of claims.

However, claims that lacked such records – including adoption records – were usually unsuccessful. As a result, about 300 claims were found to be ineligible in the first year of the scheme. Early in the implementation of the scheme, it was often difficult to identify factors associated with assimilationist practices. The SGRS Unit has been able to draw on and synthesise records from multiple sources, which has enhanced the research into and evidence base of assimilationist practices in New SouthWales. This research, together with the practice of providing broader contextual information to the Independent Assessors and the Minister, is being used to reassess those early claims. The kinds of claims that have benefited from this revised approach are described later in this report – see 'Patterns of forcible removal in New South Wales'.

> 'The SGO representatives are pleased the Scheme has commenced and payments processed quickly for many survivors. However, for the survivors who passed away in the 20 years since the Bringing Them Home report was published (and Reparations were recommended in NSW) the Scheme was implemented too late.'
>
> Comment by Stolen Generations Organisations representatives, *Unfinished Business Progress Report to Parliament*, July 2018.

In 2018–19 the number of finalised assessments dropped sharply as the scheme's processes were changed to require detailed examination and analysis of a broader range of contextual records to determine the likelihood of Aborigines Welfare Board involvement or assimilationist practices in a claimant's removal. This involved, for example, detailed searches of any sibling or parental records to identify possible Board supervision of the family prior to the claimant's removal. In total, 107 claims were eligible and 93 ineligible in that second year.

In 2019–20, higher numbers of assessments were finalised, with 171 claims found to be eligible and 88 ineligible (see Figure 2). The increase in finalised assessments is largely due to Aboriginal Affairs employing additional staff to prepare the assessments and the NSW Department of Communities and Justice (DCJ) and other record managers providing easier access to records needed to complete assessments. As a result, the backlog in unassessed claims dropped from 287 in January 2019 to 41 at the end of 2019. With an influx of new claims in early 2020, including almost 200 from the NSW Trustee and Guardian on behalf of vulnerable clients,[23] then the disruption caused by COVID-19, the number of unassessed claims has again climbed. As at 31 December 2020, there were 375 claims being assessed or awaiting assessment. A further 20 new claims continue to be received each month.

The relatively higher proportion of claims determined eligible in 2019–20 is at least partly attributable to improvements in the scheme's understanding of Aborigines Welfare Board child removal and assimilationist practices of other authorities. This was aided by improved access to records.

Reviewing or reassessing decisions

If a claim is found ineligible, the claimant is given reasons for the decision. The claimant can ask for a review, which the SGRS Unit reassess and progress to a different Independent Assessor, together with the reasons for reviewing the claim. The basis for a review is that:

a. there is information or evidence that has not been taken into consideration, or

b. the SGRS Guidelines have not been followed in considering the claim.

After reviewing the claim and taking into account any further information, the Independent Assessor again makes a recommendation to the Minister.

The scheme may also initiate reassessments without formal requests for review. This includes reassessing all claims deemed to be ineligible in the first year of the scheme and any that might benefit from information or research that emerges after the claims were finalised. For example, if a successful claim includes new or relevant information about Board influence over a particular family, previously ineligible claims from any siblings are reassessed. Those removed in similar circumstances are often found eligible following reassessment – see 'Refining the assessment process'.

Claims may fail if there are no records to confirm claimants were separated from family or if government responsibility for removing them is unclear. Many ineligible claims are referred to Legal Aid or to an Aboriginal or Community Legal Service for independent advice and for help to prepare statements that provide insights into the circumstances of their removals. In preparing reassessments, claimants' accounts are supplemented with historical research. The discussion on 'Patterns of forcible removals in New South Wales' sets out examples of factors that support eligibility.

There is no limit on the number of times a claimant can seek a review, or for the scheme to undertake reassessments (during the life of the scheme). It is likely this will change in the final months of the scheme. Consideration needs to be given to how requests for review should be dealt with after applications to the scheme close on 30 June 2022.

Funeral assistance

The Funeral Assistance Fund was established in recognition of the entrenched economic and social disadvantage experienced by survivors.

The Funeral Assistance Fund provides one-off payments of up to $7,000 to Stolen Generations survivors who meet the eligibility requirements for monetary reparations and who were living on 2 December 2016 (the date that the NSW Government announced the establishment of the Funeral Assistance Fund). Eligible Stolen Generations survivors can choose to receive the Funeral Assistance payment at the same time as their reparations payment or to defer the payment and nominate a person to receive the payment at the point it is required.

If an eligible Stolen Generations survivor dies before making an application for funeral assistance, another person may apply for a payment on their behalf on production of relevant documentation. As at 31 December 2020, funeral assistance has been paid to the families of nine people who would have been eligible for funeral assistance had they applied while they were alive. Funeral assistance to families is paid for receipted expenditure. The fund may be used to reimburse any expenses associated with the funeral, ranging from travel expenses to memorial headstones.

23 The Trustee & Guardian used an inclusive approach when screening for potential claimants among its clients. The group identified includes individuals who might never have been removed from their families.

Stolen Generations Reparations payments to December 2020

As at 31 December 2020, 703 survivors whose claims were eligible had received their $75,000 reparations payment, and 685 survivors had received their $7,000 funeral assistance fund payment. As Figure 3 shows, a total of $57.5 million has been disbursed – consisting of $52.7 million in reparations and $4.8 million in funeral assistance.

The Commonwealth Department of Social Services and the Australian Tax Office (ATO) have determined that payments to Stolen Generation survivors from the Stolen Generations Reparations Scheme and the Funeral Assistance Fund are not taxed and usually do not affect pensions and other Centrelink payments unless the survivor already owns substantial assets.[24]

The then NSW Government determined in June 2017 that reparations and funeral assistance payments would be considered non-assessable special purpose payments under DCJ and Aboriginal Housing Office (AHO) Social housing policy. This means payments do not affect eligibility for new or continued social (public, community or Aboriginal) housing assistance, or rent payable calculations. Successful claimants who qualify for social housing are given priority assistance.

In addition, Revenue NSW has put in place processes to protect reparations payments from actions to recover overdue fines. With permission from a survivor who has overdue fines and enforcement orders, Aboriginal Affairs contacts Revenue NSW to request a review. Revenue NSW then suspends debt recovery action while they consult the survivor to determine whether the debts should be enforced, reduced or written off. These reviews have helped a number of successful claimants to clear their debts, enabling them to use their payments to make a fresh start.

Figure 3: SGRS payments to June 2020

Reparations ($75,000)	People paid	703
	Total	**$52,725,004**
Funeral Fund ($7,000)	People paid	685*
	Total	**$4,781,650**
Total paid		**$57,506,654**

* Totals do not include $126,000 owed for 18 deferred funeral payments

24 Assets such as the family home are excluded from social security assets testing, but items such as cars and boats are not. If a Stolen Generations Reparations Scheme payment is used for a home mortgage, it remains exempt. If it is used to buy a car or other assessable asset, and the survivor already owns substantial assessable assets, the purchase can affect pension entitlements.

Costs of administering the Scheme

Before the Stolen Generations Reparations Scheme and Funeral Assistance Fund began, it was estimated that up to 730 claims would be successful – requiring $54.7 million in reparations payments and $5.1 million in funeral assistance payments. Estimates were reviewed, noting the original projections were based on the number of known wards of the Aborigines Welfare Board, the government agency with primary responsibility for removing Aboriginal children under past policies of assimilation. As noted in 'Discretion to depart from the guidelines', the scheme now has a better understanding of the significant role other NSW Government agencies (especially the Child Welfare Department and the NSW Police Force) and non-government organisations (typically churches, private institutions and charitable bodies) often played in assisting the Board to remove and 'assimilate' Aboriginal children. The research needed to confirm the breadth of assimilation practices relied on records held by other agencies, and was not foreseen in the original estimates (based on AWB records). Subsequently, the scheme has received a higher than expected number of applications, leading to a commensurate increase in successful claims.

Table 1 provides a summary of the scheme's operational expenditure to date:

Table 1. SGRS and Funeral Fund Operational (OPE) and Employee Related (ERE) Costs

	Year 1 2017–18		Year 2 2018–19		Year 3 2019–20		Year 4 2020–21		Year 5 2021–22	
	Forecast	**Actuals**	**Forecast**	**Actuals**	**Forecast**	**Actuals**	**Forecast**	**Actuals**	**Forecast**	**Actuals**
ERE	794,000	**1,138,400**	714,000	**960,140**	714,000	**1,091,420**	572,000	**N/A**	572,000	**N/A**
OPE	300,000	**368,846**	250,000	**269,116**	276,000	**139,290**	240,000	**N/A**	240,000	**N/A**

Note: Operational expenditure does not include grants for reparations or funeral assistance.

While operational funding allocations fluctuate over the life of the scheme, the budget forecast broadly provided for five full time equivalent (FTE) staff each year over the five-year scheme and funding for operational costs such as information access and management, staff training and development, communications, apology processes, contracted services including Independent Assessors, independent facilitators to support apologies, legal and financial advice.

Upon commencement of the scheme, staffing was increased to eight FTE employees with the aim of addressing the bulk of claims in the initial years of the scheme, and plans to taper staffing levels in the last two years when outstanding claims were expected to decrease. Operational costs in the first years of the scheme were also higher than forecast to accommodate additional administrative processing, including resourcing specialised support in the Department of Communities and Justice (DCJ) to fast-track access to claimants' child welfare records. Operational funds were also diverted to cover higher than anticipated funeral payments[25], noting that 97 per cent of successful claimants elect to receive this payment upfront, rather than deferred – see Figure 3, above.

Changes introduced in mid-2018 to broaden the contextual information considered as part of assessing claims increased the complexity of some assessments, indicating the need to maintain higher staffing resources for the remainder of the scheme. The aim is to ensure timely completion of complex assessments and to avoid the need to extend the scheme beyond its December 2022 end date, which is critical given the advanced age of many survivors. Some additional resourcing will also be needed beyond 2022 to support survivors to access apologies and the ongoing management of records.

25 The Unfinished Business budget allocation for the Funeral Fund was averaged over 20 years from June 2017 based on the assumption that most claimants would defer payments until the time of need.

Apologies to Stolen Generations survivors

Apologies to Stolen Generations survivors

When a claim for reparations is found eligible, the Stolen Generations survivor receives a letter from the Minister for Aboriginal Affairs that includes a general apology on behalf of the State of New South Wales.

In addition, applicants found eligible can choose to receive a personalised apology from the NSW Government. This apology recognises and apologises for the harm the person experienced as a consequence of their removal from their family, community and culture, and is written to address the individual's circumstances.

As at 31 December 2020, 332 eligible claimants have chosen to receive personalised apologies.

46%

of eligible claimants have opted to receive a personalised apology

Of these, 175 survivors have received their apology with four apologies having been delivered face-to-face by a senior NSW Government representative. To assist in the preparation of the apology, survivors are invited to consider submitting an impact statement. The aim is to ensure the apology addresses and reflects the survivor's particular experiences. Each apology means something different to the individual recipient, but each has the potential to become a powerful element in a shared history.

Stolen Generations Organisations advised that survivors need time to consider the content of their personal statement and whether they want to receive a personalised apology as this can be an emotional and painful experience. Based on this advice, survivors are encouraged to take their time to reflect on the issues they would like addressed. They can provide this information in conversation with an SGRS team member, as a written statement, video testimony or use previously published accounts or historical records and can nominate to receive a personalised apology at any point during the life of the scheme. They are also able to undertake the process if they initially do not request an apology but subsequently change their mind. This has been especially important for sibling groups.

Crucial to the success of in-person apologies is the use of skilled Aboriginal facilitators who focus on creating a safe space for all involved, checking survivors' expectations and helping all participants to contribute to meeting these expectations. Aboriginal Affairs continues to work with survivors on their personalised apologies. In 2020, the ability to deliver face-to-face apologies was hampered by COVID-19. Aboriginal Affairs plans to bring the independent facilitators together in 2021 to review and refresh the apologies strategy.

> 'The Stolen Generations Reparations Scheme was established by the NSW Government in recognition of the forced removal of Aboriginal children by the Aborigines Welfare Board and the widespread impacts on individuals, families and communities.
>
> 'The NSW Government sincerely apologises for the damage and hurt you and your family have suffered as a result of these historical wrongdoings.'
>
> Minister for Aboriginal Affairs' written apology to all successful claimants

Identifying eligible Stolen Generations survivors

Identifying eligible Stolen Generations survivors

Eligibility criteria

The scheme's eligibility criteria recognises those who were *'removed by, committed to, or otherwise came into the care of the New South Wales Aborigines Protection or Welfare Boards under the Aborigines Protection Act 1909'* until the Board was abolished and the Act repealed on 2 June 1969.

Stolen Generations Organisations' representatives have voiced concerns that the eligibility criteria are unduly narrow and that too many Stolen Generations survivors are unfairly excluded. All strongly felt the scheme did not adequately recognise the experience of all survivors – especially Aboriginal people who were taken by the Child Welfare Department or the police before 2 June 1969, and some who were taken in similar circumstances immediately after that date.

An important step in responding to these concerns is to ensure the principles underpinning the scheme are applied in a fair and equitable manner. The NSW Government's commitment when it created the Stolen Generations Reparations Scheme was to recognise, acknowledge and apologise for the direct role of government in past forcible removal practices. This commitment guides how the scheme's eligibility criteria are applied.

The patterns of forcible removals in New South Wales that have been revealed are one of the lessons learned from the administration of the scheme and are discussed in depth later in this report – see 'Patterns of forcible removals in New South Wales'.

Exercising discretion

Advice published by the NSW Treasury states that Ministers should have 'regard to all the circumstances' when determining whether an ex gratia payment should be made, and that every case 'must be considered on its own facts and in its own context'.[26] Under the Stolen Generations Reparations Scheme's guidelines there is discretion to pay reparations to survivors who were removed by the Child Welfare Department or other agencies, where it is in the interests of equity and justice to do so – such as when there is evidence that the Aborigines Welfare Board influenced the Child Welfare Department's decision to commit a child to care. This is consistent with the overarching goal of the scheme to recognise and make reparations to Aboriginal children who were removed from their families and communities under former governments' assimilation policies.

In cases where the Board's influence is unclear because of gaps in the records or some other reason, it is important to look for evidence indicating the intent of the removal was to 'assimilate' the claimant. Indicators might include racial bias or prejudice in the decision to remove the claimant, denying or denigrating the claimant's or their family's culture or 'caste', or an intent to permanently sever the claimant's connections with family.

Accessing records and evidence

Negotiating access to records

With signed permission from the claimant, the scheme approaches all relevant record holders in pursuit of evidence that might support the claim. There are legal, policy and other constraints on the ability of some organisations to provide access to personal records in its archives, even when the organisation is supportive of the aims of the scheme. Sometimes the records are heavily redacted to protect the privacy of others who are mentioned.

From the outset, the scheme benefited from an agreement with the Department of Communities and Justice (DCJ), then known as Family and Community Services, to provide streamlined access to a range of personal records about former wards of the Aborigines Welfare Board and Child Welfare Department. With the written consent of each claimant, DCJ released claimants' confidential care records for the purpose of assessing claims to the scheme. Access is granted on the condition that none of the records, or any information on the files, can be released by Aboriginal Affairs to the claimant or any third party. This ensures that responsibility for providing claimants with access to and an explanation of the sensitive and sometimes hurtful contents of those records remains with the agency that created them. Aboriginal Affairs' agreements to access personal records held by other government and non-government agencies are modelled on these principles.

Child Welfare Department care and family casework files often contain hundreds of pages of records, including many that are not relevant to the Stolen Generations Reparations Scheme's task of assessing the circumstances of a child's removal.

26 Treasury Circular NSW TC 11/02, 1 February 2011.

Early in the scheme, DCJ agreed to provide un-redacted records. The intention was to avoid the need for lengthy, time-intensive redactions, reducing the likelihood of the scheme's high volume of requests adversely impacting on the work of DCJ's care-leaver records access unit, and expediting assessments of Stolen Generations Reparations Scheme claims.

To further reduce delays, Aboriginal Affairs contracted two DCJ staff to undertake searches of DCJ's child welfare archive. Although this was a significant unexpected expense, it meant that the scheme was able to access crucial records in a timely manner, without disrupting the other work of DCJ's care-leaver records access unit. Aboriginal Affairs continues to employ a full-time DCJ contractor to manage its records requests.

In April 2019, DCJ also agreed to provide access to survivors' adoption files. Recognising the additional legal and ethical constraints on how these records are managed, access was provided on condition that Aboriginal Affairs:

a. only use records for the purpose of assessing eligibility under the scheme and that access be limited to the scheme's staff

b. redact any other information unlikely to impede assessment of a claim, including personal and identifying information about any person (other than the applicant)

c. destroy all records on completion of the review, and

d. ensure that no unauthorised records or information will be disclosed to the applicant.

Steps are being taken to ensure compliance with all of these conditions.

The scheme's access to adoption records has benefited many claimants who otherwise had neither records nor witnesses to indicate that they might be eligible. Of the 159 successful Stolen Generations Reparations Scheme claims in 2019–20, 32 claimants were found to be eligible as a result of adoption records. This includes many claims previously found to be ineligible, often because of a lack of records. Ongoing access to adoption records continues to benefit many claimants.

Aboriginal Affairs is in the process of negotiating an agreement with DCJ that will enable access to other relevant records held by the department. This includes Aborigines Welfare Board records that transferred to the Child Welfare Department following the abolition of the Board in 1969 and which are still held by DCJ, Child Welfare Department correspondence about the transfer of responsibilities to the Aboriginal Services directorate, and licensing inspection reports of institutions known to house Aborigines Welfare Board wards.

Research by the SGRS Unit indicates that relevant records may also be held by NSW Police Force, the NSW courts administration, the University of Sydney in its Elkin Archives and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). Work is underway to negotiate access to these records for the purpose of assessing SGRS claims.

Supplementing incomplete records

Early in the implementation of the scheme, only some of the factors associated with assimilationist practices were evident in the records. However, in mid-2018, following the assessment of more than 1,000 claims, patterns of removal and interactions between the Board and other authorities became clearer, enhancing the SGRS Unit's ability to provide greater contextual information about child removals that were influenced by the Board or assimilationist practices, and to source relevant evidence from secondary sources.

One example of this is the search of Bomaderry Public School records. In early 2019, staff of the SGRS Unit visited Bomaderry Public School in the hope that historical enrolment registers might show supporting evidence of a claimant's placement at the Board-controlled Bomaderry Aboriginal Children's Home. The records reviewed not only supported the claim in question but showed the names of more than 300 children who had been placed at Bomaderry Aboriginal Children's Home up to 2 June 1969. An index was made of all relevant data and it is being used to assist in finding supporting evidence for SGRS claimants.

Refining the assessment process

The SGRS Unit is systematically reassessing all claims assessed in the first year of the scheme to identify claims that would benefit from the use of broader contextual information, the scheme's access to new archival sources and emerging research. As at 31 December 2020, 367 previously unsuccessful claims had been identified for reassessment. Of these:

- 188 claims were successful after reassessment
- 165 remained unsuccessful
- 14 were in process or awaiting reassessment.

Additionally, there were requests to review 73 claims. Of these:

- 29 claims were successful after review
- 23 remained unsuccessful
- 13 were in process and eight were still to be reviewed.

While the reassessment of these early claims is nearly complete, Aboriginal Affairs will continue to reassess claims whenever it appears to be warranted, and particularly in the following circumstances:

- where evidence from a later claim should be applied to earlier assessments – for example, to apply what the scheme has learned about patterns of removal or Aboriginal Welfare Board influence in particular locations or contexts, and
- where a claim includes evidence or raises issues that were not considered as part of the assessment of earlier sibling claims.

This research can be time-intensive, but in cases where there are insufficient records to support a claim, the onus is on the SGRS Unit to thoroughly research the broader context of removal.

New claims

Between 20 and 25 new claims continue to be received each month.

The need to promote the scheme and support vulnerable applicants is highlighted by the work with the NSW Trustee and Guardian (TAG), which identified 190 Aboriginal clients who were born before June 1969 and whose financial affairs are managed by TAG (no preliminary assessment was undertaken to determine whether these clients were removed from their families as children). With the help of TAG, Aboriginal Affairs identified four claimants who had already been paid reparations, and five potentially eligible claims. Three claims have been determined as unsuccessful. The remaining claims are either waiting for the results of record searches, require further information from the claimant's family, or are being assessed.

Work is underway to:

- Source additional information to improve the ability of Aboriginal Affairs to identify relevant records, including birth certificates and, where required, information from families to confirm whether a removal took place and the circumstances of the removal
- Encourage TAG to implement measures to enable clients to use the funds to enhance their quality of life
- Promote the scheme to privately managed clients and others who use TAG's services.

Ineligible claims

The Stolen Generations Reparations Scheme was established to acknowledge and make reparations for the forced removal of Aboriginal children from their families and communities under former NSW Government policies of 'protection' and assimilation, using the racist powers of the *Aborigines Protection Act 1909*.

Claims are ineligible if there was no separation from family, if there was no Board involvement in the removal, or if there is no evidence that policies of assimilation may have influenced the removal. For example, placements in non-government institutions are often ineligible where there has been no government involvement in the placement.

In some cases, the claim is ineligible because there is credible evidence the courts were responding to legitimate child safety concerns, and no evidence that policies of assimilation influenced the removal. This might include action to address serious and imminent risks to the child's safety, or where repeated attempts to address the risks had failed. This is consistent with the approach recommended in *Bringing them Home,* and ultimately adopted in *Unfinished Business*, where it is recognised that in some circumstances it may have been reasonable for courts to authorise an intervention.

Lessons learned from implementing the scheme

Lessons learned from implementing the scheme

This part of the report examines some of the lessons learned from implementing the scheme and how the scheme has evolved.

The significance of contextual information

Since mid-2018, assessments routinely include information about the context of claimants' removals. Supplementing official records with other sources enables assessors to identify Stolen Generations survivors whose separation from family was influenced by the Aborigines Welfare Board, even where the Child Welfare Department or another agency was ultimately responsible for initiating their removal.

Broader access to additional government and non-government archival collections has benefited many applications. In particular, streamlined access to adoption records made available by DCJ, has provided the information needed to show when claimants' mothers appear to have been subjected to coercion or undue pressure in deciding to relinquish their child for adoption.

Research of Aborigines Welfare Board archives and other sources has revealed the Board's role in promoting the NSW Government's former policies and practices of assimilation.

Patterns of forcible removals in New South Wales

In order to provide reparations for Stolen Generations survivors in New South Wales, assessments must consider whether the Aborigines Welfare Board influenced a child's removal, or whether the racist practices and policies under the *Aborigines Protection Act 1909* were used. Through undertaking more than 1,500 assessments over three years, patterns of racially biased and systematic Aboriginal child removal practices have become clearer.

This section describes claims where eligibility was initially doubtful or unclear but was later confirmed after an examination of the broader context showed that Board influence or policies of assimilation were factors in the decision to remove children from their families. Collectively, these cases demonstrate the reach and influence of the *Aborigines Protection Act 1909* and the Aborigines Welfare Board, their interaction with other laws and agencies, and the impact of assimilationist laws and policies on Aboriginal people across New South Wales.

Aborigines Welfare Board influence over non-government institutions

In the case of the former Bomaderry Aboriginal Children's Home, the Aborigines Welfare Board records confirmed the Board's direct involvement in some Bomaderry admissions but not in others, making it difficult to confirm whether some claimants were *'removed by, committed to, or otherwise… [in] the care of the Aborigines Protection or Welfare Boards'.*

Research to support a Bomaderry-related assessment in 2017 confirmed the Board's close ties with the home, including its role in admitting Aboriginal children to the home, arranging for government subsidies and overseeing the home's care of children. Although the precise circumstances of this claimant's admission to the home were unclear, on the basis of the existing records and the relationship and practices that existed between the Board and the missionaries who ran the home, the Independent Assessor deemed it reasonable to assume that the claimant was admitted to Bomaderry with the full knowledge and awareness of the Aborigines Welfare Board. The Minister accepted this recommendation. This precedent was subsequently applied to all similar claims.

It appears the Board had similarly close links with some other institutions, including the Marella Mission Farm in Sydney. Assessments of claims submitted by former Marella residents have helped provide a more complete picture of how the home was run. Like Bomaderry, Marella was not a Board institution. Yet there is evidence the Board was responsible for placing Aboriginal children in the home, arranging for government subsidies and oversighting the home's care arrangements. Board records show that when the Child Welfare Department raised concerns in the 1950s that Marella was not complying with provisions of the *Child Welfare Act 1939* requiring regular licensing inspections, the Board successfully rebuffed the department's attempts to introduce inspections. In doing so, the Board assumed direct responsibility for overseeing the home's operations. While there remain gaps in the scheme's knowledge of the extent of Board influence over Marella, it is evident that the placement of many Aboriginal children at Marella occurred with the knowledge and awareness of the Board.

The SGRS Unit's ongoing assessments of reparations claims are revealing potential Board influence over other non-government homes. However, the depth and breadth of Board involvement in the management of these homes remains unclear. It is hoped that a proposed agreement with DCJ to provide the scheme with access to Child Welfare Department licensing inspection reports could provide insights into whether the Board routinely intervened in the affairs of these institutions or whether its suspected involvement was ad hoc or limited to isolated incidents.

Aborigines Welfare Board influencing other agencies to remove and assimilate children

The SGRS Unit has identified numerous instances of the Aborigines Welfare Board advising the Child Welfare Department, police and other agencies on whether to have children committed to institutional care. The records show the Board, Child Welfare Department and local police exchanging information about children targeted for removal, and instances of the Board identifying prospective foster care placements on behalf of the Child Welfare Department.

Cooperation sometimes extended into the courts. There are instances of Board officers using *Aborigines Protection Act 1909* powers to bring children before a court, then advising the court to have the children committed to Child Welfare Department institutions using *Child Welfare Act 1939* provisions. There are also records of Board officers stationed in busy children's courts to advise on Aboriginal children brought before those courts on charges of 'improper guardianship' or 'neglect'.

In the late 1960s there were instances of removals involving former Board officers who had transferred to the Child Welfare Department. Sometimes these records are peppered with racist remarks about the children and their families, suggesting that assimilationist attitudes may have continued to influence their approach to Aboriginal families.

Exerting influence over former wards and other parents

The SGRS Unit has confirmed the existence of a causal link between a claimant's removal and their mother having been a ward of the Aborigines Welfare Board. Well-established international research highlighted in *Bringing them Home* supports an understanding that the loss of connection to family and kinship networks, coupled with a lack of exposure to any form of parenting, can limit a former ward's capacity to parent and rob them of opportunities to develop the skills necessary to care for their own children. [27] These parents, particularly mothers, provided their children with the only parenting and childhood experiences they knew. Many of their children were deemed to be 'under improper guardianship' and then removed.

The alleged 'parenting failures' that brought the child to the attention of authorities are, in some cases, indicative of the intergenerational impact of Board policies and practices. In some claims assessed by the SGRS Unit, the mothers were still wards of the Board when the claimant was surrendered for adoption. In other claims, there was evidence of the Board coercing or exerting undo pressure on former wards to surrender their child. Sometimes the claimant's removal is as a result of the mother continuing to exhibit extreme deference to the Board's staff, even long after the mother's wardship had ceased.

The SGRS Unit has also identified instances of Aboriginal parents experiencing acute pressure to entrust the care of older children to institutions. For parents experiencing poverty and hardship, it was common for Board staff to pressure them to temporarily place their children into the care of a children's home. For some families, this option provided genuine assistance to get them through times of crisis. However, there are instances where, if parents could not keep up the required maintenance payments to the home, the home would then instigate court proceedings to have the children declared 'destitute', enabling the institution to access government child welfare allowances. After the crisis passed, some parents encountered immense barriers and racist attitudes when trying to persuade authorities to relinquish state control over their children.

Misuse of adoption processes

In April 2019, the DCJ provided the scheme with access to adoption records for the purpose of assessing survivors' eligibility for reparations. The medical and adoption records often do not refer to the child's Aboriginality. The scheme's assessments have found that Aboriginality or mixed racial heritage was often the trigger for deferring the claimant's adoption and transferring guardianship to the Child Welfare Department. Deferring or delaying adoptions weakened judicial oversight and parental consent safeguards.[28] As a result, many Aboriginal children were placed with adoptive parents who would otherwise have been deemed unsuitable to adopt. Others spent years in institutions or foster care.

27 These claims have become known as the 'Bowlby precedent' with reference to the work of John Bowlby, *A secure base: Parent-child attachment and healthy human development* (1988).

28 Concerns about deferred adoptions and 'unadoptable' babies, including Aboriginal babies, are detailed in Parliament of New South Wales Legislative Council Standing Committee on Social Issues, *Releasing the Past: Adoption Practices 1950-1998 – Final Report*, Parliamentary Paper No. 600, Report 22 edn, December 2000. See 'Chapter 3 – Adoption 1950 to the early 1970s'.

Weakening child welfare safeguards

The 1940 amendments to the *Aborigines Protection Act 1909* included reforms requiring the removal of Aboriginal children to be governed by the general child welfare law. Whereas previous amendments had strengthened the Board's powers to remove children and to control the movement of adults, the 1940 amendments required any child removals to be authorised by the Children's Court, providing an important check against the arbitrary use of discretionary powers.

Magistrates usually presided over children's courts. However, there was also provision in the *Child Welfare Act 1939* for removals to be authorised by two justices of the peace 'exercising the jurisdiction of a children's court'.[29] Courts in rural areas or where Aborigines Welfare Board offices were co-located in court houses, often used this provision. Through assessing Stolen Generations Reparations Scheme claims, the SGRS Unit has identified Aboriginal families whose children entered years of institutional care without ever coming before a magistrate.

For example, in the mid-1960s the children of two families in North-West NSW were removed by the same Child Welfare Department officer in the same week. He had a court commit six children from one family to institutional care on the basis of 'something' the Aborigines Welfare Board had told him. That 'something' was not disclosed in the court deposition. Three days later the same officer removed seven more children from another family in another town because of 'something' said by police. In both cases, there are reasons to question the adequacy of the grounds for committing the children, noting the absence of reported neglect or abuse. In both cases, the committals were authorised by justices of the peace.

Demolition of fringe settlements

In its 1960 Annual Report, the Aborigines Welfare Board urged local councils and other authorities to ensure the 'consistent' enforcement of Public Health Act provisions 'in relation to health, sanitation and hygiene … in respect of the Aboriginal part of the community'.[30] What followed was a concerted campaign to demolish itinerant camps and settlements on the fringes of regional towns, many of which had been providing refuge for Aboriginal families since the 1940s. At the same time, the Board continued to revoke reserves – closing 33 gazetted Board reserves across New South Wales between 1957 and 1964. The subsequent upheaval left many Aboriginal families homeless, leading to the forcible removal of many Aboriginal children.

Among the residents of these settlements were Aboriginal ex-servicemen who returned after serving in the Second World War, only to be excluded from the Aborigines Welfare Board's stations and reserves. As white landlords also often shunned Aboriginal people, many of these ex-Diggers built improvised homes on public lands on the fringes of towns such as Deniliquin, Coonabarabran and Wellington. There they were joined by other Aboriginal and 'mixed-race' families, many of whom faced prejudice because they were who were considered 'too white' to live on reserves, but 'too black' to live in town. The bulldozing of these settlements shattered communities that had been settled more than two decades.[31]

Delegating Aborigines Welfare Board powers to other agencies

In remote locations, the Aborigines Welfare Board often delegated its authority to police or to other agencies. These arrangements were frequently cited in the Board's reports. In its first annual report in 1941, the newly established Board praised police for their *'supervision of reserves and advice and assistance …'*, and the Child Welfare Department for its, *'inspection of wards by Child Welfare Inspectors in remote country districts, and detention and shelter of children committed by the Court.'*[32]

29 Section 4, *Child Welfare Act 1939.*

30 Aborigines Welfare Board Annual Report, 1960, p.9.

31 See earlier discussion on 'Abolishing reserves and attempts at desegregation' in the introduction of this report.

32 Aborigines Welfare Board, 1941 Annual Report, p6.

Cooperation also extended to *'church groups and philanthropic organisations which consistently assisted the Board … and the many local Associations for the welfare and assimilation of Aborigines'*.[33] The Board's Aboriginal Welfare Officers often worked across vast distances. As their duties included taking *'action for the committal of neglected children to the care of the Board',* they were expected to take the lead in establishing these kinds of cooperative arrangements.[34]

Royal Far West and the Save the Children Fund (Victorian Division) were among the non-government agencies that played an active role in removing Aboriginal children on behalf of the Board. For example, in the south-west NSW town of Dareton, hundreds of kilometres from the nearest Aborigines Welfare Board or Child Welfare Department officers, the Board sponsored the Save the Children Fund to establish a 'welfare centre' focused on Aboriginal children.[35] Records relating to reparations claims from several Aboriginal families show how they were taken from Dareton and entered the Victorian child welfare system, often with the assistance of the Save the Children Fund.

At Coffs Harbour, the Aborigines Welfare Board's responsibilities for its Aboriginal reserve were managed by staff based in Lismore. In some claims, the SGRS Unit found evidence indicating that local police or Child Welfare Department officials acted with the delegated authority of the Board when taking children from the reserve and committing them to institutional care. Sometimes Royal Far West volunteers were among those who were active in arranging for children to receive medical treatment in Sydney, then having them placed into ongoing institutional care. Again, the Board appears to have fostered these arrangements.

Role of partnerships in delivering reparations

Both claimants to the scheme and the scheme itself often rely on the support provided through partnerships between Aboriginal Affairs and other government and non-government organisations.

Stolen Generations Advisory Committee

Through the Stolen Generations Advisory Committee, New South Wales' four Stolen Generations Organisations[36] oversee the NSW Government response to *Unfinished Business,* including the Stolen Generations Reparations Scheme. Their input and advice ensures the scheme is properly informed of survivor expectations and, to the extent possible, reflects those expectations. Their advocacy played a crucial role in persuading government to broaden the information routinely considered when assessing claims to the scheme, enabling many survivors who were removed by the Child Welfare Department or police to establish their eligibility for reparations. Survivor organisations continue to advocate for those excluded by the scheme or who have difficulty accessing it, including prison inmates. In response to concerns raised by the Stolen Generations Advisory Committee, the SGRS Unit is working with Corrective Services NSW and Legal Aid NSW on strategies to support inmates to engage with the scheme.

Government agencies

The DCJ, the NSW Registry of Births, Deaths and Marriages, Revenue NSW, the NSW Trustee and Guardian and Legal Aid NSW all provide crucial support at various stages of the assessment of claims.

The DCJ's Information Access and Exchange Directorate plays a pivotal role in providing the scheme with timely access to claimants' personal records. To expedite claims assessments, the directorate agreed at the outset to provide un-redacted Child Welfare Department records. Then in April 2019, the directorate helped broker an agreement with DCJ's Adoption Information Unit for conditional access to those records. These agreements have greatly reduced the time it would ordinarily take to access such records, benefiting numerous claimants. The scheme contributes to the costs of these arrangements.

33 *Aborigines Welfare Board,* 1959 Annual Report, p3.

34 *Aborigines Welfare Board,* 1959 Annual Report, p4.

35 Aborigines Welfare Board, *Dawn Magazine*, January 1968, p9. When visiting the area in the summer of 1967-68, Board Chairman Mr A. G. Kingsmill said, '*that the Board valued greatly its good relations with and the practical approach of organisations such as the Save The Children Fund.'*

36 The committee includes survivor representatives from the Coota Girls' Aboriginal Corporation, Kinchela Boys' Home Aboriginal Corporation, the Children of the Bombaderry Aboriginal Children's Home Incorporated and the NSW/ACT Stolen Generations Council.

Similarly, the NSW Registry of Births, Deaths and Marriages often provides the details needed to properly assess claims, including the information needed to distinguish claimants' records from other individuals with the same or similar names. The registry also helps confirm successful claimants' identities, one of a series of checks to protect the scheme from fraudulent claims.

The NSW Government's commitments to improve service responses for Stolen Generations survivors includes housing supports. DCJ Housing and the Aboriginal Housing Office (within the Department of Planning, Industry and Environment) are responsible for delivering priority housing assistance to survivors. It works with the Stolen Generations Organisations to assess the housing needs of survivors involved with each group, and to facilitate priority access where needed. The provision of stable housing is especially important to those impacted by the intergenerational trauma associated with the forced removal of children.

Revenue NSW has processes in place to protect reparations payments from actions to recover overdue fines. Upon request from eligible SGRS claimants, the fines hardship team at Revenue NSW reviews outstanding fines and enforcement orders. In most cases, Revenue NSW agrees to implement or extend time to pay agreements, or to write off accumulated government debts, enabling survivors to make a fresh start.

The Civil Law Service for Aboriginal Communities, a service of Legal Aid NSW, provides support and advice to many survivors, including help to request reviews of unsuccessful claims – see 'Reviewing or reassessing decisions'. Such support is particularly useful when a search for records has been inconclusive. For example, Legal Aid often supports claimants to prepare statutory declarations setting out information about removals, for example details about undocumented indentured work placements. With the help of Legal Aid, Aboriginal Affairs worked with the Law Society of New South Wales to establish a panel of pro bono lawyers willing to provide a free or reduced-cost wills service for Stolen Generations survivors who are entitled to a reparations payment.

Non-government partners

Non-government organisations are also active in supporting claimants and advocating on their behalf, especially the Redfern and Warra Warra Aboriginal Legal Services, the Senior's Rights Service, and the four Stolen Generations Organisations – Kinchela Boys' Home Aboriginal Corporation, Coota Girls Aboriginal Corporation, Children of the Bomaderry Aboriginal Children's Home, and the Stolen Generations Council NSW/ACT. Such support can be pivotal to identifying the information needed to fully assess some claims.

The Stolen Generations Organisations were established by Stolen Generations survivors to provide peer support and speak collectively, including directly with NSW Government officials on the needs of survivors. Increasingly, the Stolen Generations Organisations also reflect the concerns of descendants, including many who are affected by past policies of assimilation but are not eligible for reparations under this scheme.

The survivor organisations often also help the SGRS Unit to connect survivors with other community agencies. With the support of Aboriginal Affairs, Kinchela Boys hosted a series of financial literacy and counselling workshops run by Muru Mittigar – a not-for-profit organisation established to advance Aboriginal culture and improve the economic and social capacity of Aboriginal people. Its financial counsellors continue to support Stolen Generations survivors with advice and referrals.

Aboriginal Legal Services, including Redfern and Warra Warra, and some community legal centres, support claimants and advocate on their behalf. For example, in August 2020 Redfern Legal Centre (RLC) assisted the scheme to establish a panel of legal firms willing to provide pro bono help to the families of claimants who have died without a will before their eligibility could be established and their claims paid. Additionally, RLC has agreed to introduce families to one of the pro bono legal firms and help guide them through the process. RLC has also agreed to help survivors in specialist Aboriginal aged care centres to apply to the scheme, and work with Aboriginal Affairs and Legal Aid to improve the support available for claimants leaving NSW prisons.

Aboriginal Affairs continues to reach out to organisations whose responsibilities include engaging with and providing support to Stolen Generations survivors. These range from specialist services such as Link-Up NSW, through to government services such as the National Redress Scheme.

The challenges ahead

The challenges ahead

This section examines some of the challenges the Stolen Generations Reparations Scheme must address in the remaining two years of the scheme.

Explaining the eligibility requirements

There is ongoing advocacy to broaden the scheme's eligibility criteria to include all Aboriginal children removed from their families before 11 June 1975, when the Commonwealth Racial Discrimination Act came into force. The Act outlawed discrimination on the basis of race, giving victims of racial discrimination a means of seeking legal remedy.

Aboriginal Affairs has no mandate to broaden the eligibility criteria or extend the cut-off date beyond 2 June 1969. The scheme was established to acknowledge and make reparations for the forced removal of Aboriginal children from their families and communities under former NSW Government policies of 'protection' and assimilation, using the racist powers of the *Aborigines Protection Act 1909.*

Consistent with the approach recommended in *Bringing them Home*, and adopted in *Unfinished Business,* the scheme recognises that in some circumstances it may have been reasonable for courts to authorise the removal of children, such as when there were serious risks to the child's safety. The scheme's guidelines are clear that its purpose is '*to provide reparations to Stolen Generations survivors who were removed by, committed to, or otherwise came to be in the care of the Board under the policy of assimilation*'.[37] While eligible claims can include removals by the former Child Welfare Department or police, the guidelines require evidence of Board involvement and/or an intention to 'assimilate' the claimant.

The scheme's fact sheets were updated in 2019. While the eligibility criteria remain unchanged, there is scope to provide updated information and advice about the assessment process. Using information from this report, including examples detailed in 'Patterns of forcible removals in New South Wales', Aboriginal Affairs aims to provide applicants and their advisers with clearer guidance on the assessment process, including further advice about the factors considered by the Independent Assessors when determining whether to recommend reparations on discretionary grounds. Clarifying the decision-making framework should promote transparency and provide for procedural fairness.

Promoting the scheme to eligible survivors

Aboriginal Affairs actively promoted the scheme when it first commenced in 2017, leading to an initial influx of applications that overwhelmed the scheme. As at 1 July 2018, a total of 1,109 claims were received. A further 275 claims were received in 2018–19, and 388 in 2019–20.

The first priority was to quickly identify and pay reparations to all former wards of the Aborigines Welfare Board, particularly those who had already confirmed Board responsibility for their removal through the Stolen Generations Group Action process.

As the SGRS Unit dealt with the backlog created by that initial influx, the emphasis shifted from identifying claims supported by records of Aborigines Welfare Board responsibility for the survivor's removal, to identifying the contextual information needed to support eligible claims where Board responsibility or involvement was less clear.

Public awareness of the scheme continues to be raised through:

- Successful claimants promoting the scheme to their peers. This is especially evident in the large number of sibling and extended family groups applying to the scheme.
- Aboriginal community advocates who encourage anyone who was in institutional or foster care before 2 June 1969 to contact the scheme to discuss their potential eligibility.
- Poster campaigns targeting former residents of institutions, such as Bomaderry Aboriginal Children's Home, where the scheme's access to new sources of records has improved the scheme's ability to confirm eligibility.
- Stolen Generations Organisations members and staff, who maintain an interest in the work of the scheme and actively encourage and support others to apply.

In the remainder of the scheme, there is a need to ensure all eligible Stolen Generations survivors are aware of the scheme and have the opportunity to apply. Even when survivors know about the scheme, a reluctance to revisit the trauma associated with being taken can deter some from applying. It is therefore important to promote available supports.

37 Guidelines for the Administration of the NSW Stolen Generations Reparations Scheme, S11.1.4

Aboriginal Affairs plans to implement targeted communications strategies to promote the scheme. This strategy will focus on locations and institutions known to have a close association with the Aborigines Welfare Board, and on potential applicants whose ability to access the scheme is limited, including Corrective Services inmates and aged care residents.

Ensuring timely access to supporting evidence

Where there are no Aborigines Protection or Welfare Board records to support a claim, the search for relevant records and analysis of the broader context of forcible removals can be time-intensive. The Stolen Generations Reparations Unit always prioritises claims from critically ill or elderly claimants but acknowledges that the time taken to assess such claims can be frustrating for claimants.

The scheme's guidelines and principles of procedural fairness place the onus on the Stolen Generations Reparations Unit to find and present the information necessary to determine a claim. Where necessary, this might necessitate interrogating several archival sources and inviting the survivor to provide a statement to assist the assessment of their claim.

With the introduction of new processes in mid-2018 to broaden the range of contextual records routinely considered when assessing claims, Aboriginal Affairs has needed to employ additional assessment staff to research records and prepare detailed claims assessments for the Independent Assessors and the Minister. As a result, the resourcing required to prepare claims assessments has been higher than initially forecast.

Also, Aboriginal Affairs has contracted staff at DCJ to streamline access to its records, initially as a temporary measure. It has become evident that there is an ongoing need to supplement DCJ staff to ensure timely review of relevant information from records such as those of parents and siblings.

Closed records

The scheme has benefited from the cooperation of many non-government organisations. However, its access to some archival records has been restricted with some organisations refusing even to confirm that claimants' presence in their institution, let alone providing information about circumstances or dates of entry into or exit from an institution.

Sometimes this is because the custodians of archival records from these institutions consider the records to be their property and simply refuse to respond to requests for records (from the scheme or care-leavers). Sometimes the contextual information needed to confirm claimants' eligibility is held in collections that are closed to the public because of the personal information contained in those records.

For example, administrative records can help confirm that the Aborigines Welfare Board was active in placing children at an institution, but also often contain personal details of individuals whose names must be redacted to protect their privacy. Sometimes these redactions remove the information needed to confirm a claimant's eligibility for reparations.

Another common barrier to Stolen Generations survivors accessing records and information about their care history is that at least some of the non-government organisations managing these collections lack the resources or capacity to provide an effective service. This, combined with the poor state of surviving records, poor indexing and the loss or destruction of some records, can inhibit access to relevant records.

Aboriginal Affairs is developing a strategy to enable the SGRS Unit to obtain access to these closed records, while encouraging records holders to provide former residents of their institutions with easier access to their personal information.

Estimating the number of eligible survivors

When the five-year scheme commenced in July 2017, it was estimated the scheme could potentially identify 730 successful claimants. This estimate was based on a search of the surviving indexed Aborigines Welfare Board records, which showed that approximately 1,079 children born after 1925 were removed by the Board up until its abolition in 1969. Based on Australian Bureau of Statistics Aboriginal life expectancy tables for New South Wales, it was estimated that the number of living survivors would be approximately 729. Other estimates concluded that New South Wales has between 800 and 1,350 Stolen Generations survivors (Sphere Consulting, 2014). In a separate process, the NSW Treasury conducted its own analysis and reached a similar conclusion about the likely number of claims to the scheme.

As the scheme has progressed, Aboriginal Affairs has identified additional sources of relevant records and information – for example, the records of a significant number of Board wards who were transferred to the Child Welfare Department when the Board was abolished in June 1969. DCJ's decision in 2019 to provide access to adoption records is another key source that was not available to Aboriginal Affairs when estimating the number of survivors likely to come forward.

As at 31 December 2020, a total of 720 claims to the scheme have been successful. As successful claims continue to be identified, the original estimate of 730 eligible claims will soon be exceeded, and between 400 and 500 additional successful claimants may be recognised by the scheme before it closes on 31 December 2022.

The higher than anticipated number of successful claims can be attributed to a number of factors, including:

- Enhancements to the scheme's knowledge and understanding of the Aborigines Welfare Board's influence in child removals, strengthening the contextual evidence needed to inform assessments
- Broader access to archival sources such as adoptions records, benefiting many survivors whose claims were previously ineligible due to a lack of evidence
- A greater willingness by Stolen Generations survivors to come forward to tell their story, thereby providing the evidence needed to fill in some of the gaps in the records, and
- An increase in applications from survivors whose siblings, family members or associates have made successful claims to the scheme, and who were removed in similar circumstances.

The Stolen Generations Reparations Scheme is demand-driven and time-limited. Funding implications of revised estimates require priority consideration to ensure the scheme is adequately resourced to assess claims and make successful reparations and funeral assistance payments within the remaining life of the scheme. The number of eligible survivors likely to be identified by the scheme will continue to be influenced by factors such as these, as well as by Aboriginal Affairs' plans to promote the scheme to eligible survivors in selected locations and through targeted networks.

Apologies

Apologies are an essential part of the Stolen Generations Reparations Scheme, whether in the form of the Minister's letter to all successful claimants that includes a general apology on behalf of the State of New South Wales, or through a personalised apology recognising and apologising for the harm an individual experienced as a consequence of their removal from their family, community and culture.

Many apologies have the potential to form a 'right of reply' for survivors, an acknowledgment that hurtful and racist comments which exist in records were unjustified or untrue. However, for some survivors, discussions about an apology will raise other issues that the person is experiencing which may be the result of being forcibly removed.

An ongoing challenge for the Stolen Generations Reparations Scheme is to coordinate the apologies provided to Stolen Generations survivors as part of this scheme, with any apologies provided to those who also take part in the National Redress Scheme for Institutional Child Sexual Abuse, which continues until June 2027. For example, care is needed to ensure an apology given in one context does not undermine the apology given in another. There are also practical considerations. Impact statements developed for one purpose should be made available to survivors or their family members for use in all relevant processes, to reduce the stress of survivors having to repeatedly retell their account.

The Stolen Generations Reparations Scheme is focused on offering apologies to survivors. However, there are also questions to be resolved about extending personal apologies to families and descendants of Stolen Generations survivors, particularly of those survivors who died before the scheme commenced. Although Aboriginal Affairs is not resourced to extend apologies to the families and descendants of Stolen Generations survivors, from a community healing perspective, there may be value in doing so. As most survivors prefer to receive their personalised apology in writing,[38] any additional apologies would most likely be in writing.

38 As at 30 June 2020, just four of the 148 successful claimants who received personalised apologies had asked for face-to-face apologies.

Preparing for the closure of the SGRS

A significant challenge this year and next will be to prepare for the end of the scheme. When applications close on 30 June 2022, the scheme will have just six months to assess and finalise all remaining claims, as well as any further review requests.

Requests for reviews

There is no formal limit on the number of times a claimant can seek a review,[39] or for the scheme to undertake reassessments (during the life of the scheme). Consideration needs to be given to how requests for review will be dealt with after the scheme ends in 2022.

Accessing apologies after assessments end

Although all Stolen Generations Reparations Scheme assessments must be finalised by 31 December 2022, some additional time and resources will be needed to ensure all survivors who have indicated by that date they wish to receive an apology are given the necessary time and support to access apologies.

Complying with conditions of access to records

The assessment of claims for reparations has raised significant issues about records: incomplete records, access and conditions of that access, and finally how the new source of information created by the Stolen Generations Reparations Scheme should be stored and administered.

The scheme's access to some records from non-government organisations and to the adoption records held by DCJ has been on the condition that these copies of records are destroyed on completion of the review of the claim. Where information drawn from these records forms part of an assessment, protected information will need to be redacted and the source documents used by Aboriginal Affairs destroyed.

Managing the legacy of Stolen Generations Reparations Scheme records

The Stolen Generations Reparations Scheme has benefited from privileged access to the claimant's personal records held in the archives of the Aborigines Welfare Board, the Child Welfare Department, some private institutions and from claimants themselves. Information and analysis from these records are often combined with publicly available records from other sources, such as the Australian War Memorial, the National Library of Australia and the NSW State Archives and Records Authority.

The collection and analysis of information from disparate sources has created a valuable new resource, potentially of importance to individuals, families and communities. For example, we now know much more about the unfair treatment of many Aboriginal ex-servicemen who returned after serving in the Second World War, only to be excluded from the Aborigines Welfare Board's stations and reserves.[40]

Unfinished Business recommends that the NSW Government, in consultation with Stolen Generation survivors, undertakes a comprehensive review of how records relating to the Stolen Generations are managed and accessed, with a view to:

- removing any barriers that inhibit Stolen Generation survivors and their descendants from accessing records related to their family and history, including any fees that may apply when individuals apply for records from government agencies, such as the Registry of Births, Deaths and Marriages
- ensuring that appropriate mechanisms are in place for Stolen Generation survivors to correct, alter or supplement records relating to their removal
- allocating additional funding to the Aboriginal Affairs NSW Family Records Unit so that it can provide increased assistance to those accessing records and better promote its services.

The records created by the Stolen Generations Reparations Scheme now form an important part of the collection managed by Aboriginal Affairs. They contain important lessons about the shameful legacy of the Aborigines Welfare Board, past government policies of assimilation and the forcible removal of Aboriginal children over many years. There is a need to ensure the history of past forcible removal policies and practices and the continuing impacts on Aboriginal people is never forgotten.

Planning has begun to develop strategies to provide Stolen Generations survivors with ways to access to these records, while protecting the privacy of individuals named in the records.

39 Under cl.12.2 of the SGRS Guidelines, claimants may seek a review if there is information or evidence that has not been taken into consideration, or the guidelines have not been followed in considering the claim.

40 See earlier discussion on 'Abolishing reserves and attempts at desegregation' in the introduction of this report, and 'Demolition of fringe settlements' in the section on lessons learned from implementing the scheme

Appendices

Appendices

A. Media release announcing reparations for Stolen Generations survivors

B. Application to the Stolen Generations Reparations Scheme

C. Fact Sheet – Overview

D. Fact Sheet – Application Guide

E. Fact Sheet – Glossary of Terms

F. Fact Sheet – Assessment Process

G. Fact Sheet – Centrelink, Tax and Social Housing Information

H. Fact Sheet – Fines Information

Appendix A: Media release announcing reparations for Stolen Generations survivors

Leslie Williams
Minister for Aboriginal Affairs
Minister for Early Childhood Education
Assistant Minister for Education

MEDIA RELEASE

Friday 2 December 2016

MORE THAN $73 MILLION FOR REPARATIONS TO STOLEN GENERATIONS SURVIVORS

The NSW Government has reaffirmed its commitment to working with the Stolen Generations to address the trauma and harm from forced removal of Aboriginal children by providing a reparations package worth more than $73 million to survivors, Minister for Aboriginal Affairs Leslie Williams has announced today.

The reparations scheme offering one-off payments to survivors, a healing fund to address intergenerational trauma, and direct financial support for survivors' groups form the foundation of the NSW Government's response to the Parliamentary Committee Inquiry into Reparations for the Stolen Generations.

Mrs Williams, who delivered an apology to the Stolen Generations in June, said the NSW Government's response tabled today in the NSW Parliament goes beyond mere words to deliver a comprehensive package of support backed by more than $73 million in funding.

"With this response, the NSW Government officially acknowledges the real and heartbreaking trauma caused by historic government policies and practices of removing Aboriginal children from their kin and country," Mrs Williams said.

"We have accepted the vast majority of the Parliamentary Committee's recommendations and together with the Premier I will establish a Stolen Generations advisory committee to ensure our response is implemented swiftly, effectively and respectfully but most importantly in partnership with Aboriginal people.

"A Stolen Generations reparations scheme will offer payments to survivors without the need for a lengthy and arduous legal process and a $5 million Stolen Generations healing fund will seek to address the impacts of trauma not only for survivors but also for their families, descendants and communities.

"It is my sincerest hope that by acknowledging the wrongs of the past and providing enduring and meaningful support for the future, we can avoid such a tragedy ever being repeated."

MEDIA: Lema Samandar | Minister Williams | 0438 529 955

NSW GOVERNMENT Aboriginal Affairs

OFFICIAL USE ONLY

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Form A: **Application to the Stolen Generations Reparations Scheme**

If you were removed by or committed into the care of the Aborigines Welfare Board before 2 June 1969 you may apply to this Scheme. To apply please fill out this form.

Do you need help with this form?

Call **1800 019 998**

Email **stolen.generations@aboriginalaffairs.nsw.gov.au**

Information about you – Section One

Your gender ☐ Male ☐ Female ☐ Other

Your present name

Title ☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other _____

Family name

Given names (inc middle names)

Other names you may have been known by (other names you may have had in the past, for example, a traditional or adopted name)

Maiden names

Other first names

Other names

Where you were sent after being taken (Do you know the name of the institution? Were you adopted, fostered or sent to work by the AWB? It's OK to write 'I don't know'.)

Your address

Street name and number

Town or suburb

State and postcode

Date of birth	(day/month/year)	
How can we contact you?	Telephone	
	Mobile	
	E-mail	

Do you have a support person or persons you would like us to contact if we have any questions or need further information?

☐ No Go to section two

☐ Yes Please complete the details below

Details of support person	Title	☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other
	Name	
	Relationship to applicant or Organisation (if relevant)	
Support person's contact numbers	Telephone	
	Mobile	
	E-mail	

If you have more than one support person you would like us to be able to discuss your application with, please attach their contact details.

Do you have a legally appointed Guardian or Power of Attorney who is signing on your behalf?

☐ No Go to section two

☐ Yes Please complete the details below

Details of Guardian or Power of Attorney	Title	☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other
	Name	
Guardian or Power of Attorney's contact numbers	Telephone	
	Mobile	
	E-mail	

Please attach legal documentation of Guardianship or Power of Attorney arrangements

Identification documents – Section Two

Please attach a copy of **two** of the following forms of identification:

- Birth Certificate;
- Passport;
- Current Drivers Licence;
- Current Pensioner Concession Card;
- Current Medicare Card;
- Current Health Care Card; or

A current plastic credit card or account card issued by a bank, building society or credit union, showing your name and signature. Card must be copied on both sides.

Please enclose **copies only** of these documents. **Do not** send original versions of these identification documents.

Permission to search for government records – Section Three

The Stolen Generations Reparations Scheme needs your permission in order to undertake a search of government and other records concerning you and the Aborigines Welfare Board. To provide your permission to search for records please sign and date the statement below.

I, (Full Name)

give permission to the Stolen Generations Reparations Scheme Unit for the authorised officers to search for any information related to my removal by, or committal to, the care of the Aborigines Protection Board or Aborigines Welfare Board. This may include searching the records of the Aborigines Protection Board, Aborigines Welfare Board, Child Welfare Department, as well as adoption records or other records relevant to my application.

I understand that this information will be given to the Stolen Generations Reparations Scheme staff and Independent Assessors for the purpose of assessing my application.

I understand that my personal information will be kept securely and will not be used for any other purpose.

Signature:

Date

Please send your completed application form via post or email to:

Post:

Aboriginal Affairs NSW
Attention: Manager, Stolen Generations Reparations Scheme
PO Box 207
Mascot NSW 1460

Email:

stolen.generations@aboriginalaffairs.nsw.gov.au

NSW GOVERNMENT | Aboriginal Affairs

NSW Stolen Generations Reparations Scheme and Funeral Assistance Fund

Fact Sheet 1 – Overview

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NSW Stolen Generations Reparations Scheme

The Stolen Generations Reparations Scheme enables ex gratia payments of $75,000 to Stolen Generations survivors who were removed by, committed to, or otherwise came to be in the care of the Aborigines Protection or Welfare Boards under the *Aborigines Protection Act 1909*, up until the Act was repealed on 2 June 1969.

The Scheme commenced on 1 July 2017 and will run for 5 years. It is open to living Stolen Generation survivors only.

The application process puts the onus on Government to search Aborigines Protection and Welfare Board records for evidence of removal. The Stolen Generations Reparations Unit in Aboriginal Affairs receives and investigates applications. If the official records are unclear or there are no records, claimants will be contacted for more information.

The Scheme is implemented under the guidance of Aboriginal Independent Assessors, who make recommendations regarding payment to the Minister for Aboriginal Affairs. The Independent Assessors consider all available evidence, including oral evidence and statutory declarations where necessary.

The Minister's decision on whether to make an ex gratia payment is final. However, the Guidelines allow for a review if a claimant considers that there is information or evidence that has not been taken into consideration, and/or the process outlined in the Guidelines has not been followed in considering the claim. Any such request for a review from a claimant must be in writing and indicate the reasons for requesting the review. The review process will be conducted by a different Independent Assessor than the Independent Assessor who originally considered the claim.

Successful claimants can choose to make a statement concerning their removal and its impact and receive a personal written apology.

Receiving a payment under the Stolen Generations Group Action and the recently announced National Redress Scheme for survivors of institutional child sexual abuse **does not disqualify** people from receiving a payment under the reparations scheme. The Stolen Generations Reparations Scheme payment is in recognition of the hurt caused by the act of forcible removal only, and does not provide for compensation for personal damages suffered as a result of any abuse or neglect while in case.

Funeral Assistance Fund

The Stolen Generations Funeral Assistance Fund enables a standard one-off payment of $7,000 to Stolen Generations survivors who were living on 2 December 2016 and were removed by, committed to, or otherwise came to be in the care of the Aborigines Protection or Welfare Boards under the *Aborigines Protection Act 1909*, up until the Act was repealed on 2 June 1969. The Fund commenced on 1 July 2017.

Those deemed eligible for the Stolen Generations Reparations Scheme are automatically eligible for the Funeral Fund.

The Fund provides flexibility in the use of funds. The onus is on claimants to make arrangements regarding funeral planning and to communicate those arrangements to their families and beneficiaries.

Successful claimants have the option of receiving payment at the time of approval or deferring payment until a later date. If a claimant requests to defer the payment, they will be asked to nominate a representative to receive payment at a later date on their behalf.

To find out more information, including how to make an application go to: http://www.aboriginalaffairs.nsw.gov.au/stolen-generations or call 1800 019 998.

NSW GOVERNMENT | Aboriginal Affairs

NSW Stolen Generations Reparations Scheme and Funeral Assistance Fund

Fact Sheet 2 – Application Guide

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How to apply

The Scheme commenced on 1 July, 2017 and will operate for 5 years. The closing date for applications will be 30 June 2022.

To apply for the Scheme you must fill in an application form that can be accessed by:

- Downloading a copy from the website at https://www.aboriginalaffairs.nsw.gov.au/healing-and-reparations/stolen-generations/reparations-scheme
- Emailing the Scheme at stolen.generations@aboriginalaffairs.nsw.gov.au
- Ringing 1800 019 998 to request an Application Form be sent to you.

When you make an application to the Scheme you will be asked for your permission for the Scheme's staff to search government records on your behalf. The record search will look for evidence that you were removed, or came into the care of the Aborigines Welfare Board before 2 June, 1969.

It is expected that the only documentation most applicants will need to supply with their application form is "proof of identify". How to do this is set out in detail in the application form, but it relates to providing copies of identification such as a Pension Card or Driver's Licence.

Eligibility

Under the Scheme's Guidelines to be eligible for a reparations payment, a person must:

a. have been removed by, committed to, or otherwise have come under the care of the Aborigines Protection or Welfare Boards, up until the *Aborigines Protection Act 1909* was repealed on 2 June 1969; and

b. be living; and

c. have lodged a valid application – that is an application that has been signed by the applicant and to which copies of current identification documents have been attached.

If a claimant who meets the eligibility criteria above and has submitted an application dies before a decision is made, the Scheme's guidelines do include discretionary power to continue to process the application if a request in writing is received from the person responsible for the claimant's estate.

Fees and charges

Access to the Stolen Generations Reparations Scheme is free of charge. Applicants who require assistance to lodge a claim should contact the Stolen Generations Reparations Unit on 1800 019 998.

Consideration and determination of claims

Once an application is received and it is determined that the person making the claim is able to meet the eligibility requirements, the Stolen Generations Reparations Unit in Aboriginal Affairs will search government records and compile the necessary evidence, if possible, from the Boards' records.

This information will then be provided to the Scheme's Independent Assessors who will, after considering all available evidence, make recommendations regarding payment to the Minister for Aboriginal Affairs. Three Independent Assessors have been appointed by the Governer of NSW. The Independent Assessors are Aboriginal and are empowered to consider all available evidence, including oral evidence and statutory declarations.

The Minister will then consider this advice and make a decision about whether an ex-gratia reparation payment can be made.

Review of decisions

The Minister's decision to make or not make a reparations payment is final. However if you believe that there is relevant information that has not been taken into consideration or that the Scheme's Guidelines have not been followed in determining your claim, you can request a review of process. The request for a review must be in writing and provide details of the relevant information that you consider was not taken into account or the process in the Guidelines that was not followed.

NSW Stolen Generations Reparations Scheme and Funeral Assistance Fund

Fact Sheet 3 – Glossary of Terms

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Authorised representative

An Authorised Representative is a person who has legal power to act on someone else's behalf. For example, they may be legally allowed to submit an application on behalf of a person to apply for the Stolen Generations Reparations Scheme. There are at least three legal ways in which people can become Authorised Representatives: having a General Power of Attorney, having an Enduring Power of Attorney, or by being a legally appointed Guardian.

Nominated recipient (Funeral Fund)

When you apply for a Funeral Assistance Fund payment you can either decide to receive the payment yourself, or you can decide that the payment can be paid to another person at a later date - for example, at the point your funeral arrangements are being made.

If you decide for the payment to be made later, you will need to nominate a person who will receive the Funeral Assistance payment. The nominated person will likely be someone who will be making the funeral arrangements.

Personal representative (Stolen Generations Reparations Scheme)

There may be situations where a person submits an application to the Stolen Generations Reparation Scheme, but that person dies before their application has been determined. If this happens, a Personal Representative of the estate of the deceased person can request that the application continue.

A Personal Representative is a person legally appointed to administer the estate of the person who has died.

This person is able to act on behalf of the person who has died, to carry out that person's wishes related to their estate. Clause 13.8 of the Stolen Generations Reparations Scheme guidelines outlines the situations that administration of a deceased estate is granted.

Power of Attorney

The two most common types of Power of Attorney are:

1. **General Power of Attorney:** A power of attorney is a legal document made by one person (called the 'principal') that allows another person to look after the financial affairs of the 'principal'. The word 'attorney' when used in the phrase 'power of attorney' does NOT mean that the person appointed has to be a solicitor or lawyer. It can be any person over the age of 18 years who can assist the 'principal' with their financial affairs. It might be a relative or friend.
2. **Enduring Power of Attorney:** Someone with the Enduring Power of Attorney has the legal authority to look after the financial affairs of another person, and this power continues even after that person becomes unable to look after themselves due to physical or mental difficulties or after a serious accident.

   More information on the different types of Power of Attorney see http://www.tag.nsw.gov.au/what-is-a-power-of-attorney.html

- **Guardian:** A guardian is a legally appointed person who may make health and welfare decisions on behalf of the person under guardianship. These might include decisions about where a person should live, as well as be able to give consent to medical, dental and health care services generally. A Guardian cannot make decisions about financial matters or a person's estate unless they have been authorised under an enduring power of attorney or have been legally appointed to be the person's financial manager.
- **Person who is otherwise empowered by law:** For example, a lawyer acting on behalf of a claimant.

A person who is an Authorised Representative will have legal documentation outlining the types of arrangements outlined above. The Stolen Generations Reparations Scheme will need to be provided with copies of this documentation, to make sure that the person is legally allowed to act on the applicants behalf.

Support person (reparations scheme and funeral assistance)

When applying for the Stolen Generations Reparations Scheme, you may wish to nominate someone that you authorise to speak to Aboriginal Affairs about your application, and if you wish, also receive correspondence from Aboriginal Affairs about the Reparations Scheme. This person will be someone you trust to support you through the application process. You do not need to nominate a support person, and if you do choose to nominate a support person, this will not stop you from dealing directly with Aboriginal Affairs as well.

Once you have submitted an application for the Reparations Scheme and have nominated a support person and given Aboriginal Affairs their details, the Scheme will only be able to discuss information about your application with yourself and your support person. If you wish to nominate more than one support person you will need to advise Aboriginal Affairs of this arrangement.

Who can make a funeral fund application if an eligible person dies before applying

There may be situations where a person who is eligible for the Funeral Assistance Fund dies after the Fund was announced on 2 December 2016, but before they were able to submit an application to the Scheme. In this instance, the Funeral Assistance payment can be applied for by another person, to help with the funeral costs. A person can apply if they can provide relevant documentation to Aboriginal Affairs to demonstrate that they are the primary person who is making the funeral arrangements and covering the funeral costs. Documentation that Aboriginal Affairs will accept includes a copy of the death certificate for the eligible person, documentation from the Funeral Director with the eligible person's name, or invoices or receipts for funeral costs. The full list of documentation that Aboriginal Affairs will accept is at clause 4.6 of the Funeral Assistance Fund Guidelines.

Funeral costs

The Funeral Assistance payment does not need to be used only for the cost of the funeral itself, but can be used to broadly cover costs associated with funerals. This can include burial rights, headstones, memorials, death notices, memorial events, or travel and accommodation for people to attend the funeral.

NSW GOVERNMENT Aboriginal Affairs

NSW Stolen Generations Reparations Scheme

Fact Sheet 4 - Assessment Process

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Complete application form available from Aboriginal Affairs and lodge with proof of identification. There is no need to provide any other documentation – the SGRS Unit will contact you if we need more information

↓

The SGRS Unit will search Aborigines Welfare Board records for evidence of your removal by the Board. If we cannot find any records of your removal, we may contact you for further information.

↓

The Independent Assessor will consider your application and make a recommendation to the Minister based on all the available evidence

↓

The Minister for Aboriginal Affairs will make a decision whether to approve a payment

YES

The SGRS Unit will write to request your bank details. We will also ask whether you would like to make a statement about your removal and receive a personal apology.

↓

Payment will be made to your bank account and you will receive a written personal apology if you requested one

NO

You will receive a letter explaining the reasons why. If you think there is information that has not been taken into account in reaching a decision or the SGRS Guidelines have not been followed you can request a review in writing.

↓

Reviews will be conducted by a different Assessor to the one that made the initial recommendation. After reviewing your claim, the Independent Assessor will make a recommendation to the Minister

This document outlines in a simple way how the SGRS assessment process works. If you need more detailed information on how to make an application and how the SGRS Unit processes claims, you can read or download additional information at http://www.aboriginalaffairs.nsw.gov.au/stolen-generations or you can email the Scheme at stolen.generations@aboriginalaffairs.nsw.gov.au

Aboriginal Affairs NSW | NSW SGRS: **Fact Sheet 4 – Assessment Process** www.aboriginalaffairs.nsw.gov.au/stolen-generations

NSW GOVERNMENT | Aboriginal Affairs

NSW Stolen Generations Reparations Scheme and Funeral Assistance Fund

Fact Sheet 5 – Centrelink, Tax and Social Housing Information

29/08/19_49696

Reparations payments and their effect on Centrelink payments, taxation and Social Housing Information

The Commonwealth Department of Social Services and the Australian Tax Office (ATO) have determined that payments to Stolen Generation survivors from the NSW Stolen Generations Reparations Scheme (SGRS) and the Funeral Assistance Fund are not taxed and do not affect successful claimants' pensions and other Centrelink payments.

The Department of Social Services on 17 May 2017 registered a legal regulation, the *Social Security (Exempt Lump Sum – NSW Government Payments to Stolen Generations Survivors) Determination 2017* on the Federal Register of Legislation.

This means that any reparation and funeral assistance made to Stolen Generations survivors will not fall within the definition of 'ordinary income' under subsection 8(1) of the Social Security Act 1991, and will not be taken into account under the Social Security income test.

Similarly, on 24 May 2017, the Australian Tax Office decided that Stolen Generations survivors will not be taxed on payments they receive from the NSW Stolen Generations Reparations Scheme and the Funeral Assistance Fund. This means that any of these payments do not need to be included in any income tax returns as they are not taxable.

The NSW Department of Communities and Justice (DCJ) advised in June 2017 that reparation and funeral assistance payments will be considered non-assessable special purpose payments under DCJ Social housing policy. This means payments won't affect eligibility for new or continued social (public, community or Aboriginal) housing assistance, or rent payable calculations.

For more information

If you own significant assets and use your payment to buy another asset, such as a car or boat, your purchase could affect your pension assets test.

For information on the assets test and how purchases can affect any regular government payments you receive, please contact a Services Australia (Centrelink) Financial Information Service officer on 13 23 00.

If you need more information on this issue it is available at: https://www.ato.gov.au/ Taxation Ruling TR 95/35: Income tax: capital gains: treatment of compensation receipts. Or you can email the ATO at TaxAdvice@ato.gov.au to ask for a ATO officer to ring you back or ring 13 28 61.

NSW Stolen Generations Reparations Scheme and Funeral Assistance Fund

Fact Sheet - Fines Information

NSW GOVERNMENT

revenue.nsw.gov.au
aboriginalaffairs.nsw.gov.au

Protect your reparations payment from fines debt recovery

Fines in NSW are collected by Revenue NSW (you may know it by the previous name of State Debt Recovery). Revenue NSW can take money from a person's bank account if their fines are overdue.

If you have received a reparations and funeral payment through Aboriginal Affairs, this is what you can do to stop automatic payments coming out of your bank account to pay overdue fines.

What should I do?

If you have overdue fines, you can give permission for Aboriginal Affairs to contact Revenue NSW on your behalf. Aboriginal Affairs cannot tell Revenue NSW that you received a reparations payment unless you give permission. Call Aboriginal Affairs on **1800 019 998**, email stolengenerations@aboriginalaffairs.nsw.gov.au or call Revenue NSW on **1300 135 627**, as they have a dedicated team to assist.

What will happen to my fines when Revenue NSW finds out I received a reparation payment?

Once Revenue NSW finds out you received a reparations payment, they will put your fines on hold, which means they won't take any money from your bank account.

In some circumstances, Revenue NSW may also write off your fines automatically when they find out you received a reparations payment. This means you will not have to pay the fines.

However, if your fines are serious, then Revenue NSW may not be able to write them off automatically and you will still have to deal with them. If this happens, Aboriginal Affairs or Revenue NSW will contact you to discuss your options, like going on a payment plan. Revenue NSW will not take money from your bank account if you are making the agreed payments on a payment plan.

Legal advice

If you think you need legal advice about your circumstances, call LawAccess NSW on **1300 888 529**.

Call Aboriginal Affairs on 1800 019 998 or Revenue NSW on 1300 135 627 now.

More information

aboriginalaffairs.nsw.gov.au
stolen.generations@aboriginalaffairs.nsw.gov.au
1800 019 998