



THE VICTORIAN BAR INCORPORATED

**SUBMISSION TO THE
LAW COUNCIL OF
AUSTRALIA**

INQUIRY INTO THE TERRITORIES
STOLEN GENERATIONS REDRESS
SCHEME BILLS

INTRODUCTION

1. The Victorian Bar (*the Bar*) welcomes the opportunity to respond to the request for input of the Law Council of Australia (*the LCA*) for a submission to the Senate Finance and Public Administration Committee's inquiry into the *Territories Stolen Generation Redress Scheme (Facilitation) Bill 2021* (Cth) and the *Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021* (Cth).
2. The Bar and its Indigenous Justice Committee (IJC) welcome the announcement of a Stolen Generations Redress Scheme in the Northern Territory, Australian Capital Territory and Jervis Bay Territory (hereinafter, *the Scheme*). The Bar considers that such recognition and support is long overdue.

ACKNOWLEDGEMENT

3. The Bar acknowledges the contributions of the members of its IJC in the preparation of this submission, in particular, Kate Stowell (primary author), Anne Sheehan, Timothy Goodwin and John Heard.

COMMENTS ON THE PROPOSED LEGISLATION

Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 (Cth)

4. The Bar understands that this Bill ensures that a payment made under the Scheme is absolutely inalienable¹ and does not affect a person's eligibility for, or entitlement to, any pension, benefit, payment, or service under a law of the Commonwealth.² Further, a redress payment is not to be considered compensation or damages for the purposes of the *Social Security Act 1991* or the *Veterans' Entitlement Act 1986* or other stipulated laws.³
5. The Bar considers s4(1) and s4(2) of the Bill are appropriate, noting that it is only fair that members of the Stolen Generation who are currently, or may in future, be in receipt of Centrelink or other Commonwealth-administered social welfare support should not be disadvantaged because they have also received a redress payment.
6. The Bar is concerned that redress payments may potentially be included for the purposes of determining the value of a person's assets under the range of legislation set out under s4(3) of the Bill. As a general principle, we consider that it is inappropriate for redress payments to be assessed as part of an assets test. This is because the purpose of a redress payment is to recognise the harm

¹ *Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021* (Cth), s4(4).

² *Ibid* s4(1).

³ *Ibid* s4(2).

of forced removal and facilitate healing,⁴ which ought to be a stand-alone purpose and not impede the assessment of a person's eligibility for other types of government payments or assistance. However, we remain conscious of unintended consequences of the inclusion or exclusion of this section and ask that the LCA seek further policy advice on this point, as we have not been able to obtain detailed advice in the short timeframe allowed for this submission.

Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021 (Cth)

7. The Bar understands that the purpose of this Bill is to ensure that eligible participants will receive the full benefit of the redress payment (\$75,000 plus a one-off healing assistance payment of \$7,000) and that receipt of the payment does not adversely affect income testing for other Commonwealth payment or benefits. In order to achieve this, amendments are proposed to the *Bankruptcy Act 1966*, *Social Security Act 1991*, *Social Security (Administration) Act 1999* and *Veterans' Entitlement Act 1986*. The Bar offers no amendment at this time.

Other elements of the proposed Scheme

8. The Bar is concerned that the proposed one-off redress payment of \$75,000 plus the healing assistance payment of \$7,000 is not enough. The Bar note that other recently implemented Commonwealth redress schemes such as the National Redress Scheme for people who have experienced institutional child sexual abuse has a maximum payment of up to \$150,000.⁵ However, the Bar also notes that the Stolen Generations Redress Scheme in New South Wales offers an ex-gratia payment of \$75,000⁶ while the South Australian Scheme offered between \$30,000 and \$50,000 in individual payments.⁷ The Bar considers that inconsistency in payments between redress schemes in different jurisdictions at different times and for different types of trauma survivors is regrettable.
9. Further, The Bar is concerned that the proposed timeline for the scheme is too short. We understand that the Scheme is to run for four years and will be open for applications between 1 March 2022 and 28 February 2026. The Bar consider that a timeframe of 6 – 8 years would be more appropriate. We note that the National Redress Scheme for people who have experienced institutional child sexual abuse has a much longer period of operation of a notional 10 years, between 1 July 2018 and 2028. Given the need for survivors to learn about the Scheme, receive information, advice, and trauma-informed support, we consider a notional window of 6 - 8 years should be provided for between 2022

⁴ *Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021* Statement of Compatibility of Human Rights.

⁵ *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s4.

⁶ NSW Department of Aboriginal Affairs website: <https://www.aboriginalaffairs.nsw.gov.au/healing-and-reparations/stolen-generations/reparations-scheme/>.

⁷ Government of South Australia website: <https://www.dpc.sa.gov.au/responsibilities/aboriginal-affairs-and-reconciliation/reconciliation/stolen-generations-reparations-scheme>.

and 2030. Further, we consider a longer time period would ease concern about any potential delays with the Scheme, which may be either unforeseen or associated with the COVID-19 pandemic.

10. The Bar also considers it appropriate that there be legislated mandatory two-yearly reviews of the Scheme's operation to assess its effectiveness and make appropriate improvements.⁸
11. Finally, The Bar notes that the Scheme is not a national program, meaning that only survivors who fall within particular geographic boundaries will be eligible for this assistance and recognition. We note the past and current redress schemes in Tasmania, South Australia, New South Wales, and the forthcoming scheme in Victoria. We consider that there should be strong encouragement from the Commonwealth to ensure that members of the Stolen Generation living in all other states have access to redress payments and assistance.⁹

⁸ Such reviews are legislated for the National Redress Scheme for people who have experienced institutional child sexual abuse under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s192.

⁹ SBS News, 5 August 2021, 'Time's up': Queensland and WA urged to launch their own reparations for Stolen Generations survivors, <https://www.sbs.com.au/news/time-s-up-queensland-and-wa-urged-to-launch-their-own-reparations-for-stolen-generations-survivors/f8ad0b73-2fd9-419a-a404-48f738bbcc79>.