



Guidelines for the administration of the NSW Stolen Generations Reparations Scheme

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1. Preliminary

- 1.1 In NSW, under the *Aborigines Protection Act 1909*, the Aborigines Protection Board and its successor, the Aborigines Welfare Board had wide ranging control over the lives of Aboriginal people, including the power to remove Aboriginal children from their families and place them into care.
- 1.2 The removal of Aboriginal children in NSW occurred first under the policy of ‘protection’ and, from 1937, under an official policy of ‘assimilation’. This policy aimed to integrate Aboriginal people into the wider population by severing connection to Aboriginal social and cultural practices.
- 1.3 On 23 June 2016, General Purpose Standing Committee No.3 released its Report on Reparations for the Stolen Generations in New South Wales: *Unfinished Business*, recommending that the NSW Government establish a reparations scheme for Stolen Generation survivors.
- 1.4 On 2 December 2016, the Government announced, in response to *Unfinished Business*, that it would establish a Stolen Generations Reparations Scheme (“the Scheme”) to provide payments to Stolen Generations survivors for their removal by the Aborigines Protection Board or Aborigines Welfare Board (“the Board”).
- 1.5 The Scheme is based on the NSW Government Ex Gratia Payments Policy. Subject to paragraph 1.8 below, there will be a standard payment of \$75,000 to Stolen Generations survivors found to have been removed by, committed to, or otherwise come into the care of the Board. The amount awarded will be no more than the standard sum.

- 1.6 The Scheme is administered by the Stolen Generations Reparations Scheme Unit (“the SGRS Unit”) within Aboriginal Affairs, the Stolen Generations Reparations Scheme Independent Assessor (“the Independent Assessor”) and the Minister for Aboriginal Affairs (“the Minister”). The SGRS Unit provides support for the deliberations of the Independent Assessor, who makes recommendations for payment to the Minister.
- 1.7 The Independent Assessor(s) will be appointed by the Governor of New South Wales.
- 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.
- 1.9 These Guidelines embody the principle of causing no further harm.
- 1.10 Words and expressions used in these Guidelines have the meanings given to them in the Definitions in Part 13 of these Guidelines.

2. Period of operation of the Scheme

- 2.1 The Scheme will operate for a period of 6 years commencing 1 July 2017.
- 2.2 The closing date for applications to the Scheme will be 30 June 2023, but the Scheme may continue to operate until 31 December 2023 to allow all applications received up until the closing date to be finalised. The Scheme may continue beyond this period if the Minister deems necessary.

3. The Stolen Generations Reparations Scheme Unit

- 3.1 The functions and responsibilities of the SGRS Unit in relation to the Scheme include but are not limited to:
- 3.1.1 receiving and processing applications made pursuant to the Scheme;
 - 3.1.2 investigating the applications and compiling all relevant information, including historical records, Statutory Declarations and oral evidence when appropriate;
 - 3.1.3 preparing assessments in relation to applications;
 - 3.1.4 making recommendations, in accordance with Parts 9 and 11 of the Guidelines, to the Independent Assessor for the payment of claims;
 - 3.1.5 forwarding the Independent Assessor's recommendations to the Minister for approval; and
 - 3.1.6 making payments to claimants.
- 3.2 The rules of evidence do not apply to assessments of applications by the SGRS Unit, but the SGRS Unit shall only consider evidence which the relevant officer in the SGRS Unit is satisfied is relevant to the recommendation/s which the SGRS Unit shall make and which the officer is satisfied is reliable evidence.

4. The Independent Assessor

- 4.1 The responsibilities of the Independent Assessor, in relation to the Scheme, include but are not limited to:
- 4.1.1 providing advice to the Minister and the SGRS Unit on the operation of the Scheme;
 - 4.1.2 making determinations, in accordance with Parts 9 and 11 of the Guidelines, to endorse or reject the SGRS Unit's recommendations for payment of claims;
 - 4.1.3 making determinations, in accordance with Parts 9 and 11 of the Guidelines, to endorse or reject the SGRS Unit's assessments for non-payment of claims;
 - 4.1.4 reviewing the facts in each case at the Independent Assessor's discretion using all available evidence, including Statutory Declarations and oral evidence;
 - 4.1.5 making recommendations to the Minister for the payment of claims;
 - 4.1.6 undertaking reviews of claims where no payment is recommended by the SGRS Unit and the claimant has requested a review pursuant to paragraph 12.2;
 - 4.1.7 contributing to a review of the operations of the Scheme after 2 years including reporting to Government; and
 - 4.1.8 contributing to a final report on the operations of the Scheme in 2023.
- 4.2 The rules of evidence do not apply to determinations of the Independent Assessor, but the Independent Assessor should only consider evidence which they are satisfied is relevant to the recommendation/s which they shall make and which the Independent Assessor is satisfied is reliable evidence.
- 4.3 Recommendations of the Independent Assessor in relation to applications will be submitted to the Minister for consideration.
- 4.4 The Minister may, from time to time, issue directions to the Independent Assessor in relation to the undertaking of the Independent Assessor's responsibilities and functions.

5. Lodging of applications

- 5.1 The following persons are eligible to apply for an ex gratia payment pursuant to the Scheme:
- 5.1.1 a person who was removed by, committed to or otherwise came to be in the care of the Board up until the *Aborigines Protection Act 1909* was repealed on 2 June 1969;
 - 5.1.2 an authorised representative of a person in 5.1.1.
- 5.2 An application:
- 5.2.1 shall be on the approved form;
 - 5.2.2 shall be accompanied by copies of any two of the following forms of identification that confirms the identity of the applicant:
 - 5.2.2.1 Birth Certificate;
 - 5.2.2.2 Driving Licence;
 - 5.2.2.3 Pensioner Concession Card;
 - 5.2.2.4 Veterans Card;
 - 5.2.2.5 Medicare Card;
 - 5.2.2.6 Health Care Card;
 - 5.2.2.7 Australian passport;
 - 5.2.2.8 a current plastic credit card or account card issued by a bank, building society or credit union, showing the applicant's name and signature; or
 - 5.2.2.9 other document that establishes the identity of the applicant to the satisfaction of the SGRS Unit; and
 - 5.2.3 shall be lodged no later than 30 June 2023.
- 5.3 Any person, or their authorised representative, who was removed by, committed to, or otherwise came into the care of the Board and who has been awarded a payment under the Stolen Generations Group Action and provides written consent to being considered a claimant under the Scheme is considered to have made an application and the provisions of paragraph 5.2.1 do not apply.
- 5.4 Any person making an application pursuant to paragraphs 5.1, 5.2 and 5.3 is a claimant under the Scheme.
- 5.5 Where a claimant makes an application but becomes incapable before the application is determined, the application may be continued by an authorised representative of the claimant, on evidence of their status as an authorised representative having been provided to the satisfaction of the SGRS Unit.
- 5.6 Where a claimant makes an application but dies before the application is determined, the SGRS Unit, the Independent Assessor or the Minister may, in their absolute discretion, continue to consider and determine the application, upon being requested in writing to do so by the Personal Representative of the estate of the deceased claimant. Where this occurs the application shall be taken to be continued by such Personal Representative in place of the deceased claimant, and these Guidelines shall be applied accordingly.
- 5.7 Pursuant to paragraph 5.3 of these Guidelines, the SGRS Unit shall write to persons who were awarded payments under the Stolen Generations Group Action seeking their written consent to be considered claimants under the Scheme.
- 5.8 A claimant may make a written or oral statement regarding their removal and its impact, and may request a personal written apology.
- 5.9 The SGRS Unit may accept a late application if it is satisfied that it is in the interests of justice or equity to do so.
- 5.10 The person making an application shall be referred to in these Guidelines as “the claimant”.

6. Investigation of applications by the SGRS Unit

- 6.1 When an application is received, it will be registered and given a priority rating. In the first instance, the Scheme will prioritise persons who were awarded a payment under the Stolen Generations Group Action and who lodged an application pursuant to paragraph 5.3 of these Guidelines.
- 6.2 Priority to be determined by the SGRS Unit will be based on:
- 6.2.1 whether the claimant is a Stolen Generations Group Action participant who lodged an application pursuant to paragraph 5.3 of these Guidelines;
 - 6.2.2 any evidence of hardship or life-threatening medical condition or serious medical condition impacting on the claimant's capacity to provide evidence in support of their application; and
 - 6.2.3 any other factors the SGRS Unit and the Independent Assessor consider relevant.
- 6.3 The priority rating will determine the order applications are dealt with. Claimants can request a review of a priority rating from the Independent Assessor.
- 6.4 The procedure for investigating an application includes the following sequential process:
- 6.4.1 The SGRS Unit will review the application and ensure all appropriate documentation is attached. Applications cannot be processed without the appropriate documentation and a valid indication of consent (such as a signature). The claimant may be requested to provide further information, either in documentary or oral form.
 - 6.4.2 The SGRS Unit will undertake a search of the Board records and/or other Government records (as applicable) and prepare a written report.
 - 6.4.3 The SGRS Unit will then investigate records relevant to the application and prepare a report that includes certified true copies of relevant records.
 - 6.4.4 The SGRS Unit may seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application.
 - 6.4.5 Where the SGRS Unit considers it is necessary, it may, in its absolute discretion, determine that it will conduct an interview with the claimant in person or by telephone or with any other person who may have information relevant to the determination of an application.
- 6.5 For persons who have been awarded a payment under the Stolen Generations Group Action and have provided written consent to being considered a claimant under the Scheme, relevant documentation and information provided as part of their claims under the Stolen Generations Group Action, will be used in the first instance by the SGRS Unit to undertake the procedures outlined in paragraph 6.4.

7. Consideration of applications by the SGRS Unit

- 7.1 When the SGRS Unit is satisfied it has made all reasonable attempts to collect relevant evidence in relation to an application, the SGRS Unit shall assess the evidence and prepare and submit to the Independent Assessor the following:
- 7.1.1 a summary of the information found in the course of its investigation of that application, including copies of relevant documents;
 - 7.1.2 in accordance with Parts 9 and 11 of the Guidelines (as applicable), an assessment and draft recommendation as to whether or not a payment should be made pursuant to the Scheme, and to whom the payment should be made; and
 - 7.1.3 its reasons for making the recommendation, including evidence relied on.
- 7.2 If, after undertaking the procedure outlined in paragraph 6.4, the SGRS Unit is unable to make a clear recommendation as to whether or not a payment should be made, the following will occur:
- 7.2.1 The SGRS Unit will forward a copy of those documents referred to in paragraph 7.1 to the claimant to whom the application relates.
 - 7.2.2 When these documents are forwarded to a claimant, the SGRS Unit shall inform the claimant that they may provide the SGRS Unit with a response to the assessment including any other information the claimant may consider relevant to the application.
 - 7.2.3 If the claimant indicates, or the SGRS Unit becomes aware, that they are finding it difficult to provide a written response as indicated in clause 7.2.2, the SGRS Unit can offer to assist the claimant either through a referral to an appropriate organisation or through any other process agreeable to both the claimant and the SGRS Unit.
- 7.3 On receipt of a response from the claimant as outlined in paragraph 7.2, the SGRS Unit will forward to the Independent Assessor the following:
- 7.3.1 the application;
 - 7.3.2 a summary of the information found in the course of its investigation of the application, including copies of the documents forwarded to the claimant;
 - 7.3.3 any response received from the claimant;
 - 7.3.4 an assessment for the Independent Assessor's consideration, including a draft recommendation as to whether or not a payment should be made to the claimant in accordance with Parts 9 and 11; and
 - 7.3.5 its reasons for making the recommendation, including evidence relied on.
- 7.4 Where a claimant has made a statement and request for an apology as indicated in paragraph 5.8, the SGRS Unit will draft and forward to the Independent Assessor the proposed wording of a personal apology to the claimant.

8. Consideration of applications by the Independent Assessor

- 8.1 The procedure for consideration of an application by the Independent Assessor will be as follows:
- 8.1.1 The Independent Assessor shall review the documentation to ensure that they have received all of the documentation in accordance with paragraph 7.1 or paragraph 7.3 (as applicable).
 - 8.1.2 The Independent Assessor may seek expert assistance in locating, collating or interpreting the records if they consider this would be of assistance in assessing the application.
 - 8.1.3 Where the Independent Assessor considers it is necessary, they may conduct an interview with the claimant in person or by telephone or with any person who may have information relevant to the determination of the application.
 - 8.1.4 Where the claimant has made a request as indicated in paragraph 5.8, the Independent Assessor may receive a personal oral or written statement from the claimant and prepare a personal apology for the Minister's consideration.
- 8.1.5 When the Independent Assessor is satisfied they have properly reviewed the available evidence in relation to an application, they shall prepare the following:
- 8.1.5.1 a summary of the information considered in relation to the review of that application;
 - 8.1.5.2 a recommendation to the Minister as to whether or not a payment should be made pursuant to the Scheme, and to whom the payment should be made;
 - 8.1.5.3 the reasons for the recommendation; and
 - 8.1.5.4 a draft personal apology if one has been prepared in accordance with clause 8.1.4 of these Guidelines.
- 8.1.6 The recommendation is to be prepared in accordance with Parts 9 and 11 of the Guidelines (as applicable) and forwarded to the Minister, along with a draft personal apology if one has been prepared.

9. Recommendation for payment by Independent Assessor

- 9.1 If the Independent Assessor is satisfied that there is certainty, strong evidence or strong circumstantial evidence that the claimant was removed by, committed to or otherwise came into the care of the Board up until the *Aborigines Protection Act 1909* was repealed in 1969, they shall make a recommendation that the Minister make an ex gratia payment to the claimant.
- 9.2 If the Independent Assessor is not satisfied regarding the matters referred to in paragraph 9.1, then a recommendation shall be made that the Minister not make an ex gratia payment to the claimant.

10. Consideration of applications by the Minister

- 10.1 The Minister, on receiving the documentation referred to in clause 8.1.5 from the Independent Assessor will determine, in their absolute discretion, either to
 - 10.1.1 make an ex gratia payment; or
 - 10.1.2 not make an ex gratia payment.
- 10.2 The Minister may refer the matter back to the Independent Assessor or to the SGRS Unit for further investigation or consideration.
- 10.3 If the Minister determines to make an ex gratia payment and a request for a personal apology has been made as indicated in paragraph 5.8 of these Guidelines, the Minister or a person nominated by the Minister will provide a personal written apology to the claimant. The personal apology will be in accordance with the form of the apology approved by the Minister.
- 10.4 The Minister determines whether an ex gratia payment should be made and to whom the payment is to be paid. It should be noted that an ex-gratia payment is made within the Minister's discretionary powers and is not an indication of any admission of liability.
- 10.5 The provision of a personal apology by the Minister or the Minister's nominees is not an indication of any admission of liability.

11. General principles relevant to the consideration and/or determination of applications

- 11.1 In considering an application, regard shall be had to the following factors:
- 11.1.1 the length of time that has elapsed and the difficulty claimants may have in substantiating their application as a result;
 - 11.1.2 any deficiencies in the official written record relating to the application or similar applications;
 - 11.1.3 the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people;
 - 11.1.4 the purpose of the Scheme, which 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; and
 - 11.1.5 any other matter which the SGRS Unit, the Independent Assessor or the Minister considers relevant.

12. Notification of the Minister's decision and review of claims

- 12.1 Notice of the Minister's decision under Part 10 shall be provided to the claimant in writing as soon as possible after the decision.
- 12.2 Where the Minister decides that a claim is ineligible for an ex gratia payment under the Scheme, the claimant may request a review from the Independent Assessor if the claimant considers that:
- 12.2.1 there is information or evidence that has not been taken into consideration; and/or
 - 12.2.2 the process outlined in the SGRS Guidelines have not been followed in considering the claim.
- 12.3 A request for review under paragraph 12.2 shall be provided in writing and include the basis of the claimant's request for review.
- 12.4 A request for review under paragraph 12.2 shall be referred to an Independent Assessor other than the Independent Assessor who originally considered the claim.
- 12.5 If new information arises as a result of the review process the application will be re-submitted to the Minister for consideration. The amount of payment is not reviewable.

13. Definitions

- 13.1 “Authorised Representative” means any of:
- 13.1.1 an attorney for the individual under an enduring power of attorney; or
 - 13.1.2 a guardian within the meaning of the *Guardianship Act 1987*; or
 - 13.1.3 person who is otherwise empowered under law to exercise any functions as an agent of or in the best interests of the individual.
- 13.2 “Board” means the Aborigines Protection Board and/ or the Aborigines Welfare Board as applicable.
- 13.3 “Claimant” means a claimant who has lodged (or is taken to have lodged) an application with the Scheme for an ex gratia payment.
- 13.4 “Incapable” means lacking the capacity (whether temporarily or permanently) to understand the nature and effect of the application or to communicate their wishes and intentions with regard to their application.
- 13.5 “Independent Assessor” means any person appointed to the role of Stolen Generations Reparations Scheme Independent Assessor by the New South Wales Government.
- 13.6 “Minister” means the Minister for Aboriginal Affairs or any other Minister of the Crown in New South Wales who the Premier may appoint to have oversight of the SGRS from time to time.
- 13.7 “Organisation” includes corporation, business, body corporate, body politic or unincorporated association.
- 13.8 “Personal Representative of the estate of the deceased claimant” is the person to whom administration of the estate has been granted, and who has provided evidence to the satisfaction of the SGRS Unit, the Independent Assessor or the Minister that this is the case. For the purpose of this definition, administration is granted in respect of the estate of a deceased claimant if:
- 13.8.1 probate of the will of the deceased claimant is granted in New South Wales or granted outside New South Wales but sealed in accordance with section 107 (1) of the *Probate and Administration Act 1898*, or
 - 13.8.2 letters of administration of the estate of the deceased claimant are granted in New South Wales or granted outside New South Wales but sealed in accordance with section 107 (1) of the *Probate and Administration Act 1898*, whether the letters were granted with or without a will annexed and whether for general, special or limited purposes, or
 - 13.8.3 an order is made under section 24 or 25 of the *NSW Trustee and Guardian Act 2009* in respect of the estate of the deceased claimant, or
 - 13.8.4 an election is made by the NSW Trustee under Division 1 of Part 3.2 of the *NSW Trustee and Guardian Act 2009* in respect of the estate of the deceased claimant, or the estate is being dealt with by NSW Trustee under s.31 of that Act.
- 13.9 “Scheme” means the Stolen Generations Reparations Scheme commenced by the New South Wales Government on 1 July 2017.
- 13.10 “SGRS Unit” means the Stolen Generations Reparations Scheme Unit, located in Aboriginal Affairs, and includes the SGRS Project Manager and any person undertaking duties for the purposes of the Scheme.
- 13.11 “Stolen Generations” for the purpose of these Guidelines means Aboriginal children who were removed by, committed to or otherwise came to be in the care of the Board up until the *Aborigines Protection Act 1909* was repealed in 1969.
- 13.12 “Stolen Generations Group Action” means the un-litigated claim brought against the NSW Government in 2015 by former residents of Bomaderry Children’s Home, Kinchela Aboriginal Boys Home and Cootamundra Girls Training Home, represented by Carroll & O’Dea Solicitors, in which the Crown Solicitor acts for the NSW Government.

