

# Class Action Settlement Notice

The Northern Territory  
Stolen Generations Class Action







# WHAT IS IN THIS NOTICE

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*Important: This notice has important information you need to know about a proposed settlement of the Northern Territory Stolen Generations Class Action.*

*This notice has been approved by Order of the Honourable Justice Beech-Jones, Chief Judge at Common Law, made on 28 October 2022.*





# WHY IS THIS NOTICE IMPORTANT?

## 1 Why are you getting this notice?

A class action has been started in the Supreme Court of New South Wales by Natalie Ellis on behalf of her mother's estate (who is the plaintiff) against the Commonwealth of Australia (who is the defendant).

The case is called *Natalie Ellis v Commonwealth of Australia* and it is about Aboriginal and Torres Strait Islander children who were removed from their families in the Northern Territory between 1912 and 1973 (**Removed Children**), and the carers and siblings of those Removed Children.

We call this class action "**The Northern Territory Stolen Generations Class Action**".


The Supreme Court has ordered that this notice be sent to people who might be affected by the class action. If you are a Removed Child, or are related to a person who is or was a Removed Child, you should read this notice carefully as it may affect your legal rights.

## 2 What is a class action?

A class action is a type of court proceeding where one person (who is called the "**plaintiff**") is allowed to sue not just on their own behalf but also on behalf of a wider group of people (called the "**group members**"). The person they sue is called the "**defendant**".

The plaintiff in this class action is Ms Natalie Ellis. The defendant is the Commonwealth Government. We explain below who the group members are.





### 3 Is the class action the same as the Commonwealth's "Redress Scheme"?

You may have heard about a "Redress Scheme" announced by the Commonwealth Government for members of the Territories "Stolen Generations".

The Redress Scheme is called the "*Territories Stolen Generations Redress Scheme*".

Importantly, the Redress Scheme is **not** the same thing as the class action.

The Redress Scheme is for Stolen Generations survivors who were removed from their families or communities:

- in the Northern Territory, before 1 July 1978; or
- in the Australian Capital Territory, before 11 May 1989; or
- in the Jervis Bay Territory.

The Redress Scheme has been receiving applications since 1 March 2022.

The Redress Scheme only covers the Aboriginal and Torres Strait Islander people who were removed as children, **and** who are still alive or passed away on or after 5 August 2021.

The Redress Scheme does **not** cover Removed Children who passed away before 5 August 2021, or people who were family members of Removed Children but are not Removed Children themselves.

To find out more about the Redress Scheme, call the Redress Scheme Helpline on 1800 566 111 or visit [territoriesredress.gov.au](https://territoriesredress.gov.au)

### 4 What is the class action about?

The class action alleges that the Commonwealth Government is responsible for the policies and procedures that operated in the Northern Territory between 1912 and 1973, under which some children of Aboriginal descent were removed from their families and carers.

The class action alleges that the Commonwealth owed a duty of care not only to the Removed Children, but also to their siblings and carers. It alleges that the Commonwealth, by causing the children to be removed, breached that duty, and caused trauma, distress and other harms not only to the Removed Children but also to the siblings and carers.

The Commonwealth has agreed to settle the class action for people who are not eligible for the Redress Scheme, namely the siblings and carers of Removed Children. As part of the settlement, Ms Ellis is asking the Court to confine the class action so that it only covers people who are not eligible to make claims under the Redress Scheme.

That means the class covers people who are Aboriginal or Torres Strait Islander and:

- were Removed Children from the Northern Territory between 1912 and 1973 *but who have passed away prior to 5 August 2021*; or
- were the parent, carer or sibling of a Removed Child (called a "**Kinship Group Member**").

These people are the group members in this class action.

A person who was a Removed Child or a Kinship Group Member but died prior to 5 August 2021 is still covered by the class action. His or her spouse or children can claim compensation on behalf of the deceased person.





## 5 Proposed settlement of the class action

The Commonwealth has agreed to settle the class action by paying a total amount of \$50.45m. We call this the “**Settlement Sum**”.

The settlement agreement does not take effect unless it is approved by the Court. If it is approved then the people covered by the class action (the group members) will be able to claim a share of the Settlement Sum paid by the Commonwealth Government, if they register according to the procedure described below and are shown to have eligible claims.

## 6 How will the compensation be shared?

The Settlement Sum will be used to make five (5) kinds of payments, according to a procedure called the **Settlement Distribution Scheme** or **SDS** that the Court will be asked to approve.

First, the Court will check and approve the amount of legal costs to be deducted from the Settlement Sum. These will total no more than \$1.5m.

Second, the class action was only able to be run because of a litigation funder called **LLS Fund Services Pty Ltd** or “**LLS**”. LLS agreed to cover the legal costs and bear other financial risks associated with the litigation. The Court will be asked to approve a commission payment to LLS of \$5.5m, or 11% of the Settlement Sum as well as the payment of \$1m to LLS for its costs in arranging insurance for the class action. That order would mean that all group members will equally contribute to both those amounts out of the Settlement Sum, whether or not they have signed an agreement with LLS. LLS will not be paid these amounts unless the Court decides that it is reasonable. The courts and lawyers have called this kind of order a common fund order.

Third, the Settlement Sum will be the fund from which the legal costs of **administering** the settlement will be paid. These are expected to be not more than \$3m.

Fourth, two small payments will be made to the two plaintiffs who played an active role in running the case on behalf of all the group members, Ms Eileen Cummings and Ms Natalie Ellis. Those payments are proposed to be \$15,000 in total.

Fifth, the balance of the Settlement Sum, expected to be around \$39.5m, will be shared between the group members and the plaintiff according to a standard formula, under which:

- the deceased estates of Kinship Group Members will be treated as the “base payment”;
- living Kinship Group Members will get two times the base payment; and
- the deceased estates of Removed Children will get three times the base payment.

In that fifth step, the whole of the Settlement Sum then remaining will be shared between the participating group members, until it is used up. Because we do not yet know how many group members will become eligible to claim compensation, we are not able to estimate the size of the payment that any individual group member will get.





## 7 What do group members need to do?

If you meet the definition of a 'group member' set out above, or you are the child or spouse of a deceased person who met the definition, then you have three (3) options.

### **Option A – register to claim compensation**

If you think you are eligible to make a claim under the class action then you should complete the **Registration Form** below. Your claim will then be checked to confirm whether you are in fact eligible, and if you are then you will be included in the compensation payments according to the Court-approved formula.

If you want to register and claim compensation, then you must send the Registration Form to Shine Lawyers **before 28 February 2023**.

### **Option B – opt out**

If you think you are eligible to make a claim under the class action but do **not** want to be covered by the class action at all, you will need to **opt out** of the class action. To do this, you need to complete the **Opt Out Form** and send it to the NSW Supreme Court Registry before 28 February 2023.

You can download the Opt Out form from the Stolen Generations Class Action website <https://www.shine.com.au/stolengenerationsnt/notice> or you can call the Stolen Generations Class Action Hotline on 1800 870 342 and ask for a copy.

If you opt out then your legal rights will no longer be affected by the class action. You will not be able to claim compensation in the class action, but if you wanted to start your own legal case against the Commonwealth for the types of claims covered by the class action then you might be able to do so. If you think this is something you might want to do then you should seek your own independent legal advice as soon as possible, because time deadlines might apply to these kinds of claims.

You should **not** fill out both the Opt Out Form and the Registration Form. They are **alternatives** so you should choose only one of them.

### **Option C – do nothing and lose your rights**

If you do nothing then you will remain a group member in the class action but will not be entitled to a share of the Settlement Sum. In effect you will lose your rights. This is why it is important that you take either Option A or Option B.





## 8 What happens if you take Option A?

If you take Option A and register to claim compensation, your claim will be checked by lawyers from Shine Lawyers, who are the law firm that ran the class action. If the lawyers need more information to confirm that you are eligible, they will get in contact with you.

All eligible claims will then be paid according to a formula approved by the Court. If you want more information about the Settlement Distribution Scheme (the SDS) then you can find a copy of it <https://www.shine.com.au/stolengenerationsnt/notice>.

## 9 Effect of the settlement

If the settlement is approved by the Court then it will be 'binding' on everyone who fits the definition of a 'group member' and who does not opt out. Being 'bound' means that you will not be able to raise the same claims in any other proceedings against the Commonwealth. Your rights to sue the Commonwealth will be replaced by the rights given to you under the settlement and the SDS.

## 10 What if you object to the settlement?

If you fit the definition of a group member and you want to argue that the Court should not approve the settlement, so that the settlement does not take effect, then you have the right to do that.

If this is something you think you might want to do, you should first get independent legal advice. If you object then the Court might ask whether you are willing to step into the role of plaintiff in the class action. If you do that, you might face a risk of having to pay legal costs, so this is an important consideration and a reason why you should get independent legal advice if you think you might want to object to the settlement.

If you do decide to object to the settlement, you need to fill out the **Objection Form** enclosed with this notice. Again, you then need to return that form to Shine Lawyers or the NSW Supreme Court Registry before 28 February 2023.

If you want to object, you should **also** fill out **either** the Option A Registration Form, or the Option B Opt Out Form (but never both). That way, if the Court overrules your objection, your other decisions in relation to the class action will be given effect.

## 11 What if you have already registered with Shine Lawyers?

Many group members have already told Shine Lawyers that they want to be part of the class action. Even if you have already spoken to Shine Lawyers, you still need to register in the settlement by filling out the Registration Form.



## 12 Counselling

Completing the registration form might bring up difficult memories and feelings. If you feel any distress and want to get some help then you should call:

Lifeline **13 11 14**

Beyond Blue **1300 224 636**

Suicide Call Back Service **1300 659 467**

Of course, if you or someone you know is in immediate danger, you should call 000.

## 13 How to get more information

Because the eligibility of group members needs to be checked, the different forms below can be a bit complicated. The information in this notice might also be confusing. If you do not understand something or you are not sure what to do, you should speak to someone you trust and get their help. You might have your own lawyer, for instance.

***You can also contact Shine Lawyers for more information. You can either:***



**by e-mail**

email them at **stolengen@shine.com.au** or



**over the phone**

telephone them on **1800 870 342**.

If you need to speak to someone in your own language, you need to find a way to contact Shine by email or telephone and Shine will organise a free interpreter service to help you.

## 14 Deadlines

In Section 7 above we told you that there are deadlines for you either to register and claim compensation (Option A), or opt out and cease to be covered by the class action (Option B).

Those deadlines are very important and they will be enforced. So it is very important that you consider this notice carefully and then move quickly either to take Option A or Option B (but not both).

For the same reason, if you want to get more information from Shine, or get advice from your own lawyer, you should move quickly so that you are in a position to decide between Option A and Option B as soon as possible and certainly before 28 February 2023.