



**Western Australian Department for Communities**

**Submission to the**

**SENATE COMMUNITY AFFAIRS COMMITTEE  
INQUIRY INTO THE PROGRESS MADE WITH THE  
IMPLEMENTATION OF THE RECOMMENDATIONS INTO:**

- **the child migrant inquiry report, *Lost Innocents: Righting the Record*;**
- **the 2004 report, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*;**
- **the 2005 *Protecting Vulnerable Children: a national challenge report*.**

Every effort has been made to ensure accuracy, objectivity and comprehensiveness in the completion of this submission.

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## INTRODUCTION

This submission by the Western Australian Department for Communities will primarily focus on one specific measure that has been established in response to the Senate Community Affairs References Committee 2001 child migrant report, *Lost Innocents: Righting the Record* and the 2004 *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*.

This significant measure is the establishment of the Redress WA scheme to address the historical abuse of those who as children spent time in State care in Western Australia. While most States have offered a range of public apologies for the harm caused by abuse in State care,<sup>1</sup> Western Australian has become the third State to set up a redress scheme; the other two being Tasmania and Queensland.

## BACKGROUND TO REDRESS WA

A trilogy of national inquiries have revealed that large numbers of children have been abused and/or neglected while in State care across all Australian jurisdictions.<sup>2</sup> There have also been a number of State-based reports that have uncovered the widespread mistreatment of children in care.<sup>3</sup> All of the inquiries have made specific recommendations regarding:

- provision of an apology;
- counselling/support; and
- some form of monetary redress for the victims of institutional abuse.

Increasingly, people who are victims of child abuse while in care are seeking some measure of justice. However, to achieve this through the courts is particularly problematic. Limitation laws, the adversarial nature of court proceedings, the costs of funding legal cases and evidentiary problems with the passing of time are all barriers for these survivors.

As an alternative to seeking action in the courts, and to respond to the Senate reports recommendations, on 17 December 2007, the then Premier of

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<sup>1</sup> In Western Australia, on 7 April 2005, the then Labor Premier, the Hon Geoff Gallop, issued an apology in Parliament to those who as children suffered harm while in State care.

<sup>2</sup> Together with the two Senate Community Affairs reports referred to above, the third in this trilogy is the Human Rights and Equal Opportunity Commission, *Bringing them home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, April 1997.

<sup>3</sup> For example, Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Report), 1999; Gordon, S. Hallahan, K. Henry, D. *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet Western Australia, 2002; O'Grady, J (Tasmanian Ombudsman), *Interim report on abuse of children in State care*, 7 January 2004; and, the Commission of Inquiry, *Children in State Care: Allegations of Sexual Abuse and Death from Criminal Conduct* (the Mullighan Report), South Australia, March 2008.

Western Australia, the Hon Alan Carpenter MLA, and the then Minister for Communities, Sue Ellery MLC, announced the setting up of Redress WA.

## **A SNAPSHOT OF THE REDRESS WA SCHEME**

Redress WA is a \$114 million scheme to provide redress to adults over the age of 18 years who suffered abuse and/or neglect as children while in State care in Western Australia prior to 1 March 2006.<sup>4</sup> They include former child migrants, those of the 'stolen generations' and anyone who spent time in a care facility that was subsidised, monitored, registered or approved by a State Government, including foster homes or other residential settings.

Redress WA is not just about payments of money as the Government acknowledges that no amount of money can make up for the abuse some people suffered in State care. It is primarily about the healing process and is designed to:

- help people move forward with their lives by publicly acknowledging failures in the provision of care to vulnerable children;
- provide a personal apology from the Western Australian Government;
- partly fund a memorial;
- provide access to support services such as psychological and financial counselling;
- assist eligible applicants with the Redress WA application process; and
- provide eligible applicants with an *ex-gratia* payment.

Any relatives of deceased persons, or the estate of deceased persons, who were in State care are not eligible.

Those who have received payments from receiving agencies, such as the Catholic Church and the Salvation Army, are eligible to apply. Similarly, applicants do not have to have been State wards. If they experienced private placements either by their families or by any other means, they too are eligible to apply.

The scheme comprises a two-tier payment system:

- an *ex-gratia* payment of up to \$10 000 whereby applicants must show there is a reasonable likelihood that they experienced abuse and/or neglect; and
- an *ex-gratia* payment of up to \$80 000 whereby medical and/or psychological evidence is provided to substantiate claims of abuse and/or neglect.

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<sup>4</sup> This cut-off date has been set because children currently in the care of the State who allege abuse while in that care may be eligible to pursue a claim against the State through common law. The Department for Child Protection's Duty of Care Unit, established in 2004, continues to refer children currently in State care, who allege they were abused in that care, for legal advice from an independent solicitor.

The scheme closes for applications on 30 April 2009 and confidentiality is assured.

## **THE PROMISED REDRESS WA MEMORIAL**

In response to one of the recommendations of the Forgotten Australians report, part of the Redress WA scheme includes the promise to erect a permanent memorial to those abused or neglected in State care. The Federal Government has contributed \$10 000 toward the memorial and the former Labor Government allocated \$50 000 of Redress WA funding to the memorial project.

The Department for Child Protection is currently supporting a committee of 'forgotten Australians' that will result in the mounting of a plaque or other public memorial to signify their experiences. An agreement has been made with the Department for Culture and Arts to provide space in the Perth Cultural Centre for this purpose.

## **THE CHANCE TO FORMALLY RECORD APPLICANT'S OWN STORY**

The Redress WA website home page states: "On a personal level, people will be given the opportunity to formally record their own stories on their official files." Offering this chance remains an important part of the healing process for the adult survivors of childhood abuse and/or neglect.

The scheme's guidelines offer all applicants this opportunity regardless of whether or not they receive an offer of a Redress WA payment. Applicants can also decide if their story will be placed into other appropriate governmental archives or otherwise recorded, as well as opting out of putting their story on the official records.

A solution to the administration of attaching applicants' stories to their records is still being considered.

## **ADOPTED PERSONS NOT ELIGIBLE FOR REDRESS WA**

Since Redress WA was announced, the eligibility of children who were adopted has been queried. The Adoption Research and Counselling Services argue that as adoption is a placement alternative organised by the State, this arrangement should be considered as a form of State care.

However, as a general rule, children who have been legally adopted in Western Australia are not eligible for an ex-gratia payment or services under Redress WA. Once an Adoption Order is granted, the adoptive parents become the legal guardians and retain the same rights and responsibilities as the biological parent of a child.

In certain circumstances individuals who were subject to an Adoption Order may be eligible to apply if:

- abuse occurred in the pre-adoptive placement before an Order was granted;
- the child was removed from their adoptive parents, placed in State care and abuse then occurred; and
- the Order was revoked and the child was subsequently placed in State care and abuse then occurred.

## **SERVICES AVAILABLE TO APPLICANTS**

Redress WA has established a network of contracted and non-contracted service providers across Western Australia to provide assistance to applicants, both with lodging their applications and with counselling needs.

Additionally, to assist those people who are eligible to apply but who now reside outside of Western Australia, the Care Leavers of Australia Network or CLAN, a non-government organisation situated in Sydney, has been contracted to assist applicants from other States.

Professional support services are also available through a 1800 telephone service at the cost of a local call directly to any applicant anywhere in Australia. Email support is also available to applicants in Australia or those now living overseas.

Redress WA has also employed a social worker to provide callers with direct guidance through the application process and to provide telephone counselling if required. Given the increased work load, it is planned to recruit another social worker.

Redress WA staff have undertaken visits to larger regional centres and also to remote regional communities to promote the scheme directly and when required to physically help people through the application process.

Numerous promotional presentations have been made Statewide to a broad range of non contracted organisations, most of which now freely lend their support to the Redress WA process.

## **PROMOTING REDRESS WA**

When the Labor Government approved the scheme, it was estimated that approximately 10 000 applications would be received. This was based on 17 per cent of the approximate estimation of 54 321 children who were in State care from 1947 to 2006.<sup>5</sup>

As the number of applications received at the end of August 2008 was only 328, Redress WA decided to appoint a communications and media officer to promote the scheme more widely. This was also considered necessary because the Queensland redress scheme had to re-open after its closing date due to the pressure of new applications. The Queensland scheme estimates

<sup>5</sup> As outlined in Cabinet Minute 5.02 of 3 December 2007.

that nearly half its final number of applications was lodged after it re-opened. Similarly, the Tasmanian redress scheme was actually re-opened in February 2008 for a 3-month period for those who missed out in the original review in 2004-05.

A communications and media person has now been appointed and is revising the communications plan for the scheme as well as preparing a range of promotional materials and a program for their release. These include media releases, advertisements in appropriate publications, community notices, e-news updates, revised web copy, direct presentation and assistance to service providers to assist them with information dissemination to potential applicants.

### **APPLICANTS WITH SERIOUS HEALTH PROBLEMS**

All applicants with a terminal illness are eligible for an interim payment. Similarly, those with life-threatening conditions are also eligible; however, until recently these applicants had to be over the age of 70-years. As this age barrier was considered unfair given the general poor health of applicants, especially Aboriginal ones, a change to this guideline was put to the new Minister after the change of government in October 2008. This change was taken up and the situation now with the life-threatening category is that Redress WA will have regard to the applicant's age and diagnosed life-threatening illness.

All substantiating documentation must be available, including a doctor's report, before an interim payment decision can be recommended. Those applications that meet the criteria are fast-tracked to ensure applicants receive their interim payments within 14 days of their approval. Their applications are then filed away for priority assessment after the closing date for applications on 30 April 2009.

An interim payment cannot exceed \$10 000 and to date, most have received this amount. Any amount awarded in this manner will be deducted from the applicant's final offer of payment made in the final determination.

### **PAYMENT DETERMINATIONS**

Maximum payments of up to \$80 000 are possible under Redress WA. This makes the scheme the most generous in Australia compared to maxima of \$60 000 offered in Tasmania and \$40 000 in Queensland.

The Redress WA fund is fixed at \$114 million, of which approximately \$24 million is being expended on service providers of legal, financial and psychological counselling and support, as well as administration of the scheme. This means that once all applications have been assessed, about \$91 million is available for distribution as *ex-gratia* payments.

After the closing date of 30 April 2009, all applications will be assessed and a final payment offered. This process could take up to 18 months depending on

the number of applicants. The amount of the offer of payment under the Guidelines is based upon the severity and extent of abuse and/or neglect experienced. The scheme provides for physical abuse, sexual abuse, emotional or psychological abuse and/or neglect, but there is no provision for awarding payment for being removed from or loss of family.

Offers of payment under Option 1 in the range of up to \$10 000 will be made if there is insufficient medical or psychological evidence to show the extent of the injury, loss or harm suffered by the applicant.

Offers of payment under Option 2 in the range of up to \$80 000 will be made where there is sufficient medical or psychological evidence available to show the extent of the injury, loss or harm suffered by the applicant.

If the applicant has already received an award of compensation or an *ex-gratia* payment from the State in respect of the abuse or neglect alleged by the applicant, these will be taken into account in determining the final offer.

All offers of payments will be either endorsed or recommended for change by an Independent Review Member or a panel of Independent Review Members. Offers of payment will remain open for a period of 60 days. In accepting a Redress WA offer, all applicants must take independent legal advice as to the nature and effect of the terms of the Deed of Settlement and Release prior to signing the Deed. This legal advice will be paid for by Redress WA up to a maximum amount of \$1 000 plus GST.

## **STATISTICAL OVERVIEW OF REDRESS WA APPLICATIONS**

A statistical overview of the applications to Redress WA as at 11 November 2008 is provided as an attachment to this submission (Attachment 1). It reveals that:

- the number of applications received total 619, of which 250, or 40 per cent, are of Aboriginal and Torres Strait Islander descent and 369, or 60 per cent, are non-Indigenous;
- former child migrant applicants number 160, or 26 per cent, of the total;
- former State wards number 339, or 55 per cent of the total;
- a total of 55 applicants, or 9 per cent, of the total, were in State care but not wards;
- a total of 559 applicants, or 91 per cent, of the total are between the age range of 41-90 years;
- a total of only 60 applicants, or 9 per cent, of the total are between the age range of 11-40 years;
- a total of 354 applicants, or 68 per cent, of the total are males and 265, or 32 per cent, applicants are females;
- a total of 17 applicants, or 3 per cent, have been received from correctional centres;
- a total of 133 applicants, or 21 per cent, of the total have identified themselves as having a terminal or life-threatening illness; and

- a total of 25 interim payments totalling \$244 000 have been made to eligible applicants.

## **CONCLUSION**

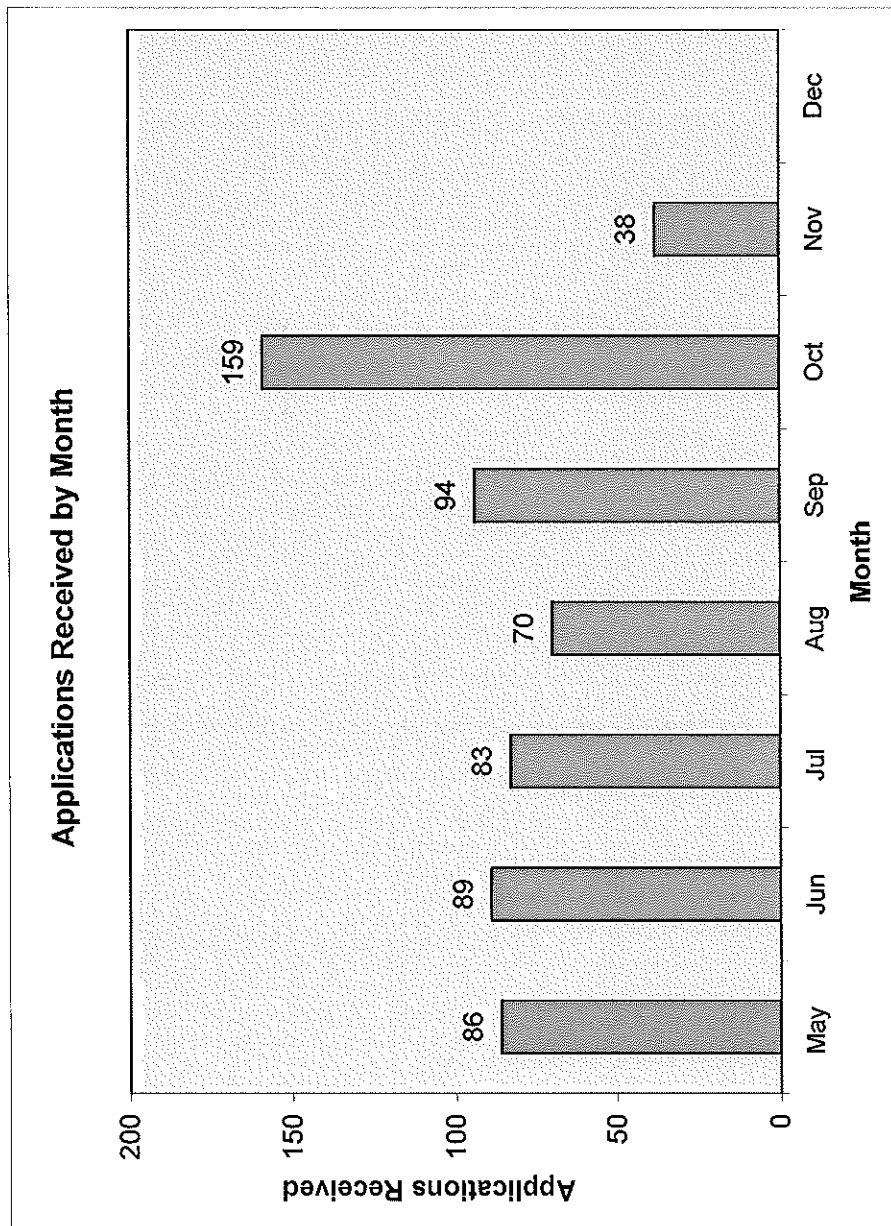
While the Government acknowledges that there are those who had positive experiences in State care, it also recognises the significant long term impacts for those whose childhoods were marred by abuse and neglect. For these survivors of abuse, it is envisaged that the Redress WA Scheme will go some way in reconciling past wrongs. However, it must be stressed that the scheme is not just about monetary payments as these are unlikely to achieve healing or closure for many care leavers. Counselling services are especially important and these are available to all applicants.

The Government also acknowledges that the Redress WA scheme should not be considered a finite solution to providing reparation for adult survivors of abusive childhoods in State care. To this end, Redress WA is carrying out research on successful models of after care support for each of the groups represented by the trilogy of reports referred to on p2; former child migrants, members of the 'stolen generations' and former state wards. This entails exploring models that meet the complex and specialised needs of these groups of people including specialist counselling and the building of personal and community capacity.

In sum, the Government realises that a more long-term solution is required that can follow on from the foundations created by the Redress WA scheme.

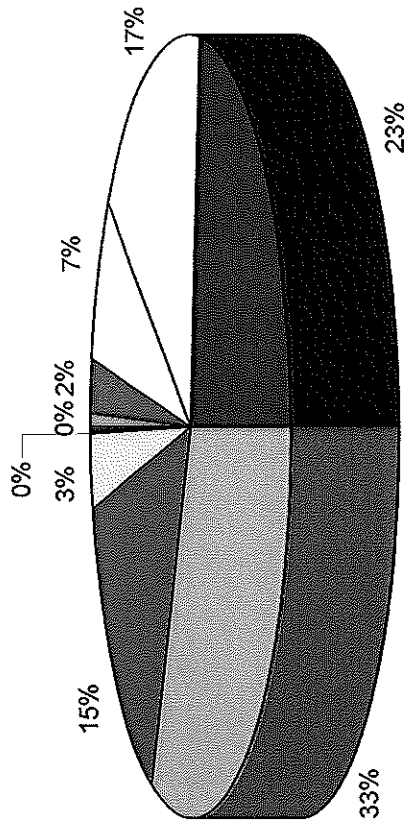


# STATUS REPORT - REDRESS APPLICATIONS AS AT 11 NOVEMBER 2008



Number of Applications Received	Month
86	May
89	Jun
83	Jul
70	Aug
94	Sep
159	Oct
38	Nov
0	Dec
<b>TOTAL</b>	<b>619</b>

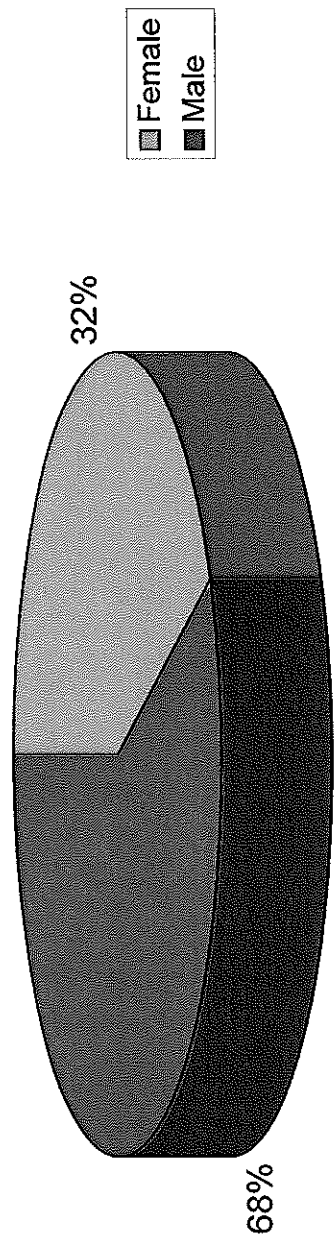
### Applications Received by Age Range



- 11 - 20 years
- 21 - 30 years
- 31 - 40 years
- 41 - 50 years
- 51 - 60 years
- 61 - 70 years
- 71 - 80 years
- 81 - 90 years
- 91 - 100 years

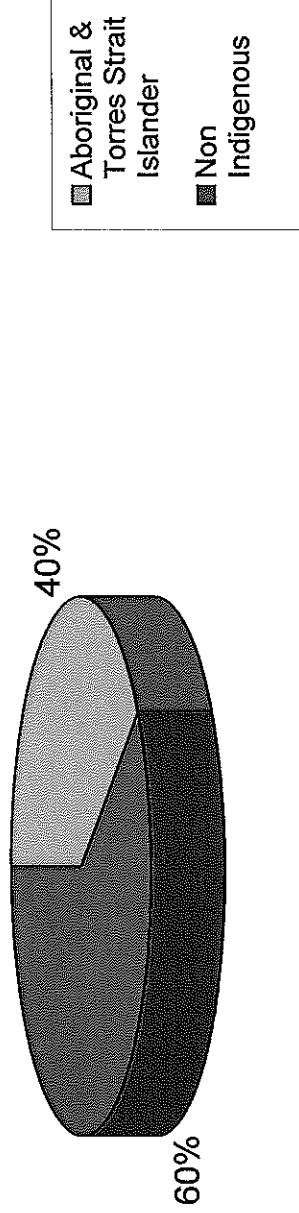
Age Range	Applications Received
11 - 20 years	3
21 - 30 years	15
31 - 40 years	42
41 - 50 years	105
51 - 60 years	144
61 - 70 years	197
71 - 80 years	92
81 - 90 years	20
91 - 100 years	1
<b>TOTAL</b>	<b>619</b>

### Applications received by Gender



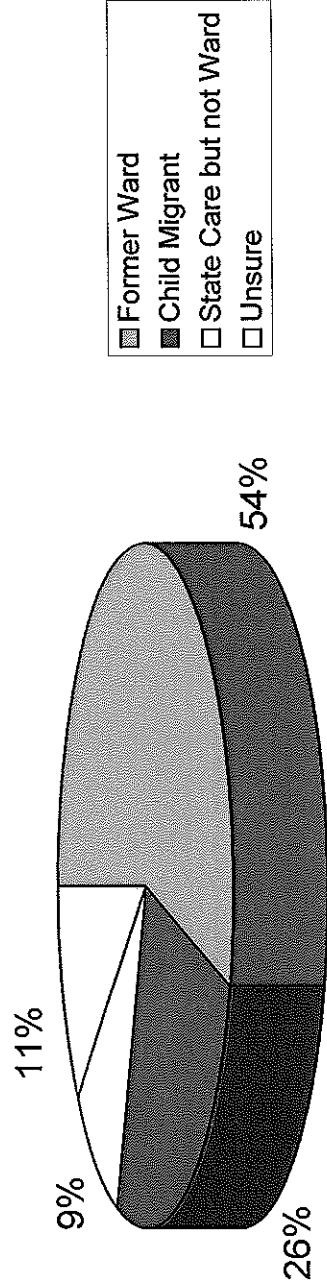
Gender	Number of Applications Received
Female	265
Male	354
Total	619

### Applications received by Indigenous Status



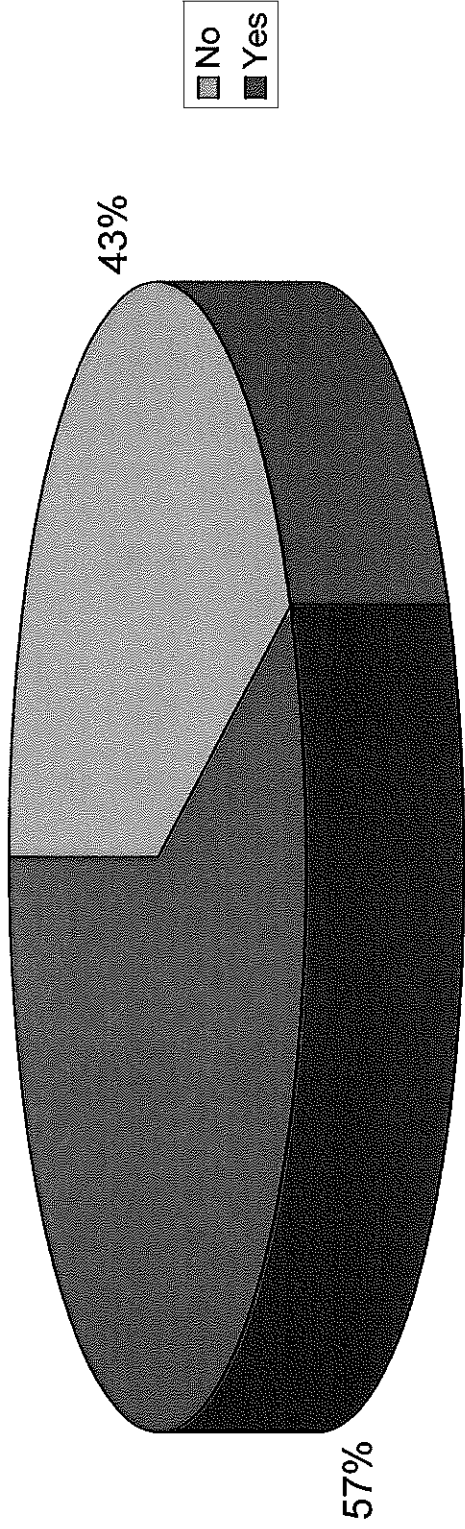
Indigenous Status	Applications Received
Aboriginal & Torres Strait Islander	250
Non Indigenous	369
<b>Total</b>	<b>619</b>

**Applications received by Type**



Application Type	Number received by Type	Percentage of Applications Received by Type
Former Ward	339	55%
Child Migrant	160	26%
State Care but not Ward	55	9%
Unsure	65	11%
<b>TOTAL</b>	<b>619</b>	

**Consent forms received to Release Information to Police**



Consent to Release Information to Police	Consent Forms Received	Consent Forms received as a % of Total Applications Received
No	166	63%
Yes	221	
<b>Total</b>	<b>387</b>	

### Interim Payments

Number of Interim Payments made to Applicants	Value of Payments
25	\$244,000

### Other Information

Special Consideration	Number received	Percentage of Total Received
Ticked Life Threatening Illness or Terminal Illness	133	21%
In Correctional Centre	17	3%