Centre for Law and Justice

Assessment Cover Sheet

Student Name: 

Student Number: 

Subject Coordinator: 

Subject Name: LAW112 - Essay

Due Date: 15 October 2018

Turnitin Similarity Percentage: Enter your Turnitin percentage here.

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[Your answer will begin on this new page. Reference according to the AGLC an example is below. You can find more on the Law Library Resource Guide.

EG: Fraud is defined as any act by a person that involves obtaining the property of another or any financial advantage or causing financial disadvantage by deception or dishonesty.¹ – you can remove this part once you are ready to submit via EASTS]

This is an essay asking you to respond to the following overarching question:

**Critically analyse how knowledge and understanding of the Stolen Generation is relevant to advancing reconciliation between Indigenous Australian people and non-Indigenous Australian people.** (2000 words)

You are being tasked with answering the question in a few parts – a-d

Start with an Introduction, then address the parts, then a conclusion as per a traditional essay format. Use subheadings to ensure you address each part.

Make sure you use respectful language as per the Appropriate Terminology, Representations and Protocols of Acknowledgment for Aboriginal and Torres Strait Islander Peoples (found in the supplementary materials folder) and include at least 12 peer reviewed and credible academic sources. No Wikipedia, creative spirits etc. Law Society Journal is an example of a credible academic source.

**Introduction:**

In your introduction you need to: introduce the main arguments, lead into the body of the essay. I recommend only 3-4 sentences.

**Body:**

This is where you address each part with supporting arguments and scholarly references or other evidence. Introduce and reference primary and secondary sources.

a. **Outline the purpose of the Aborigines Protection Act 1909 (NSW) and the Aborigines Protection Amending Act 1915 (NSW)**

Here you need to articulate what the object or purpose of the legislation was. You might refer to provisions in the Act to do this but don’t quote large slabs of text. You might refer to the second reading speech of the legislation for extrinsic sources or committee reports etc. There should be no more than 2 paragraphs (6-8 sentences) covering the direct purpose of the legislation

b. **Conclusion reached by the Federal Court in Cubillo v Commonwealth of Australia (No 2) (2000) 103 FCR 1**

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¹ Crimes Act 1900 (NSW), s192E.
Please DO NOT provide extensive coverage of the facts of the case. This section is included so that you can have a read mainly of secondary resources discussing the *Cubillo* case so that you gain an understanding of the nature and outcome of possible avenues of redress. Please do not spend too much time researching this case and certainly not to the extent of your research that you undertook for the *Esso* case for assessment 3. You should not have more than one paragraph (3-4 sentences) in your essay covering the *Cubillo* case.

c. **Impact on Access to Justice**

You need to define access to justice. The best answer would show how access to justice is broad and relates to health, education, employment, participation, self-determination ie how these are inter-related. Explain using secondary resources what the impact of this legislation has had on the contemporary setting. You might use the concept of inter-generational trauma for example. Make sure you use scholarly references.

d. **Significance of United Nations Declaration on the Rights of Indigenous Peoples**

In this section you would define what human rights are. You might explain some of the limitations in terms of accessing these rights and the ratification of United Nations Declaration on the Rights of Indigenous Peoples.

Here is an example of a discussion on the limitations of human rights instruments for asylum seekers:

Australia has the obligation under several human rights instruments, not to deport individuals to countries where they would face a risk of violation of their human rights.\(^2\) For example, under Article 33 of the Refugee Convention, ‘No Contracting State shall expel or return a refugee to the frontiers of territories where his life or freedom would be threatened…’\(^3\) This is identified as the concept of non-refoulement. However, several of Australia’s obligations have not been signed by PNG.\(^4\) For the ones that have been signed, the degree of PNG’s ability to fulfil these

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\(^3\) **Conventions Relating to the Status of Refugees**, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 of April 1954).

\(^4\) PNG has not signed two key treaties; **Reservations and declarations in Relation to the Refugees Convention**, 189 UNTS 137; **Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment**, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
obligations is also in question, given the limited medical and legal resources available to those detained. This threat of a lesser standard of human rights for refugees in PNG, was part of the grounds for the plaintiff’s argument in Plaintiff S156, i.e. the Minister’s failure to take into account key considerations when designating PNG as a regional processing country.

Additionally, the case illustrates the Court’s neglecting of international treaty requirements in relation to offshore processing. Australia’s present offshore processing regime has been discovered by the International Human Rights Committee to be in breach of binding obligations. Australia has numerous international legal obligations. Other than Article 31 (which states contracting states will not impose penalties on unauthorised or authorised refugees or asylum seekers), under article 9(1) of the ICCPR and article 37(b) of the CRC no one is to be subjected to arbitrary detention. While the physical amenities of detention centres are lacking, it is the indefinite nature of immigration detention process and the constraints on individual liberty that make detention inherently abusive.

However, the High Court in Plaintiff S156 displayed the little value it places on these obligations, by finding that with respect to offshore processing, regardless of the merits of the system in relation to human rights, it cannot overrule statute that is constitutionally valid.

When addressing parts a-d remember the overarching essay question-
Critically analyse how knowledge and understanding of the Stolen Generation is relevant to advancing reconciliation between Indigenous Australian people and non-Indigenous Australian people

As well as a critical analysis you would need to define reconciliation and raise that it is a contested term. You would also discuss the value of education in social

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6 Plaintiff S156, above n 5, 30
11 Plaintiff S156, above n 5, 35.
justice and social change. Why is this knowledge of past historical practices relevant to your learning and to the legal profession?

**Conclusion**

This should be a summary of your argument. Do not introduce new ideas/concepts in your conclusion.

**BIBLIOGRAPHY**

To format your bibliography see AGLC3 Rule: 1.16, found on page 33-34 of the AGLC. Remove any categories not used.

**A Articles/Books/ Reports**

**B Cases**

**C Legislation**

**D Treaties**

**E Other**