



10 September 2021

Committee Secretary
Senate Finance and Public Administration Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By electronic submission

Dear Committee,

Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021

The Australian Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 and Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021. The Commission's submission focuses on the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 (The Bill).

The Commission welcomes the Bill as an important step towards addressing the harm caused by policies of forced removal of Aboriginal and Torres Strait Islander children from their families. The Commission has long supported measures that provide recognition and justice for members of the Stolen Generations, including through its landmark 1997 *Bringing Them Home* report.¹

In particular the Commission welcomes the specifications in the Bill that the redress payment will not 'affect a participant's access to, or eligibility for, any pensions, payments, benefits or services (however described) provided by the Commonwealth or require the repayment of an amount to the Commonwealth',² and that the payment 'is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise'.³ The Commission also welcomes clarifications that payments made under the Scheme will not affect payments from the National Redress Scheme or vice versa.⁴ This approach is consistent with these payments operating as a standalone redress measure, without qualifications.

The Commission understands that the Scheme will operate as follows:

- To be eligible, applicants must be an Aboriginal and/or Torres Strait Islander person; under the age of 18 years at the time they were removed from their family; and removed whilst living in the Northern Territory, the Australian Capital Territory, or the Jervis Bay Territory.

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- Eligible applicants will be entitled to a payment of \$75,000 'in recognition of the harm caused by forced removal' from families, and a \$7000 'healing assistance payment ... in recognition that the action to facilitate healing will be specific to each individual'. Applicants will also have the opportunity to confidentially tell the story of the effect of their experience to a senior official, and receive a face-to-face or written apology 'for their removal and resulting trauma'.
- If an eligible Stolen Generations member passes away between 5 August 2021 and 1 March 2022, their family or estate will be able to submit an application on their behalf.⁵

The Commission notes that the Scheme will be developed and administered through regulations. These regulations are subject to disallowance.⁶ The Commission provides the following high-level comments to guide the design of regulations and the implementation of the Scheme:

- As an overarching principle, members of the Stolen Generations should be closely involved in the development and rollout of the Scheme.
- The evidential bar for eligibility should be simple and clear, avoiding overly stringent or complex legalistic approaches. In this regard:
 - The Scheme should be designed in light of the inadequacy of many existing official records about the personal history of members of the Stolen Generations, and the loss or destruction of records over the years.⁷
 - The Scheme should contemplate and account for both officially legislated child removal policies, and less official policies and practices that resulted in the removal of Aboriginal and Torres Strait Islander children from their families.⁸
- The approach to the provision of monetary compensation should be consistent with the recommendations of the *Bringing Them Home* report, which itself drew on the *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law* ('van Boven principles', later adopted by the United Nations General Assembly).⁹ Compensation should take into account the ongoing, life-long trauma inflicted upon members of the Stolen Generations and their families. The *Bringing Them Home* report found that the history and effects of forced removals requires reparations that recognise the effects of removal on Indigenous communities as a whole, the families (including descendants) of children forcibly removed, and the children themselves.¹⁰
- The Commission notes that if an eligible applicant passes away between 5 August 2021 and 1 March 2022, their family or estate may apply in their stead. The Commission considers that if an applicant passes away at any time throughout the length of the Scheme their families/estates should be able to apply. Some applicants will not be aware of the existence of the Scheme or their eligibility, and if they pass away during the operation of the Scheme before they apply, they/their families may be arbitrarily denied redress that would otherwise have been provided.

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- The Commission notes that access to redress is a matter of some urgency, due to the advanced age of many members of the Stolen Generations and years of delayed action, and encourages speedy and efficient processing of applications.
- The form of the optional personal apology by a Government official should be guided by Stolen Generation groups.
- There should be a process of review available to those who have their claims rejected under the Scheme.
- The regulations should not exclude any sub-category of individual affected by child removal policies, such as prisoners.
- The National Indigenous Australians Agency has stated that ‘Scheme funded support services will provide free and confidential, practical and emotional support, legal advice, and financial counselling’.¹¹ This is an essential element that will be necessary to ensure the effectiveness and accessibility of the Scheme. These services should be delivered by Aboriginal-controlled organisations, and should give priority to the provision of legal advice to enable applicants to successfully navigate administrative processes.
- It is important that information about the Scheme is adequately communicated to those who may be eligible, in accessible forms (including in language, and disability accessible) alongside information about how to access support services. Organisations in the territory such as the Aboriginal and Torres Strait Islander Legal Service, Family Violence Prevention Legal Service and Aboriginal Community Controlled Health Organisations should be funded to assist in communicating about the Scheme. This should occur ahead of the rollout, noting the time-limited operation of the Scheme.

Yours faithfully

Emeritus Professor Rosalind Croucher AM

President

June Oscar AO

**Aboriginal and Torres Strait Islander
Social Justice Commissioner**

¹ Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) <<https://humanrights.gov.au/our-work/bringing-them-home-report-1997>>.

² Explanatory Memorandum, Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 cl 4; Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 cl 4(1).

³ Explanatory Memorandum, Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 cl 4; Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 cl 4(4).

⁴ Prime Minister and Minister for Indigenous Australians 'Stolen Generations Redress Scheme' (Press Release, 5 August 2021) <<https://www.pm.gov.au/media/stolen-generations-redress-scheme>>.

⁵ 'Territories Stolen Generations Redress Scheme' *National Indigenous Australians Agency* (Web Page) <<https://www.niaa.gov.au/indigenous-affairs/community-safety/national-redress-scheme/territories-stolen-generations-redress-scheme>>.

⁶ Explanatory Memorandum, Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 cl 34.

⁷ Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) 30 <<https://humanrights.gov.au/our-work/bringing-them-home-report-1997>>.

⁸ See e.g. Peter Read, *The removal of Aboriginal children in New South Wales 1883 to 1969* (1981, 2007 Reprint) 7 <https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/research-and-publications/completed-research-and-evaluation/Stolen_Generations.pdf>.

⁹ *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law*, GA Res 60/147 of 16 (16 December 2005) UN Doc A/RES/60/147.

¹⁰ Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) Recommendation 4 <<https://humanrights.gov.au/our-work/bringing-them-home-report-1997>>.

¹¹ 'Territories Stolen Generations Redress Scheme' *National Indigenous Australians Agency* (Web Page) <<https://www.niaa.gov.au/indigenous-affairs/community-safety/national-redress-scheme/territories-stolen-generations-redress-scheme>>.