



15 June 2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Chair

Submission to the Review of Government Compensation Payments

The Australian Human Rights Commission is grateful for the opportunity to provide a submission for the Senate Legal and Constitutional Committee's Review of Government Compensation Payments.

The Commission is aware of the range of compensation payment schemes that have operated in Australia including:

- *Stolen Wages Scheme (QLD)/ Aboriginal Trust Fund Repayment Scheme (NSW)*
Reparation payments made to individuals whose wages and savings were controlled by the authorities under government 'Protection Acts'.
- *Redress Scheme (QLD, WA and Tas)*
Redress for harm suffered by children in State care.
- *Stolen Generations Compensation Scheme (Tas)*
Compensation payments for effect of forcible removal policies.

The Commission's work on compensation payments has focused on Indigenous compensation payments related to the Stolen Generations and the issue of Stolen Wages.

The Commission has supported recommendations for compensation payment schemes to be established for Stolen Generations since it issued the *Bringing them home* Report (National Inquiry into Separation of Aboriginal and Torres Strait Islander Children From their Families) in 1997. The *Bringing them home* report recommended:

That, for the purposes of responding to the effects of forcible removals 'compensation' be widely defined to mean 'reparation'; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of,

1. acknowledgment and apology
2. guarantees against repetition
3. measures of restitution,
4. measures of rehabilitation, and
5. monetary compensation.¹

The Commission directs the Committee's attention to the following previous submissions made by the Commission to this Committee on these issues:

- *HREOC Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Stolen Generations Compensation Bill 2008* (9 April 2008)
- *HREOC Submission to the Senate legal and Constitutional Affairs Committee on the Inquiry into Stolen Wages* (1 August 2006)

Copies of these submissions are enclosed for your information.

The Commission notes that the key recommendations from these submissions pertaining to compensation payments included:

Stolen Generations Compensation:

HREOC recommends: that the Commonwealth, through the Councils of Australian Governments, engage with State and Territory governments to develop a consistent approach with joint funding mechanisms in the provision of financial redress for the Stolen Generations;²

Stolen Wages Compensation:

The Commission urges the Committee to recognise in its report the importance of this issue with a view to achieving just outcomes for those who have suffered loss as a result of this discrimination.³

The Commission notes that similar recommendations have also recently been made by UN Human Rights Committee commenting on Australia's compliance with its human rights obligations:

The State party should adopt a comprehensive national mechanism to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.⁴

¹ 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* (2007) Recommendation 3.

² Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Stolen Generations Compensation Bill 2008* (2008), para 5a. At http://humanrights.gov.au/legal/submissions/2008/080409_compensation.html (viewed 8 June 2010).

³ Human Rights and Equal Opportunity Commission *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into Stolen Wages* (2006), para 44. At http://www.hreoc.gov.au/legal/submissions/2006/stolen_wages_2006.html (viewed 8 June 2010).

⁴ UN Human Rights Committee, *Concluding Observations- Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), para 15. At <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-AUS-CO-5.doc> (viewed 8 June 2010). The Special Rapporteur on the situation of human rights and fundamental

The absence of appropriate compensation payment schemes for Stolen Generations and Stolen Wages, leaves the right to an appropriate remedy, as recognised under the International Covenant on Civil and Political Rights, unfulfilled in Australia.

In relation to the issue of Stolen Wages, the Commission also notes the recommendations in this Committee's report, *Unfinished business: Indigenous stolen wages* for:

Recommendation 4: The Western Australian Government to establish a compensation scheme in relation to withholding, underpayment and non-payment of Indigenous wages and welfare entitlements using the New South Wales scheme as a model,

Recommendation 5: The Commonwealth Government in relation to the Northern Territory and the Australian Capital Territory, and the state governments of South Australia, Tasmania and Victoria - where research reveals that that similar practices operated in relation to the withholding, underpayment or non-payment of Indigenous wages and welfare entitlements in these states, then establish compensation schemes using the New South Wales scheme as a model.⁵

The Commission also directs the Committee to the final report of the *Moving Forward Consultation Project* issued by the Public Interest Advocacy Centre (PIAC) in 2009. This project sought the opinions of Aboriginal and Torres Strait Islander peoples on PIAC's proposal for a Stolen Generations Reparations Tribunal. Based on these opinions the report makes a recommendation on compensation payments for Stolen Generations.⁶

The Commission notes that neither the Commission's recommendations for compensation payments (see above), nor the Committee's recommendations for compensation payments (see above), have been implemented to date.

So we bring these recommendations again to the Committee's attention, as pertinent recommendations for the current inquiry.

freedoms of indigenous people has also concurred with this recommendation (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15 (2010), para 19).

⁵ Senate Legal and Constitutional Affairs Committee, *Unfinished business: Indigenous stolen wages* (2006), paras 8.26-8.27. At

http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_wages/report/index.htm (viewed 8 June 2010).

⁶ Public Interest Advocacy Centre, *Restoring Identity: Final Report* (2009). At

http://www.piac.asn.au/publications/pubs/rep2009063_20090630.html (viewed 8 June 2010).

For further information please contact Alison Aggarwal, Senior Policy Officer, Social Justice Unit

Yours sincerely

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