



Australian Government

Australian Government response to the Senate Finance and
Public Administration Legislation Committee Inquiry Report:

*Territories Stolen Generations Redress Scheme (Facilitation)
Bill 2021 [Provisions] and Territories Stolen Generations
Redress Scheme (Consequential Amendments) Bill 2021
[Provisions]*

August 2022

Introduction

The Australian Government welcomes the opportunity to respond to the Senate Finance and Public Administration Legislation Committee's (the Committee) report on the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 [Provisions] and Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021 [Provisions] released on 14 October 2021. The Australian Government's response to the report comprises input from the National Indigenous Australians Agency (NIAA), the Department of Social Services, the Department of Health and Aged Care and the Department of Veterans' Affairs.

The Australian Government notes the Committee supported the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 (the Facilitation Bill) and the Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021 (together, the bills). The Australian Government notes the bills were passed on 2 December 2021. Having the bills in place prior to 1 March 2022 supported the commencement of the Territories Stolen Generations Redress Scheme (the Scheme). The bills are now the *Territories Stolen Generations Redress Scheme (Facilitation) Act 2021* (the Facilitation Act) and the *Territories Stolen Generations Redress Scheme (Consequential Amendments) Act 2021*.

The purpose of the bills was to ensure eligible recipients were not adversely affected by receiving a redress payment under the Scheme. The bills provided that receipt of a redress payment does not affect a participant's access to, or eligibility for, payments or services provided by the Commonwealth, nor require the repayment of any amount to the Commonwealth that may otherwise be required by receipt of compensation or damages.

The Australian Government welcomes the Committee's comments that the bills support the survivor-focused and trauma-informed approach of the Scheme, and that the resulting operation of the Scheme will positively impact the health and wellbeing of Stolen Generations survivors, their families and communities, in line with the Scheme's key principle to 'do no further harm'.

Overview of the Territories Stolen Generations Redress Scheme

The former Prime Minister, the Hon. Scott Morrison MP, announced the Scheme on 5 August 2021, as part of the Commonwealth's Closing the Gap Implementation Plan.

The Scheme is open to Stolen Generations survivors who were removed from their families or communities as children whilst living in the territories administered by the Commonwealth—the Northern Territory or the Australian Capital Territory (prior to their respective self-government) or the Jervis Bay Territory.

The Scheme is largely administrative-based to minimise legislative complexity in the operation of the Scheme. The NIAA is responsible for establishing and operating the Scheme. The Scheme will operate from 1 March 2022 to 30 June 2026 and is open for applications between 1 March 2022 and 28 February 2026.

The Scheme provides eligible applicants access to:

- a one-off payment in recognition of the harm caused by the forced removal;
- a one-off healing assistance payment in recognition that the action to facilitate healing is specific to each individual; and
- the opportunity for each survivor to have their story about their removal and the impact it has had acknowledged by a senior official within government and receive a personalised and genuine acknowledgement of the resulting harm and trauma. This might be a face-to-face and/or written acknowledgement.

To be eligible for the Scheme, a person must meet the following criteria:

- 1) be of Aboriginal or Torres Strait Islander descent or both, who is a Stolen Generations survivor.

In assessing this, the Scheme will consider:

- whether the applicant was removed from family or community by:
 - a government agency or non-government body, or
 - an officer of such an agency or body, and
 - whether they were under the age of 18 at the time they were removed, and
 - whether their Aboriginal and/or Torres Strait Islander descent was a factor in their removal, and
 - any other factors that are relevant to determining whether they meet this criterion.
- 2) The removal must have taken place in the:
 - Northern Territory, prior to 1 July 1978, or
 - Australian Capital Territory, prior to 11 May 1989, or
 - Jervis Bay Territory.

In order to take a trauma-informed approach, applicants to the Scheme are not required to prove they are of Aboriginal or Torres Strait Islander descent. Where all the other eligibility criteria are met, it will be considered plausible that a person's Aboriginal or Torres Strait Islander descent was a factor in their removal. This recognises the unlikelihood that direct reference to 'Indigeneity' as a factor will be found in supporting documentation. In line with this, while the eligibility criteria included in the application form states that in order to apply to the Scheme, Indigeneity must have been a factor in a person's removal, the form does not include a specific question that requires a person to respond directly to this part of the eligibility criteria.

Consultation and Co-design

The NIAA established internal and external formal governance structures to guide and monitor the establishment and implementation of the Scheme. An External Advisory Board was established to embed engagement with Stolen Generations organisations and survivors and trauma specialists into the design, implementation and evaluation of the Scheme to ensure it is delivered in a survivor-focused, trauma-informed and culturally sensitive manner.

The External Advisory Board was established in line with commitments set out in the National Agreement on Closing the Gap to engage fully and transparently on significant policy change that primarily impacts First Nations peoples.

The External Advisory Board meets regularly to provide critical advice to assist in the design and development of key Scheme documents, policies and procedures to ensure that the Scheme operates to best meet the needs of Stolen Generations survivors. Key matters the External Advisory Board has advised on include the Scheme and eligibility criteria, the Scheme operating model, the Scheme branding, the Scheme application form and the Personal Acknowledgement model.

The Internal Advisory Board is comprised of Senior Executive Staff within the NIAA to oversee the establishment, implementation and ongoing delivery of the Scheme.

Supports provided to applicants through the Scheme

As part of the Scheme's operation, free independent application support, free legal advice and free financial counselling are available to people who are thinking about applying or have already applied to the Scheme, not just to applicants found to be eligible.

Independent legal advice and financial counselling services are delivered by *knowmore* and are accessible to applicants irrespective of their geographic location or unique circumstances. These services aim to ensure applicants and potential applicants are in a position to make fully informed decisions and understand the impact of accepting redress payments on their personal situation. The selection of *knowmore* was based on the organisation having demonstrated ability to deliver support services that are culturally-safe and trauma-informed and well as being able to deliver both legal advice and financial counselling services. First Nations Engagement Advisors are available to provide applicants with cultural support when engaging with *knowmore*. Male and female advisors available in all of *knowmore*'s offices and when engaging with *knowmore* over the phone.

Applicants also have access to free practical and emotional support services. These are delivered by Link-Up Services in the Northern Territory, New South Wales, Queensland, South Australia, Western Australia and Victoria, and through Winnunga Nimmityjah Aboriginal Health and Community Services in the Australian Capital Territory. These services specialise in supporting Stolen Generations survivors and their families, and can guide an applicant through completing the Scheme's forms. Link-Up Services can provide information, assistance to complete application forms and emotional support throughout the application process.

Implementation and operational update

The Scheme opened for applications on 1 March 2022. Within six weeks, the first application was assessed by the delegate and the first offer of redress made to an applicant. The first redress payments were made 10 weeks after opening.

As at 7 August 2022:

- 403 total applications have been received
- 151 applications have been assessed, all of which have been found eligible
- 132 payments have been made and 14 are in progress.
- A total of \$11,001,833 has been paid and \$232,166 is allocated for instalment payments.
- The average value of payments is \$82,000.
- 129 eligible applicants have requested a Personal Acknowledgement (acceptance rate of 85 per cent), noting that applicants have not yet indicated a readiness to commence their Personal Acknowledgement.

Responses to recommendations in the Report

The Australian Government provides the following responses to the recommendations and comments provided in the Report.

Committee Recommendation

Recommendation 1

The committee recommends that the bills be passed.

The Australian Government **supports** this recommendation and notes the Senate passed the bills on 2 December 2021.

Other recommendations

Detailed response to the recommendation provided by The Australian Labor Party in Additional Comments

Recommendation 1

Labor recommends that the Senate support the bills as soon as practicable.

The Australian Government **supports** this recommendation and notes the Senate passed the bills on 2 December 2021.

Other recommendations

The Australian Government **notes** that Labor senators made a number of other recommendations for the establishment and implementation of the Scheme in the body of its Additional Comments. These recommendations are addressed below.

Recommendations at Paragraph 1.5

While the committee report considers it appropriate to refrain from commenting directly on matters included in delegated legislation, Labor Senators make the following recommendations about the establishment and operation of the scheme:

- (a) that consideration be given to families or estates of deceased members of the Stolen Generation to apply in their stead;
- (b) that applications be made available in language and culturally appropriate support for applicants is provided;
- (c) that the time frame proposed for applications be extended from 1 March 2022 – February 2026, to 1 March 2022 – February 2030 in order to consider:
 - (i) remoteness of applicants;
 - (ii) lack of access and connectivity in remote communities; and
 - (iii) applicants who may be a member of the Territory Stolen Generations who were removed to another State and have lived their life interstate;
- (d) that applicants have access to free and independent legal advice at every stage of the application and review process; and
- (e) that a review mechanism be implemented for claims rejected.

Paragraph 1.5(a)

The Australian Government **notes** this recommendation, and has responded to feedback about Stolen Generations survivors who pass post the Scheme announcement. The Scheme policy has been amended to enable an application to be submitted on behalf of a Stolen Generations survivor who passes away between the Scheme's announcement on 5 August 2021 and when applications close on 28 February 2026.

The executor or administrator of the estate can apply to the Scheme on behalf of the person who passed away. Where there is no executor or administrator a family member or close person can apply on behalf of the person who passed away. Through the Scheme support services, *knowmore* is available to provide free and independent legal advice to people applying on behalf of a person who has passed away.

Paragraph 1.5(b)

The Australian Government **notes** this recommendation.

Scheme information is trauma-informed, designed to do no further harm and culturally sensitive. The content was developed in simple, plain English with supporting images to accommodate low literacy levels. Self-print and commercially printed products, including wallet cards, posters and easy-read factsheets explaining the Scheme and application process are available for people with low or no internet connectivity.

Written communications are generally not translated into First Nations languages, as this approach is not considered to be trauma-informed, given that many Stolen Generations members removed from their communities lost the opportunity to learn their language(s). Scheme funded interpreter services and applicant support services are available to applicants and their families.

The NIAA has implemented a comprehensive engagement approach, to both promote the Scheme widely across Australia and to seek feedback on the Scheme from potential applicants and key stakeholder organisations. Advice on engagement activities with communities and trusted local provider organisations is sought in consultation with cultural authorities, such as Land Councils, Aboriginal Community Controlled Health Organisations (ACCHOs) and key representative forums, for example the Scheme's External Advisory Board and the Aboriginal Medical Services Alliance Northern Territory (AMSANT).

Paragraph 1.5(c)

This recommendation is **outside of the scope** of the bills.

Equitable access is critical to the successful delivery of the Scheme. Accordingly, the NIAA has used a state and territory wide strategy to deliver multi-channel community and stakeholder engagement activities. This is intended to ensure the Scheme is accessible to all potential applicants and maximum reach is achieved.

Paragraph 1.5(d)

The Australian Government **supports** this recommendation.

The Scheme includes free independent application support, legal advice and free financial counselling, available to people who are thinking about applying or have already applied to the Scheme, not just applicants found to be eligible. More detail is provided under *Supports provided to applicants through the Scheme* (page 3).

Paragraph 1.5(e)

The Australian Government **supports** this recommendation.

The Scheme provides for applicants to request a review of the determination on their application. If an applicant or their legal nominee disagrees with a decision, they can ask for the decision to be reviewed by calling or emailing the Scheme.

Recommendation at Paragraph 1.8

Labor recommends that the Committee seek further advice from the Government on the issue of redress payments being included for the purposes of determining the value of a person's assets under the range of legislation set out under subcase 4(3) of the facilitation bill.

The Australian Government **notes** the recommendation.

Under the Scheme, the redress payments are exempted from Commonwealth income tests but are assessable for Commonwealth assets tests.

A person can have a certain amount of assessable assets without any reduction in their social security payment:

- a homeowner can have up to \$280,000 in assets if they are single and \$419,000 combined assets if a member of a couple.
- a non-homeowner can have up to \$504,500 in assets if they are single and \$643,500 in combined assets if a member of a couple.

For allowances such as JobSeeker Payment and Youth Allowance, if assets exceed these amounts, the rate of payment will be nil. For pensions, such as Age Pension, Disability Support Pension or Carer Payment, the rate of payment reduces by \$3 per fortnight for every \$1,000 of assets above these amounts.

It is a longstanding principle that amounts held as assets should be taken into account when assessing ongoing entitlement to support, irrespective of the source of the asset. This ensures government assistance continues to be fair, targeted based on need and not unnecessarily complex. This is why assets test exemptions have not been granted in the past.

The Facilitation Act ensures receipt of a redress payment does not affect an applicant's access to, or eligibility for, pensions, payments, benefits or services provided by the Commonwealth. The Acts also provide the redress payments (whether paid in a lump sum or by instalments) will be exempt from income tax and capital gains tax. In practice, this protection excludes the payments from Commonwealth income tests but it does not exempt them from Commonwealth assets tests.

This approach is consistent with other Commonwealth redress schemes, such as the National Redress Scheme for Institutional Child Sexual Abuse, the Defence Reparations Scheme and the Thalidomide Survivors Support Program.

Redress payments are also not exempt from assets testing for aged care and veterans entitlements, consistent with the approach for other support payments. This is supported by the Department of Health and the Department of Veterans Affairs, who administer aged care support and veterans entitlements.

There is the ability under sub-sections 4(1), (3) and (6) and section 6 of the Facilitation Act for redress payments to be excluded from particular Commonwealth assets tests by regulation, on a case by case basis. In these circumstances, the NIAA will work with the relevant Commonwealth departments and agencies to implement the necessary changes.

Free legal advice and financial counselling is available to applicants throughout the Scheme process. Applicants are encouraged to seek this advice, particularly in relation to the implications of accepting an offer of redress, and any financial impacts of the redress payments on their individual situation. For example, financial counsellors can work with applicants to ensure they are aware of flexible payment options such as payment by instalments.

Recommendation at Paragraph 1.9

While the National Indigenous Australians Agency notes in their submission that applicants should not need to access private firms or private advisers, Labor Senators seek clarity from the Government that applicants will be able to choose the support they receive, and that protections from exploitative practices will be put in place.

The Australian Government **notes** the recommendation.

Applicants have the option to choose which Scheme support services they access, this includes practical and emotional support, legal advice and financial counselling. Applicants are also able to seek such support privately, but costs for this will need to be met by the applicant.

All Scheme support services available to applicants and potential applicants are independent and free of charge. There is no requirement for applicants to access advice from private firms or advisers, but they may choose to do so. Advice from private firms or advisers may not be free and is outside the scope and control of the Scheme.

The NIAA uses clear messaging about the availability of the free and independent Scheme support services.

Detailed response to the recommendations provided by The Greens in the Additional Comments of the Report

Recommendation 1

The Australian Government begin the process of negotiating a Treaty or treaties with First Nations people, including a truth telling process and healing. A Treaty will create a unified national identity that celebrates what unites us, protects the rights of First Nations people and their cultures while also acknowledging the ongoing and historical injustices of colonisation, including child removals.

This recommendation is **outside of the scope** of the bills and the Scheme.

The Australian Government is committed to implementing the Uluru Statement from the Heart in full. As part of this commitment, the Government will establish a Makarrata Commission as a priority. This commitment sits alongside a commitment to hold a referendum on a constitutionally enshrined Voice to Parliament in the first term of Government.

The Makarrata Commission will be independent and will support local models of truth-telling, in partnership with First Nations communities and other levels of government. It will also develop a national framework for treaty-making as a first step, taking into account existing State and Territory treaty processes. The Commission will work with a Voice to Parliament when it is established.

The Australian Government's Territories Stolen Generations Redress Scheme also represents a major practical step forward towards healing, truth-telling and reconciliation.

Recommendation 2

That the current provision for the family or an estate of Stolen Generation members deceased between August 5, 2021 and March 1, 2022 to make applications on behalf of the deceased be extended to the full operational timeframe of the scheme, and for provisions to be included in the scheme for families of members of the Stolen Generations who passed away before August 2021.

The Australian Government **notes** this recommendation, and has responded to feedback about Stolen Generations members who pass post the Scheme announcement. The policy for applications on behalf of a Stolen Generations survivor who has passed away since the Scheme's announcement is detailed under the response to Paragraph 1.5(a).

The recommendation to include provisions in the Scheme for families of Stolen Generations survivors who passed away before August 2021 is **outside the scope** of the bills and the Scheme. Redress under the Scheme recognises the harm and trauma experienced by the generation removed. The Scheme is helping to address this harm and trauma.

The Australian Government is also committed to addressing intergenerational trauma and continues to invest in programs that provide practical support for the Stolen Generations and their descendants in intergenerational healing, and is investing up to \$66 million in these supports in 2022-23.

Recommendation 3

The Territories Stolen Generation Redress Scheme (Facilitation) Bill be amended so as to omit the provision for redress payments to be counted for the purposes of determining a person's assets as outlined in section 4 subclause (3).

The Australian Government **notes** the bills were passed on 2 December 2021.

The response to the Recommendation at Paragraph 1.8 provides further details regarding redress payments not being exempted from Commonwealth assets tests.

Recommendation 4

The Australian Government raise the amount of the redress payment provided under the scheme to at least \$200,000 (plus the one-off healing assistance payment of \$7,000).

This recommendation is **outside the scope** of the Scheme bills.

To ensure equity, the monetary components of the Scheme are similar to those of the New South Wales (NSW) Stolen Generations Reparations Scheme, which was at the time of establishment, the only state scheme currently operating specifically for Stolen Generations survivors.

Recommendation 5

The Australian Government ensure accessibility to the scheme in accordance with the recommendations of the Healing Foundation, as outlined above.

The Australian Government **supports** this recommendation.

The NIAA recognises that equitable access is critical to the successful delivery of the Scheme. The NIAA has sought to engage as widely across the community as possible, i.e. by NIAA staff going to engage with community members on the ground, meeting people on country, and in face-to-face settings where possible. The NIAA is working to raise awareness of the Scheme and ensure it is accessible to potential applicants by implementing multi-channel community and stakeholder engagement strategies. This includes ensuring trusted local organisations and their staff have sufficient knowledge about the Scheme to help identify potential applicants and refer them to the Scheme. Scheme staff will foster relationships with these organisations throughout the life of the Scheme.

The NIAA is aware that potential applicants could be living anywhere across Australia or overseas, and has factored this into its state and territory wide communications strategy. The Scheme communications strategy delivers various activities across multiple channels, to ensure maximum reach is achieved. Strategies include social media, First Nations radio and production of a multimedia 'DVD', which could be run on closed circuit TV in settings such as Centrelink and Aboriginal Medical Service (AMS) waiting spaces.

With applicants living in urban, rural and remote settings, and different accommodations such as residential aged care, residential rehabilitation facilities, closed environments including prison or mental health units, or travelling away from home, Scheme engagement activities include as much outreach as is practical.

A key component of outreach engagement is to build ongoing relationships with trusted organisations to ensure Scheme information is provided in the wake of direct engagement by Scheme staff. The Scheme is leveraging the NIAA regional presence, Link-Up service providers and The Healing Foundation and working closely with stakeholders, such as AMS', local Aboriginal Corporations, and other community controlled organisations, across Australia who help ensure that the Scheme messages are promulgated widely.

All aspects of the Scheme, including Scheme information, are trauma informed, designed to do no further harm and culturally appropriate. The content has been developed in simple, plain English with supporting images to accommodate low-literacy levels. Self-print and commercially printed products, including wallet cards, posters, and easy-read factsheets explaining the Scheme and application process are available for people with low or no internet connectivity.

Recommendation 6

The Australian Government consider including key aspects of the scheme in the primary legislation rather than leaving it to be subject to delegated legislation.

The Australian Government **notes** the bills were passed on 2 December 2021 and the Scheme commenced operating on 1 March 2022.

The Scheme is largely administratively based (meaning that the key elements are set out in policies, procedures and guidelines). This enables the Scheme to be survivor-focused and trauma-informed, and easily accessible and understandable to all people.

The key benefit of an administrative scheme is that it could be established and adapted in a timelier and more flexible manner than a legislative scheme. This means that, if any issues or unintended consequences for applicants are identified during the administration of the Scheme, they can be addressed more promptly as many changes will not require Parliament to pass legislation.

An administrative scheme also provides greater opportunity for ongoing co-design with key First Nations organisations throughout the implementation and ongoing operation of the Scheme.

The Facilitation Act has a limited regulation making power that only pertains to matters included in that act.

Recommendation 7

The Australian Government consider extending the operational timeframe of the scheme.

The Australian Government **notes** this recommendation.

The Scheme will be open for applications for four years. The Scheme was modelled on the NSW Stolen Generations Reparations Scheme, which was in operation for five years, but has recently been extended to six years. NIAA notes the equivalent South Australian scheme operated for three years, the Tasmanian scheme operated for one year and the recently announced Victorian Stolen Generations Reparations Package is open for applications for five years.

The NIAA will deliver significant and comprehensive communication and engagement activities throughout the life of the Scheme to ensure potential applicants are made aware of the Scheme and have sufficient time to apply.

Although the Scheme is aligned with the operating timeframes of other schemes, the NIAA will continuously monitor the Scheme to determine if a timeframe extension requires consideration.

Recommendation 8

The Australian Government consider implementing a national redress scheme, as proposed in the Bringing them Home Report through the National Compensation Fund, for members of the Stolen Generations and their families, to ensure consistency across all jurisdictions and an equitable access to redress.

This recommendation is **outside of the scope** of the bills.

The Commonwealth has established the Territories Stolen Generations Redress Scheme in relation to the Australian Capital Territory, the Northern Territory and the Jervis Bay Territory as territories administered, or formerly administered, by the Commonwealth. As seen in NSW, South Australia, Tasmania and most recently, Victoria, the establishment of a scheme for other jurisdictions in relation to Stolen Generations is a matter for the relevant state government.