

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the provisions of the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 and the Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: National Indigenous Australians Agency
Topic: Territories Stolen Generations Redress Scheme - funding

Senator: Ayres

Question reference number: 0001

Type of question: Hansard, F&PA page 22, 24 September 2021

Date set by the committee for the return of answer: 30 September 2021

Number of pages: 1

Question:

Senator AYRES: You might want to take this on notice, but has a funding profile been established over the forwards for that allocation of let's call it \$380 million?

Ms Mitchell: We will take that on notice, but, yes, it would be.

Answer:

A funding profile for the Territories Stolen Generations Redress Scheme has been established for the forward estimates. This profile will be published in the Mid-Year Economic Fiscal Outlook and the Portfolio Additional Estimates Statements.

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Prime Minister and Cabinet Portfolio

Department/Agency: National Indigenous Australians Agency

Topic: Administrative scheme

Senator: Chandler

Question reference number: 0002

Type of question: Written

Date set by the committee for the return of answer: 30 September 2021

Number of pages: 2

Question:

1. What does the NIAA mean by an ‘administrative scheme’? (i.e. provide a general definition)
2. On what authority can a government decide to utilise an administrative model (rather than legislative model) to deliver an initiative?
3. How does an administrative model differ to a legislative model in terms of the practical establishment and operation of an initiative?
4. In terms of the Stolen Generations Territories Redress Scheme, what are the benefits of establishing this initiative as an administrative scheme, rather than as a legislated scheme?
5. The NIAA described the Scheme as ‘largely administrative’ - what does this mean in practical terms?

Answer:

1. The National Indigenous Australians Agency (NIAA) is essentially using this term to describe a scheme for which the content is largely defined outside of legislation and in policies, procedures and guidelines. The content is supported or facilitated by legislation where needed (in either existing legislation or limited new legislation).
2. The NIAA is not able to provide general advice to the Committee on the circumstances in which, or extent to which, the Commonwealth may need to rely on legislation to deliver initiatives. The appropriate model will depend on a range of legal and policy considerations in each case.

However, the present scheme would rely partly on legislation for authority, as it is proposed that the expenditure associated with the Scheme will be authorised by an item to be inserted in the *Financial Framework (Supplementary Powers) Regulations 1997* (FFSP Regulations), and the practical operation of the scheme will be facilitated by the two ancillary Bills. It is common practice for items in the FFSP Regulations to outline the constitutional basis for the expenditure on the programs that they authorise.

3. An administrative model is established by the Commonwealth and its key elements are set out in policies, procedures and guidelines with only those elements needing to be legislated being included in legislation. Operationally, an administrative model provides greater flexibility in operations as unintended consequences can mostly be addressed through new or updated policies, procedures and guidelines.

A legislative model requires the scheme elements and operations to be set out in legislation, and, where this requires primary legislation, this would need to pass the Parliament. A scheme established in legislation needs to operate in terms of how it is set out in the legislation. Any changes to the operations of a legislated scheme would largely require amendments to the legislation to be drafted and passed through Parliament.

4. The key benefit of an administrative scheme is that it can be established and adapted in a timelier manner compared to a scheme that is established entirely through legislation (which would require considerable time to draft the legislation and pass it through Parliament).

In this context, an administrative scheme provides the flexibility to engage with scheme stakeholders on issues of design, implementation and operation, enabling a co-design approach through the life of the Scheme. It also provides the flexibility to manage and adapt the Scheme to the large number of circumstances that applicants will be facing. An example of this is in relation to documentary evidence to support an application. The poor historical record keeping practices relating to Aboriginal and Torres Strait Islander people are well known.

In implementing the Scheme, where issues relating to documentary evidence are identified, an administrative scheme allows the flexibility to address this promptly during the administration of the Scheme.

5. In practical terms, the Scheme being largely administrative means that only the matters that need to be set out in legislation will be included in legislation. The two Bills, the subjects of this inquiry, include the matters that require legislation and it is proposed to request amendments be made to the *Financial Framework (Supplementary Powers) Regulations 1997* to authorise expenditure associated with the Scheme. The remaining parts of the Scheme will be set out in policies, procedures and guidelines.

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Prime Minister and Cabinet Portfolio

Department/Agency: National Indigenous Australians Agency

Topic: Territories Stolen Generations Redress Scheme – elements guaranteed

Senator: Chandler

Question reference number: 0003

Type of question: Written

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Question:

Many details of the Stolen Generations Territories Redress Scheme published by the NIAA are not contained in the bills. Given the NIAA advice that these elements will not be legislated, please explain how they will be formally enshrined/guaranteed in the Scheme?

Answer:

The Government has publicly announced the Scheme including the key elements of the Scheme. All Scheme policies, procedures and guidelines will be documented subsequent to co-design through engagement with the External Advisory Board, and subsequently be made public as appropriate.