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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES
COMMITTEE

Reference: Government compensation schemes

FRIDAY, 29 OCTOBER 2010

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

REFERENCES COMMITTEE

Friday, 29 October 2010

Members: Senator Barnett (Chair), Senator Crossin (Deputy Chair) and Senators Furner, Ludlam, Parry and Trood

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators

Terms of reference for the inquiry: Senators Barnett, Crossin, Siewert

To inquire into and report on:

The administration and effectiveness of current mechanisms used by federal and state and territory governments to provide discretionary payments in special circumstances, or to provide financial relief from amounts owing to governments, namely:

- state statutory schemes relating to children in care;
- payments made under 'defective administration' schemes, such as the Commonwealth Scheme for Compensation for Detriment caused by Defective Administration;
- act of grace and ex gratia payments; and
- waiver of debt schemes.

WITNESSES

EDGE, Mr John, First Assistant Secretary, Government Business, Special Claims and Land Policy Division, Department of Finance and Deregulation 1

EMERSON, Mr Ty James, Branch Manager, Social Security Policy, Department of Families, Housing, Community Services and Indigenous Affairs 1

ESSEX, Ms Allyson, Branch Manager, Family and Child Support Policy Branch, Department of Families, Housing, Community Services and Indigenous Affairs..... 1

MASON, Ms Jan Laurel, Deputy Secretary, Asset Management and Parliamentary Services Group, Department of Finance and Deregulation 1

VERNEY, Dr Guy, Assistant Secretary, Special Claims and Land Policy Branch, Department of Finance and Deregulation..... 1

Committee met at 1.19 pm

EDGE, Mr John, First Assistant Secretary, Government Business, Special Claims and Land Policy Division, Department of Finance and Deregulation

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MASON, Ms Jan Laurel, Deputy Secretary, Asset Management and Parliamentary Services Group, Department of Finance and Deregulation

VERNEY, Dr Guy, Assistant Secretary, Special Claims and Land Policy Branch, Department of Finance and Deregulation

CHAIR (Senator Barnett)—Welcome to you all. Thanks for being here today at this public hearing of the Senate Legal and Constitutional Affairs References Committee's inquiry into government compensation schemes. The inquiry was re-adopted by the Senate following the election, on 30 September 2010, for inquiry and report by 24 November 2010. The committee has received 182 submissions to the inquiry. Some submissions have been authorised for publication and will be made available on the committee's website; others have been accepted as confidential submissions to the inquiry.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of the states shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of a department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

I now welcome officers from the Department of Finance and Deregulation, and the Department of Families, Housing, Community Services and Indigenous Affairs. The Department

of Finance and Deregulation has lodged submission No. 92 with the committee, and the Department of Families, Housing, Community Services and Indigenous Affairs has lodged submission No. 167. Do you wish to make any amendments or changes to those submissions?

Ms Mason—Senator, I do have some more up-to-date information. Our submission was lodged prior to the finalisation of financial year data for 2009-10. We do have up-to-date information for the committee to table, if you agree, which may be of use to the committee.

CHAIR—That would be greatly appreciated. Thank you for that. With the committee's consent, we will agree to that. I invite you to make a short opening statement, at the conclusion of which we will have questions from members of the committee.

Mr Emerson—Excuse me, Senator; I do have a correction to FaHCSIA's submission, if that is okay.

CHAIR—Yes.

Mr Emerson—I would just like to clarify the statement at the bottom of page 4 in the FaHCSIA submission where it says:

... administrative processes have resulted in FaHCSIA program areas not being consulted prior to the Finance delegate making a decision ...

I would like clarify that on one occasion there was an error through Centrelink not consulting with FaHCSIA in order to come to a decision. It is not a reflection on the administrative processes and certainly not on Finance. That is just a point of clarification in our submission.

CHAIR—No problem at all.

Mr Emerson—Okay. Thank you.

CHAIR—We have that other information tabled now, so would you like to proceed with an opening statement?

Ms Mason—Yes, just briefly. Thank you for the opportunity to make an opening statement to your inquiry. I would like to mention key points from the Finance submission to the inquiry. In summary, Finance believes that the suite of mechanisms for Commonwealth discretionary compensation and financial relief works effectively to deliver assistance where appropriate and meets Australians' expectations of government in this regard. While access to Commonwealth discretionary assistance should continue to be generous by world standards, principles based compensation arrangements do not underwrite risk incurred by private individuals or corporations for imprudent financial decisions, nor for tardiness in applying for Commonwealth benefits.

I understand that the committee is interested in the implementation of recommendations in the Ombudsman's report entitled *Putting things right: compensating for defective administration*, published in August 2009. I noted that the Acting Ombudsman made a submission to your inquiry. In relation to that report, the following actions have been taken. The finance circular

entitled *Discretionary compensation and waiver of debt mechanisms* was reissued in November 2009 to bring greater focus to the requirements of administrative law and to align the commentary on CDDA with lessons learnt from departments and agencies. Finance established an interagency forum on discretionary compensation mechanisms to share information on best practice in order to encourage a consistent whole-of-government approach to approaching and managing claims. The interagency forum I have referred to met in August 2009, November 2009 and May 2010. The next meeting of that forum is scheduled for 3 December 2010. Also, application forms for discretionary assistance are available on the finance website, along with information about the discretionary mechanisms themselves. Australian government agencies can link to finance website for those forms if they wish.

As part of observing procedural fairness, finance has encouraged departments and agencies to provide claimants with a copy of the papers which will be taken into account in making a decision. In relation to decisions concerning act-of-grace and/or waiver of debt decisions, finance attaches and information sheet to the correspondence to a claimant which explains the review options for decisions to decline an act of gross payment and/or waiver of debt and explains the investigative Ombudsman's role.

In terms of increased visibility of the CDDA scheme, the ombudsman has published an information sheet that supplements the finance circular and the Attorney-General's Department's administrative justice framework refers to the discretionary compensation mechanisms. In addition, finance continues to meet with departments and agencies as required to discuss any systemic issues arising.

CHAIR—Would anyone else like to make an opening statement? We will proceed to questions.

Senator SIEWERT—Thank you for your very helpful submissions. I want to explore the difference between act-of-grace payments and ex-gratia payments—one to individuals and one for groups. If a group is identified as having suffered or as needing some form of compensation, is that group then treated as a whole and given access to ex-gratia payments? Can you help me through the way the decision is made about what is a group which comes under those provisions and those who are individuals and come through under act-of-grace payments?

Dr Verney—Ex gratia and act of grace are different mechanisms. Ex-gratia is rooted in the Constitution in the executive power section 61. It is a decision that can be taken by the Prime Minister and/or cabinet in relation to events which are urgent or unforeseen. For example, after the Bali bombings the government immediately undertook decisions in relation to an ex-gratia scheme so that families with either dead or injured members could travel to Bali to be with them to deal with that situation; or, going back in time, when the Katherine floods occurred, ex gratia was used. The responsibility for the policy for that mechanism rests with me Department of the Prime Minister and Cabinet. Centrelink administers the arrangements for that.

As to the decision-making processes, when that occurs, the relevant portfolio minister advises the Prime Minister and informs the finance minister, because financial matters are involved, and a decision is taken on that basis. So it will depend on the particular circumstances. You could see how, in relation to the Bali bombings, the group of people would be determined, and likewise for

the Katherine floods. But Centrelink is responsible for administering those arrangements and how those payments are made.

The act-of-grace mechanism is a power that has rested in statute, in the Financial Management and Accountability Act 1997, in section 33 of the act. That is a statutory power. That power is available, generally, for individuals. Sometimes companies apply for assistance, but generally it is for individuals. The power is used in looking at special circumstances relating to what is being claimed. There is a difference there, but again it depends on the particular circumstances at the time and the nature of the event and what has happened.

Senator SIEWERT—Thank you. So ex gratia payments tend to be used for emergency situations? The examples you have used are the more emergency type situations.

Dr Verney—Yes, that is correct.

Senator SIEWERT—I want to get to more specifics a bit later, but I want to keep it general to begin with. How is the decision made about what fits into acts of grace and ex gratia? What comes under the constitutional powers? How do you make the decision that it comes under the constitutional powers or the statutory powers? Is it just that, or is it the nature of the issue at stake?

Dr Verney—It is what I just talked about. The act-of-grace mechanism is usually for people who have had outcomes from, say, the operation of legislation that are unintended, or anomalous things that have arisen or occurred. It is in statute, as I mentioned, which is a key distinction for that. The Prime Minister and cabinet have the power to use the ex gratia power as they see fit.

Senator SIEWERT—Who makes the decision on the act-of-grace payments?

Dr Verney—The decisions on the act-of-grace payments are a responsibility of the finance portfolio minister. The finance portfolio minister has delegated the authority to make decisions to officials in the department, so we make decisions in relation to the act-of-grace mechanism.

Senator SIEWERT—I am trying to come to looking at groups of people who have been affected by policy decisions. Obviously, you have seen the submissions. There are the children in care, the stolen generation and the stolen wages—and I realise that that comes under the state as well, so I will get there in a minute—and then, of course, there is the direct detriment caused by defective administration. I am trying to work out where these sorts of groups fit in. Are they a group? Are they under act of grace or defective policy administration? It seems to me that they could fall into defective policy administration, sort of, but then, if there were higher policy decisions, policies of government, the people implementing them, administering them, were doing it according to the policy. Do you see what I am trying to get at?

Dr Verney—In the Finance submission, we outlined in the introduction the suite of mechanisms that are available in terms of compensation. I think they reflect the complexity of the Commonwealth—

Senator SIEWERT—That is why I am asking you!

Dr Verney—No, it is the complexity of the Commonwealth—there is one Commonwealth but there are many parts of the Commonwealth—and in terms of the mechanisms that have been developed since 1901 and through the experience of the parliament to deal with situations and provide channels for people dealing with that. On your point that there are things like the wages issue that are state jurisdiction issues, I think there have been arrangements to deal with those—

Senator SIEWERT—In some states.

Dr Verney—in some senses, but there is a jurisdictional issue here in terms of the Commonwealth-state relationship.

Senator SIEWERT—I want to come back to that in a minute.

Mr Edge—I am not quite sure about what has been done on the wages front. We have not been asked to look at any of those in Finance.

Senator SIEWERT—I appreciate that, and I know we did pursue it during the Senate inquiry, but there are specific issues, not necessarily about that. But it brings up the issue of where the Commonwealth either knows what is going on or is part of a process. In fact, I would suggest that, now that we have the COAG process, the Commonwealth is helping to coordinate and facilitate a whole lot of processes, so it would be aware of what is going on. Taking stolen wages as an example—I do not expect you to answer around the wages question itself, but I will use it as an example—evidence was presented to the committee that suggested that the Commonwealth did, at the time, know what was happening and in fact provided advice to the states. It was argued to us during the inquiry that therefore the Commonwealth had role in reparations because it knew and provided advice to states around specific Commonwealth payments. I do not expect you to answer for stolen wages, but I would be interested to know how you then decide, where the Commonwealth does have a role and there is some justification in people pursuing the Commonwealth for some sort of reparation as well?

Dr Verney—I think there is no simple rule or template for coming to a conclusion on a matter like that, because there is a need to look at the link to the Commonwealth—what type of link is it, its nature and the elements of it—to decide whether there is a linkage which would bring something under the powers that we have.

Senator SIEWERT—I know that in our submissions the issues around legal avenues are pursued and the point is made that a lot of people do not have access to those sorts of resources. There is the legal avenue, obviously—

Dr Verney—Yes.

Senator SIEWERT—but how else do people go about asking whether there is a case and which areas of the various provisions it comes under?

Dr Verney—In terms of where people proceed, there is available information on that and an explanation of the different mechanisms, in the Finance circular.

Senator SIEWERT—But it is still complicated. I appreciate that you explained that; I am not having a go, but it is still very complicated. I am still trying to get my head around which areas it fits into.

Ms Mason—Senator, we are trying to make more accessible and more clearly explain what you rightly point out are complex mechanisms. But, going further to your point about the resources available to some people to understand what methods of redress might be available to them, I think some people approach community legal centres or other advocates to assist them in understanding what remedies they may be able to pursue for particular causes of complaint. The Ombudsman's office is sometimes, I think, approached for advice on such things as well.

Dr Verney—We see a wide spectrum of people who make claims. They come from organisations like welfare rights organisations. They come from members of parliament and the Senate. There are a variety of sources like that, so there are networks out there. There are veteran associations which caucus on ways to approach the Commonwealth in regard to these matters.

Senator SIEWERT—Can I go back to this issue of groups and individuals—I am sorry if I am a bit slow. Where would people bringing a case for, let us say, the forgotten Australians go for a national redress—and that is addressed in some of the submissions as well? Which area does it fall into?

Ms Essex—I am sorry, Senator, I did not catch the first part of the question.

Senator SIEWERT—I am intrigued by this issue around groups for ex gratia payments and act-of-grace payments for individuals, and there is the defective detriment caused by defective administration. Where it is clearly a group made up of individuals that do not fall into the emergency provisions under ex gratia, where would that fit into in those broader bands of redress or compensation schemes?

Ms Essex—And you are thinking particularly about forgotten Australians—

Senator SIEWERT—I am using them as an example because, as you know, there were a large number of submissions.

Ms Essex—I am aware of that, Senator. In relation to the forgotten Australians, the Commonwealth's position has been that the redress that they seek is related to the actions of state governments, and so they do not fall into the Commonwealth scheme. There are various state schemes.

Senator SIEWERT—Just imagine for a minute that we have overcome the hurdle of whether it is state or national and we are all in stunning agreement that we recognise that there is a need. I am not trying to get you to acknowledge that; what I am saying is: just imagine that hurdle is not there.

Ms Essex—I understand your question. If that was the case, we would generally seek advice from our colleagues at the department of finance. Given the facts of a particular case, if it did not fit clearly into one area or another as to where it might fit within the scheme because they have

the policy responsibility for that area, we would not seek to make a decision or a grant in any way that was contrary to the policy advice of the department of finance.

Senator SIEWERT—I am not trying to be difficult here; I am just trying to get my head around it. Would they then fit into ex gratia payments?

Dr Verney—In relation to that, it would be a decision of policy about whether the government wanted to treat it like that, but I would think that it would move into the act-of-grace consideration. There would be an assessment of what was appropriate and whether the claim, if it is relating to, say, to some state responsibilities, would have complexities arising from it and how you would have to deal with it. Those sorts of interactions may lead to advice to government about a way of handling this, depending on volume, size; all those sorts of issues. As I said, there is no fixed template you can put over this, so you need to analyse it and you also have to research these items to see what the facts are and what the material facts are.

Senator SIEWERT—If I understand it correctly, therefore act-of-grace payments could be used for a broader group of individuals.

Dr Verney—It would depend on the particular circumstances and how we would deal with that, but there has to be that link to the Commonwealth in terms of its activities and actions.

Senator SIEWERT—I appreciate that. I do not want to bog us down on forgotten Australians, for example—and you will be aware of the issues of course around Stolen Generations and stolen wages and they are the ones that I have specifically dealt with, so it is natural that I would think of those cases. I would like to know therefore how you explore the issues around whether it is a Commonwealth responsibility. What is the threshold that you use—I am not trying to get you to say anything about any of those cases but I am trying to explore how you decide that the Commonwealth is also liable? Liable is a legal word.

Dr Verney—That is a legal word about legal liability.

Senator SIEWERT—Do you use legal liability?

Dr Verney—The schemes that we have like the defective administration scheme and the others are discretionary statutory mechanisms where there is no legal liability.

Senator SIEWERT—Okay. I chose the wrong word, but there is Commonwealth involvement. We can go back to stolen wages again and think of the NT, for example. There are all those other issues around that I mentioned before, and you know them as well as I do. There is also an argument, around the forgotten Australians, of Commonwealth policies around immigration. I will not go through all the arguments. But how do you determine that?

Ms Mason—I think Dr Verney has attempted to give an abstract or conceptual answer. The short answer is: it depends. In the circumstances of any particular claim, the people examining the claim would do research to try and ascertain the extent of Commonwealth involvement in that claim and therefore the extent to which Commonwealth compensation may or may not be applicable to that particular claim. So giving a definitive answer is very difficult in the abstract.

Dr Verney—There is also the other issue when you have, as I mentioned, the numbers and volume of these things. The act-of-grace mechanism is generally used for individuals. What you are talking about may be better dealt with through a scheme, because there has to be an assessment of what is the best way to handle this. It may be better to have a scheme dealing with something, a scheme that can corral the people who have been affected by something. That is a balanced decision-making process.

Senator SIEWERT—That scheme will then fall within those various categories or it could be dealt with outside of that.

Dr Verney—It could be, yes, or somebody may say there should be a piece of legislation for a scheme, say.

Senator SIEWERT—I've got one of those, in fact!

Dr Verney—Those are the sorts of things that you would look at in terms of the practicalities of how you would deal with the issue.

Mr Emerson—Just to further elaborate on those points: it is about volume and size. Act of grace is particularly around the individual. As we have just heard, an administrative scheme can certainly work for groups or classes of people under—as you have rightly pointed out, Senator—certain parts of legislation. For example, that has occurred in the ESS payment, the Economic Security Strategy payment, where there is a class of people who had unintended consequences around care. Their situation was more appropriately recognised by having an administrative scheme put in place. So it is a class or a group of people. That was dealt with more swiftly or quickly. If they all had to be dealt with through an act-of-grace type arrangement, you would imagine it might take a longer period of time.

Senator SIEWERT—Chair, I have a number of other questions but I am conscious I have had quite a bit of time. Do you want me to hand over and then go back later on?

Senator CROSSIN—I only have a couple of questions.

CHAIR—I think we have got time, so I think you should pursue it, because of your special interest in this area, Senator Siewert. Then we will come back to Senator Crossin and me.

Senator SIEWERT—Thank you, Chair. We keep stumbling up against the territories and, in particular, the states. Obviously there are a number of redress schemes, and they are articulated in various submissions and briefing papers and things. You are obviously aware that there are a number of criticisms around the various state redress schemes. What role, if any, is the Commonwealth now playing in looking at those various state schemes on various things and not necessarily critiquing them but looking at what is best practice? Mr Emerson, I saw you nodding.

Mr Emerson—Do you want to talk about that from your perspective, Ms Essex?

Ms Essex—I can talk in relation to the forgotten Australians, because that is my particular area of expertise and responsibility. The Commonwealth does continue to raise the issue of

redress schemes with the states. Specifically the Australian government raised the issue of redress at the meeting of the Community and Disability Services Ministers Conference on 11 September 2009. It is the case that the Commonwealth's role in relation to those schemes is one of influence and discussion. It is not possible for the Commonwealth to direct states in relation to their redress schemes. But the Commonwealth—as I think I may have indicated in my evidence to the forgotten Australians inquiry—continues to be actively involved in discussing matters of redress with the states. It is just a fairly lengthy discussion.

Senator CROSSIN—Who takes responsibility if you are a forgotten Australian and you live in the Northern Territory?

Ms Essex—I just want to check my notes because I am not across the detail of the Northern Territory off the top of my head.

Senator CROSSIN—I am assuming the forgotten Australians were put into institutional care prior to 1978, so who looks after any redress scheme for people living in the Northern Territory?

Ms Essex—I am happy to take that on notice. I have detailed notes on every other place but the Northern Territory, so I will take that on notice and give the committee an answer.

Senator CROSSIN—We are always the forgotten place of the country.

Ms Essex—I will do my very best to remedy that.

Senator CROSSIN—Thank you.

Senator SIEWERT—I appreciate you do not have any big whip that you can get the states with, but I am interested in this issue of best practice. I want to come back to WA in a sec. Do you have an approach or even some guidelines that have been developed about what the Commonwealth would consider best practice so that all Australians have similar access?

Ms Essex—So you are looking at equity across schemes?

Senator SIEWERT—Across schemes when they are addressing the same thing across states, but also within schemes. Does that make sense?

Ms Essex—Yes. I do not have any awareness in relation to the forgotten Australians off the top of my head, but I would like to take that on notice. There was a range of work done before I took responsibility for this issue, so I would prefer to take it on notice if that is all right.

Senator SIEWERT—That is fine. The other thing is that the schemes vary. In WA redress was more about children in care, so it crossed forgotten Australians and other children taken into care. It has also been changed again since the guidelines were first released, and I am wondering if that is an issue that you would look into. Have members of the community raised that directly with the Commonwealth?

Ms Essex—I want to take that on notice because I would not want to mislead the committee and I would prefer to check our records. I am certainly happy to take on notice weather that has

been specifically raised with the Commonwealth and if the Commonwealth has had any response or made any representations in relation to that.

Senator SIEWERT—Thank you. I appreciate you probably need to take my questions on notice. Within similar sorts of schemes, does the Commonwealth look at the conditions within the schemes and across the schemes—for example, the guidelines and the sorts of things that are taken into account in schemes relating to stolen wages, children in care, forgotten Australians and of course the stolen generation and the reparation scheme in Tasmania?

Ms Essex—I want to take that on notice, simply because the schemes were established at different times, in different time periods, and I would like to be very careful to ensure that I knew what involvement the Commonwealth had or what engagement it had in each case. I do not have that information with me.

Senator SIEWERT—That is fine. Thank you.

CHAIR—Senator Siewert, I am happy to come back to you but we have questions as well. Are you happy if we ask some now?

Senator SIEWERT—Yes, that is fine.

CHAIR—Senator Crossin, would you like to continue?

Senator CROSSIN—Yes, I do want to continue. I want to take you to the Northern Territory again. I notice that in relation to the stolen generations Tasmania have of course instigated a scheme. I know we have had Senate inquiry after Senate inquiry into this, but if we got to a situation where the Tasmanian scheme was then taken to Queensland, South Australia or Victoria, even, again my question goes to whether or not FaHCSIA, or even Finance and Deregulation, have looked at who is in the position to compensate people from the Northern Territory if they are from the stolen generations.

Ms Essex—From the FaHCSIA perspective, I will need to take that on notice. It sits within another area of the department and I will need to check with them. But I am very happy to take that on notice and provide the committee with the relevant information.

Senator CROSSIN—That is not a question about policy; I am well aware of what the current government's policy is about compensation. But with respect to, again, Northern Territory people, because the Commonwealth has had responsibility for the Northern Territory prior to 1978, I am assuming the answer to your question must be that it would have to be the Commonwealth that would have any responsibility for an act of compensation or payment of compensation with respect to those people.

Ms Mason—Senator, I do not think that is a question that we have reflected on previously and I do not think it is one that, from the point of view of the Department of Finance and Deregulation, we are in a position to be able to answer today.

Senator CROSSIN—Can both of you take it on notice, please.

Ms Mason—Certainly.

Senator CROSSIN—Ms Essex, have you actually looked at the adequacy of the compensation payments in the Tasmanian scheme? Does the Commonwealth have a view about that or about how successfully that scheme is operating?

Ms Essex—My understanding of the Commonwealth's view is that the state redress schemes are a matter for the state governments. I think it has been consistently the Commonwealth's position over time that the state redress schemes are a matter for the state governments. Notwithstanding that the Commonwealth continues to engage in conversations with state governments, to my knowledge there has been no assessment of the adequacy of various schemes. But I will take that on notice.

Senator CROSSIN—So the big gaping hole then would be who looks after any compensation for people in the Northern Territory and/or the ACT, but particularly the Northern Territory?

Ms Essex—Senator, as I said, I will take that on notice and provide detail to the committee.

Senator SIEWERT—I would like to build on that because the issue has come up with stolen wages as well. Could you bear in mind also compensation generally, and absolutely for the stolen generation; but also there are former child migrants, forgotten Australians and stolen wages—so across the board.

Ms Essex—I will undertake to provide an answer in relation to each of the groups that you have mentioned.

Senator CROSSIN—I want to ask about the Ombudsman's report *Putting things right: compensating for defective administration*, which you quoted in your opening statement. My understanding is that, at the time, the department of finance stated that you were going to assess the merits of establishing an interdepartmental advisory or review panel to deal with disputed or exceptional claims. Has that happened?

Dr Verney—In relation to the panel's suggestion, the Finance response was that that would be a resource-intensive activity and that we would discuss it further. In relation to that, the next meeting of the interagency forum, which was mentioned by Ms Mason in her opening statement, will be discussing that issue as part of its agenda.

Senator CROSSIN—So you have not made a decision to actually set up a panel yet? Or have you made a decision to look at making a decision about it?

Dr Verney—The response from Finance said that it would consider the matter and it would discuss it with other agencies and departments in view of the resource implications of that. It is being considered at the next interagency forum, along with a number of other issues related to that proposal.

In terms of what you have just mentioned, there already is in the Financial Management and Accountability Act a requirement that there is an advisory committee report prepared for the minister's decision maker when the amounts are \$250,000 and above. That is a practice which is in statute and is followed. The Ombudsman has suggested that this would be involved with the defective administration scheme, which is across all Commonwealth departments and agencies. As I said, we will be considering that the next interagency forum.

Senator CROSSIN—What about the recommendation that there was a need to increase people's awareness of the compensation for detriment caused by defective administration scheme, the CDDA scheme? There was a recommendation that you need to increase people's knowledge or awareness of the scheme and to perhaps adopt a less legalistic application of the scheme. Has any consideration been given about adopting or implementing that recommendation?

Dr Verney—The Ombudsman's office comes to those meetings of the interagency forum and briefs about their issues—

Senator CROSSIN—That does not mean to say that you have put in place their recommendations.

Dr Verney—I thought I would preface my comments by saying that they do attend and that there is a close relationship there in terms of taking things forward. In terms of the recommendations out of that report, as Ms Mason has outlined, we have put further information on the Finance website which allows departments and agencies to link to us. The Finance Circular was reissued to provide greater explanation in relation to the defective administration scheme. The Ombudsman's office was involved and was able to comment on what we had done in relation to those recommendations.

Senator CROSSIN—What happens if you do not have a website? What happens if you do not have a computer or internet access? How do people find out about this scheme? What was your approach to heighten their awareness about it?

Dr Verney—We endeavour to reach as many people as we possibly can. The networks and organisations that we deal with, such as welfare rights and others in the country, are aware of the mechanisms and the guidance and advice that we provide, as are the departments that are located in regional areas. I do know that there are people who do not have websites, but we have endeavoured to do the best we possibly can in reaching as many people as we can.

Senator CROSSIN—So you would send letters to those agencies as well to advise them about the changes?

Dr Verney—They have been part and parcel of the changes that we have endeavoured to put in place. We cannot do this by ourselves; we must consult and cooperate as much as we can.

Mr Emerson—I would also add to that response. I think it is also a good question for Centrelink, who have a big reach across the country and are very good at informing customers of their responsibilities, rights and what they are entitled to. I am aware that they do include as part

of that information—not just in an online sense but in other forms as well—information about CDDA, acts of grace and—

Senator CROSSIN—So you interact with, say, Finance, to ensure that their changes are then communicated through your outlets?

Mr Emerson—I am not from Centrelink but we actually have a very strong relationship with Centrelink through our business management.

Senator CROSSIN—I understand that.

Mr Emerson—Given that we are, if you like, at the policy side of the policy service deliver and the interconnectedness of agencies, we are aware of what they do to inform customers of their rights and responsibilities. That is certainly a part of it, Senator.

Dr Verney—I might add that Centrelink is part of the interagency forum and attends those meetings. We have invited the new regional department, the regional and rural department, to the next meeting. We try to communicate as best we can with everyone.

Senator CROSSIN—I know you are going to think this a very unusual question, but my understanding is that, in establishing this inquiry, the previous minister, in discussion with Senator Siewert, was quite happy to have this inquiry go forward and keen to see the Senate look at these issues.

Dr Verney—Yes.

Senator CROSSIN—I know you will think this is a very unusual question, but my understanding is that in establishing this inquiry the previous minister, in discussion with Senator Siewert, was quite happy to have this inquiry go forward and keen to see the Senate look at these issues. What is it that you hope we will achieve? What are the signposts that you, or the department, must have thought were beneficial in what we would look at, and how do they complement the work that you are doing in this area?

Ms Mason—As far as I am aware, we have not given any thought to how the committee might report on the results of its inquiry. What we have focused on is implementing the recommendations in the Ombudsman's report, providing more user-friendly information about various avenues of remedy and redress to people. Also, many Commonwealth agencies do include in their decision letters information about rights of review and appeal of decisions. As far as I am aware, that is a reasonably common practice, but I do not think we have in any way thought about what you recommend as a result of this inquiry.

Senator CROSSIN—But you must be doing some work yourself in this area. I understand you were keen to see an intersection between the work of this committee. Can you give me an idea of what sort of work you are doing? Other than implementing the Ombudsman's recommendations, is there any other broad scope of work in this area that is being undertaken?

Mr Edge—The thing for us in following the Ombudsman's report has been to really look at the important role that we can play as Finance in terms of the discretionary compensation

mechanisms, the CDDA scheme and so on. It is basically to ensure that there is good information sharing around the Commonwealth in terms of how the various schemes operate. In particular, with the CDDA scheme, we have established an interagency forum and we see that as a very valuable part of working with agencies to improve the administration of the scheme, to share information about it and to encourage good and consistent practice across agencies. Also, with the role that we have in the act-of-grace mechanism, we work closely with agencies and encourage a good flow of information in terms of the decisions that are being made and provision of information to people who are making requests for act-of-grace payments. We are also in a position, quite fortunately, to look at areas of administration where we can see some systemic issues or problems, and we are in a position to reflect that back to individual agencies or agencies as a group to encourage administrative practice. In many respects, an important part of this process is to improve problematic areas, whether they are becoming evident through CDDA schemes, act or grace or whatever. We see that as a role where we can add value to the process.

CHAIR—Regarding the Compensation for Detriment caused by Defective Administrative Schemes, CDDA schemes, and the Ombudsman’s report, which we have been talking about at some length, I understand that the Ombudsman’s report made a number of recommendations. I understand that you have responded to those. Is there a document that you have in your possession which says, ‘Yes, we agree with all of these recommendations but we don’t agree with these; we are implementing these but we are not acting on these’? We do not have time today to go through all of this, but have you got some summary document?

Dr Verne—We can provide you with that, but I can tell you, Senator, that we agreed with all recommendations except the one I mentioned about the interagency panel. We saw that as subject to priorities and resources. As I mentioned, we are looking at that at the next meeting. We can give you what we have agreed to and what we have done.

CHAIR—You are telling us that you have complied with every recommendation and you have implemented or are implementing them?

Dr Verney—I would argue that we have implemented the recommendations.

CHAIR—Good. Could you, on notice, confirm that in writing. If it is implementing, I want you to tell us that. I would like you to give full and particulars regarding the lack of response to date in implementing the recommendation regarding setting up the interdepartmental advisory or review panel and you saying that it is coming up at the next meeting.

Dr Verney—Yes.

CHAIR—Can you, on notice, flesh out the reason for that? You talked about resourcing, and I guess that is a financial matter for the government, but just flesh that out for us, if you could.

Dr Verney—Yes.

CHAIR—Clearly there are different schemes in different states and territories and at the Commonwealth level. Your submission has helped us greatly to be better informed about that. I am aware of the Tasmanian scheme in terms of the stolen generations in Tasmania. I am aware of

the role of the former Premier, Ray Groom. I have commended and congratulated him publicly and privately on his role in making that happen. I just want to put that on the record.

In Tasmania we have a huge issue at the moment with children in state care. You would be aware of the concerns that have been raised as a result of a recent inquiry about a young girl who, sadly, was in state care and who was used as a sex vehicle by up to 200 males. Are you familiar with that case? What rights does she have to compensation?

Ms Essex—I am aware of the case in terms of general media around the case. The issues relating to the National Framework for Protecting Australia's Children and children's policy are dealt with in a different area of the department, but I am very happy to take on notice your question in relation to that young girl and her rights and to provide that to the committee.

CHAIR—Thank you, I would appreciate that. Where would she go? What rights and what legislative mechanism would apply to her in that situation?

Ms Essex—I would need to take it on notice. My understanding, on the basic facts, would be that she would be dealing with the Tasmanian government rather than the Commonwealth.

CHAIR—Yes, I can understand that.

Ms Essex—I am very happy to take on notice what information the department has about options available to her.

CHAIR—That would be appreciated. Hypothetically, in relation to sexual abuse in state care, does every state have a different system that applies to compensation for those who have suffered sexual abuse in state care?

Ms Essex—My understanding is that it would vary from state to state because the action, if you like, would be against the state because the child was in state care, but I will confirm that for the committee.

CHAIR—My question is: is there particular legislation, to your knowledge, that applies for that or would this be a simple discretionary matter for the state or territory government in each case?

Ms Essex—I would need to check in the case of each state.

CHAIR—All right. You understand the importance of that in this case? Are you aware of the media reports of this child who has suffered so greatly and so severely? It is incomprehensible to think what she has suffered. A decision has been made, apparently, by the state DPP not to pursue the perpetrators, the males involved in this sexual abuse. It has caused considerable anxiety and concern in Tasmania that there appears to be a lack of justice. Are you aware of that?

Ms Essex—I was not aware of that later detail that you shared. And I cannot comment on decisions of the Tasmanian government. I can say that the Commonwealth has been very clear and Minister Macklin has been very clear that every child should be able to have a childhood

which is happy and safe and in which they are well treated. The Commonwealth's position is that children should be safe.

CHAIR—Thanks for that. I cannot tell you the amount of anguish and concern that this particular matter being brought to the public arena in Tasmania have caused and the importance of ensuring, to whatever extent possible, compensation and reparation for not just her but perhaps others in similar situations all around Australia, not just in Tasmania.

Thank you very much for tabling the updated figures. I have a few questions to ask about those. The act-of-grace payments have obviously changed from year to year. You have the latest figures, up to 2009-10, which have clearly dropped. Is there any reason for the significant drop in the last 12 months?

Dr Verney—It is hard to put a finger on what drives these things. They have gone up and they have moved down and it is the same for the waiver of debt as well.

CHAIR—For the waiver of debt we were about \$53 million to \$56 million at the beginning of the decade and now we are down to \$3 million.

Dr Verney—Yes, but the waiver of debt mechanism is different in that it is also a very important mechanism for government. Those figures, the \$56 million or \$53 million, may well represent—and Senator Sherry asked a question about this in estimates some time ago—the restructure of the Snowy GBE, government business enterprise. In that, the debt that they had needed to be waived, which was significant—

CHAIR—Which department was that?

Dr Verney—The Snowy government business enterprise. Likewise, I understand that in the past there was an agreement on housing with states and territories and there was a figure that was waived in relation to that.

CHAIR—On notice, could you give us an indication of the main reasons behind the variations in the figures that you put to us.

Dr Verney—We will have a go at an explanation.

CHAIR—Likewise the discretionary claim applications for the financial year have increased quite a lot in the last couple of years it seems. You have 'related matters' and then 'discretionary claims'. What are 'related matters'?

Dr Verney—Sometimes with these we have other things, like freedom of information requests. Sometimes you can have both an act-of-grace and a waiver of debt transaction in one. So there are other sorts of matters that impinge on those.

Ms Mason—The influence on the number of applications can be an indicator of increasing awareness of the mechanisms that are available to people and/or increased causes of complaint. It is possibly or probably a combination of the two.

CHAIR—Is all this happening under the CDDA, or is this just discretionary payments?

Dr Verney—It is in relation to the discretionary powers of the FMA Act that you have there.

CHAIR—Does the CDDA only apply to certain departments?

Dr Verney—It applies to the financial management and accountability departments. It is a permissive scheme—that is, the minister has responsibility for the decision making and can delegate that to the respective departments and agencies.

CHAIR—Should we legislate to ensure that it covers all government agencies? What can we do to make that happen and be assured that this mechanism is available across the government?

Dr Verney—The Ombudsman’s submission raises the issue of a matter dealing with Comcare, a case which straddled both what they call the Commonwealth Authorities and Companies Act and the Financial Management and Accountability Act. We will have to consult Comcare to confirm this for you, but I can tell you that they have been working on this by putting a defective administration arrangement into Comcare. Some other Commonwealth companies bodies do have arrangements for dealing with these sorts of things while others do not. That will depend on their particular governance arrangements.

CHAIR—The obvious question is: why is there not a consistent application of this approach across the whole of government? We have key principles that we are implementing through the CDDA. Why would you have a different approach in different circumstances across government?

Ms Mason—I think the short answer is it is relatively easy to apply a reasonably consistent approach to Commonwealth agencies that come under the Financial Management and Accountability Act. When it comes to those that are more on the periphery of government operations, those covered by the Companies and Corporations acts, they can have specific acts that govern the way that they operate and it can be more difficult to apply a consistent approach across all of those particular entities.

CHAIR—I am not convinced.

Senator SIEWERT—Has how you would do that ever been looked into, besides the Ombudsman pointing it out? Did you take up the comments that the Ombudsman has made and look at how you would do that?

Dr Verney—The responsibility for that particular matter rests with Comcare, as I mentioned.

Senator SIEWERT—The particular one, yes, but I am now talking about this broader issue that we have been exploring. Have you ever looked at how you could effect the same outcomes that are part of that particular scheme for all these other agencies that we have just been talking about?

Ms Mason—I would need to take that on notice. From my point of view I am not aware that that has been looked at, but I am not able to give a definitive answer without checking with colleagues around the department.

Senator SIEWERT—That will be fine.

CHAIR—Thank you for that. I ask you on notice to identify which agencies are covered, which ones are not and perhaps, in brief, the reasons why so that we can have a look at them. The question is why it should not apply across government. That is my question; that is what I would like to know.

Dr Verney—The defective administration scheme applies to the Financial Management and Accountability Act agencies and not the others. We will list them for you.

CHAIR—I am aware of that. You have just said that, but I am asking you to identify them and the others, the reasons why they are not, whether they have a scheme and, if they do not have a scheme, the reasons why.

Mr Edge—I will do that. The Commonwealth Authorities and Companies Act covers a very wide range of bodies. Many of them may not interact with the public in a way that could give rise to defective administration. Many are commercial entities that operate in a commercial market. So we will certainly go through that and help to—

CHAIR—I am sure there must be a sensible reason, but there is a chance there may not be, and we would like to know; that is what we are inquiring into.

Ms Mason—Certainly a list of the agencies covered by the Financial Management and Accountability Act is readily obtainable via the Finance internet site. I say that just for the record.

CHAIR—That is fine. I appreciate that. Finally, with your handout of updated figures, these discretionary claim applications relevant to each department and agency are for 2009-10. It is a bit hard to tell because of the colours, but I think Centrelink has the highest one at 21 per cent. Is that the way you read that?

Dr Verney—Yes, that is right.

Mr Edge—That is correct.

CHAIR—Is that consistent year on year? This is just for the last 12 months, obviously.

Dr Verney—Generally it is, yes.

CHAIR—That is okay. I appreciate that. We probably have just a few more minutes if Senator Siewert has any wrap-up questions.

Senator SIEWERT—Yes, I do. You have covered a couple of the ones I was going to ask, so that is great; I can get some other ones in. A point has been made in a number of the

submissions, and it is where I was getting to with those questions around the various differences between the states. Have you given thought to a national scheme that is administered by the Commonwealth but where the states put in money? There is an argument put by many that the Commonwealth has responsibilities as well, so it could put money in depending on the scheme and administer it so that there is only one body that everybody has to deal with and people who have moved do not get this issue: 'I'm in Queensland now but I was in Western Australia, and one scheme's better than the other.' There would be a consistent approach. Has any thought been put into that?

Ms Essex—No.

Senator SIEWERT—Do you think there would be a benefit to that approach? I am asking for a policy opinion.

Ms Essex—Yes. I am in a difficult position because it is a policy opinion.

Senator SIEWERT—Yes, I appreciate that. I withdraw that question.

CHAIR—Senator Siewert, could you wrap up your questions, because there is a time constraint for the committee.

Senator SIEWERT—Yes, okay. My last question sort of follows on from a point that Senator Crossin made. There is a great deal of frustration in the community on a whole range of issues, specifically the issues I have just been talking about. People think there is a Commonwealth responsibility, but they are also being pinged between the states and the Commonwealth. Has there been, or is there, any thought given to how to deal with that? You have a whole lot of frustrated Australians who are, as they see it, being sent from pillar to post. They are not being treated properly; they are not getting an answer from the states or from the Commonwealth.

Ms Essex—To my knowledge, in relation to the matters for which FaHCSIA has responsibility we have certainly thought about how to give people clear information and clear explanations about why their particular matter might sit with a state, how to help them to understand that and, where possible, how to provide the best possible referral to them so they get to the right place in the right state government department at the right time. Beyond that, I am not aware of a more systemic approach, unless my colleagues from the department of finance are aware of anything.

Ms Mason—No, Senator.

CHAIR—Thank you very much for that. I would like to thank witnesses who have given evidence to the committee.

Committee adjourned at 2.25 pm