

**Human Rights and  
Equal Opportunity Commission**

**Aboriginal Torres Strait Islander  
Social Justice Commissioner**

8 May 2008

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Mr Hallahan,

On 16 April 2008, The Human Rights and Equal Opportunity Commission ('HREOC') appeared before the Senate Constitutional and Legal Affairs Committee in Sydney to give evidence at the Inquiry into the Stolen Generations Compensation Bill 2008.

In its written submission, HREOC took the position that the amount of monetary compensation to be awarded by a Stolen Generations Tribunal should be determined in consultation with Stolen Generations members and their organisations. HREOC noted, however, that the \$20,000 amount proposed as a common experience payment under the Bill represented a modest amount when compared to other state-based redress schemes.

Appearing for the Commission, Mr Darren Dick gave oral evidence to the effect that payments in the order of \$20,000 under a national compensation scheme would not represent a 'substantial' financial undertaking by government.

Senator Guy Barnett asked HREOC to provide a broad estimate of the costs that would be involved in setting up a national compensation scheme for the Stolen Generations. HREOC undertook to answer Senator Barnett's Question on Notice.

The following information is HREOC's view of the possible costs that may be involved in setting up a national compensation scheme for the Stolen Generations. It should be noted that there may be others better placed to provide this information than HREOC. As you will see below, HREOC's estimates are necessarily general, and can only be based on the public information that it has access to.

### **Numbers of Claimants**

It is extremely difficult to state with any precision how exactly many children were forcibly removed from their families prior to 1975; how many of those individuals are still alive today; and how many might make a claim for compensation if a reparations tribunal were to be established.

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**Human Rights and Equal Opportunity Commission**

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In the *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) ('*Bringing them home*') HREOC concluded that in the period 1910 – 1970, between one in ten and one in three Indigenous children were subject to forcible removal.<sup>1</sup>

In the Quarterly Essay 'In Denial: The Stolen Generations and the Right' (2001) Robert Manne argued that HREOC's extrapolation of state figures to form a national estimate of one in three children having been removed was inaccurate. Based on figures provided by the Australian Bureau of Statistics, Manne estimated that the number of Aboriginal and Torres Strait Islander children removed from their families in the period 1910 – 1970 was closer to the figure of one in ten, or between 20, 000 and 25, 000 individuals.<sup>2</sup>

The 1994 National Aboriginal and Torres Strait Islander Survey (NATSIS) found that approximately 10% of all Indigenous people aged 25 years or over reported that they had been taken away from their natural family. The same result (10%) was recorded for the closest equivalent age cohort group (35 years or over) in the 2002 NATSIS.<sup>3</sup>

The 2002 NATSIS recorded that there were approximately 128, 500 Indigenous people aged 35 and over in 2002.<sup>4</sup> Under the most expansive scenario, if every Indigenous person aged 35 or over and identifying as having been removed was eligible for a payment under the Bill, the number of claimants would therefore number approximately 12, 850 people.

HREOC submits, however, that the recent experience of the Tasmanian government when administering the *Stolen Generations of Aboriginal Children Act 2006* (which also took into account descendant claims) demonstrates that the number of individuals that would actually bring a compensation claim before a national tribunal is likely to be far lower than this number.

In the 2006 census, 16, 900 people in Tasmania identified as being an Aboriginal or Torres Strait Islander person.<sup>5</sup> However, only 151 compensation claims were lodged for assessment under the *Stolen Generations of Aboriginal Children Act 2006* (Tas).<sup>6</sup> Of this number, 106 individuals finally received an award of compensation: less than 1% of all Indigenous Tasmanians.<sup>7</sup>

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<sup>1</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the national Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (2007), p37.

<sup>2</sup> Manne, R., 'In Denial: The Stolen Generations and the Right' (2001) 1 *The Quarterly Essay*, p27.

<sup>3</sup> Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2002*, ABS series cat. no. 4714.0., Commonwealth of Australia, Canberra, 2002, p32.

<sup>4</sup> Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2002*, ABS series cat. no. 4714.0., Commonwealth of Australia, Canberra, 2002, p32

<sup>5</sup> Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*, ABS series cat. no. 4705.0., Commonwealth of Australia, Canberra, 2006, Table 1.

<sup>6</sup> Office of the Stolen Generations Assessor, *Report of the Stolen Generations Assessor* (2008), Department of Premier and Cabinet, Tasmania, p12.

<sup>7</sup> Office of the Stolen Generations Assessor, *Report of the Stolen Generations Assessor* (2008), Department of Premier and Cabinet, Tasmania, p12.

The reasons for the relatively low rate of compensation applications being lodged under the Tasmanian scheme are also difficult to identify. However, factors such as the loss of records, the age and ill health of participants and the prospect of re-traumatisation are likely to have presented barriers for Indigenous people's participation in the compensation scheme. Regrettably, it is also reasonable to expect that such factors would be present on a national level.

## **Conclusion**

In the event that 12, 850 Indigenous people were found to be eligible for a common experience payment of \$20,000, the total amount of compensation payable by government would be \$256.8 million, or 0.0025% of GDP of Australia's Gross Domestic Product ('GDP').<sup>8</sup>

On the other hand, if 1% of the entire Indigenous population successfully lodged an application for compensation, this would equate to some 5000 applicants. Even if all of these applicants were successful, and were awarded a common experience payment of \$20,000, the total amount of compensation payable by government would be approximately \$100 million, or 0.001% of GDP.

As this analysis demonstrates, there are simply too many variables to accurately forecast the costs that would be involved in setting up a national compensation scheme for the Stolen Generations. Furthermore, HREOC cannot estimate the cost of setting up the actual infrastructure for administering such a scheme.

HREOC hopes that this information will be of assistance to the Committee.

Yours sincerely,

Darren Dick  
Director – Social Justice Unit  
HREOC

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<sup>8</sup> Australia's estimated GDP in the period 2006-07 was \$998 547 million: see Australian Bureau of Statistics, *Australian Economic Indicators*, ABS series cat. no. 1350.0., Commonwealth of Australia, Canberra, 2008, Table 1.1.