



Ngarrindjeri Regional Authority Incorporated
PO Box 126 Meningie, SA, 5264

TO:

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

SUBMISSION BY:

Mr George Trevorrow,
Interim Chairperson and Rupelle
Ngarrindjeri Regional Authority Inc.

PREPARED BY:

Shaun Berg
Hunt & Hunt, Lawyers
For Ngarrindjeri Regional Authority Inc.

IN RELATION TO:

Stolen Generation Compensation Bill 2008 ("the Bill")

BACKGROUND:

We have reviewed the Bill and welcome the opportunity to submit comments on the proposed Stolen Generations Tribunal ("the Tribunal"). We are pleased that the Parliament of the Commonwealth has recognised the importance of this issue and we support the creation of the Tribunal. However, from the outset, we submit that the Tribunal should have greater scope than currently provided for in the Bill, and instead should have three key functions, namely:

1. to accept applications;
2. to administer an archive of statements of experience; and
3. to administer payments for both a common experience fund and independently assessed damages.

Please find below our submission on the Bill.

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We submit:

- A. The Commonwealth of Australia ("the Commonwealth") caused harm, distress, injury, loss and damage to many generations of Aboriginal People by its conscious, voluntary and deliberate actions in removing Aboriginal children from their families by means of misconduct, improper purpose, bad faith, unlawful authority, by breach of its duty of care, by oppressing and debasing legislation, policy and administrative action and by displaying contumelious disregard of their rights; referred to in this submission as the 'Stolen Generations of Aboriginal Children'.
- B. Aboriginal People desire a fair, comprehensive and lasting resolution of the legacy of the Stolen Generations of Aboriginal Children.
- C. Aboriginal People further desire the promotion of healing, compensation of victims, education, reconciliation and commemoration for the communities, families and children of the Stolen Generations of Aboriginal Children.
- D. Aboriginal People consider the following actions should be taken by the Parliament of the Commonwealth to endeavor to resolve the Stolen Generations of Aboriginal Children, namely:
 - (i) to create a Tribunal capable of making fair, just, quick and efficient determination of claims by members of the Stolen Generations of Aboriginal Children;
 - (ii) to create a not-for-profit foundation funded to conduct healing programs addressing the legacy of harms and injustice suffered by communities, families and victims of the Stolen Generations of Aboriginal Children including the intergenerational effects; and
 - (iii) to provide funding for commemoration of the legacy of the Stolen Generations of Aboriginal Children.

The following processes should be considered, namely:

1. The Tribunal

- 1.1. The Tribunal shall be in place for five (5) years.
- 1.2. It shall comprise members of indigenous and non-indigenous backgrounds with experience and understanding of the issues of the Stolen Generation of Children.
- 1.3. The Tribunal shall be overseen by a committee of independent persons capable of providing a review function for decision or grievances arising from the Tribunal. Such role shall not include an appeal against quantum; such appeal should be to a relevant court.

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- 1.4. The Tribunal shall have three functions, namely:
 - 1.4.1. to accept applications from any Aboriginal person removed from their family by the Commonwealth;
 - 1.4.2. to provide as a matter of right any applicant to make a statement of experience to be kept in an archive administered by the Commonwealth for and on behalf of victims of the Stolen Generations of Children for all time;
 - 1.4.3. to administer applications for:
 - 1.4.3.1. payment of a fixed amount from a Common Experience Fund for any Aboriginal person removed from their family by the Commonwealth;
 - 1.4.3.2. payment of damages by an Independent Assessment of damages for any Aboriginal person removed from their family by the Commonwealth.

Notes:

- It may be appropriate to have a majority of indigenous persons comprising membership of the Tribunal.
- The overseeing committee shall comprise a small number of persons to ensure that it has the capacity to meet regularly without be restrained by resource or administrative consideration.
- It is important that people are able to record their story and for that process to be dealt with compassionately and with sincerity. This should be an option that people can make without necessarily seeking to be paid any form of compensation. In creating the archive of materials under this program consideration will need to be given to issues such as use, access, holding requirements, disclosure and intellectual property.
- The administration of the compensation process by payment of a Common Experience Payment ('CEP') or an assessment of damages should be mutually exclusive. This would mean that if an applicant did not wish to go through the process but was removed by the Commonwealth that they would be entitled to a lump sum payment. The amount of the lump sum should be determined by consultation with Aboriginal people. If they did wish to proceed to an independent assessment they could do so but then would not be eligible for the CEP. It may be that there is a cap on the amount capable of being paid by the Tribunal for damages. Nothing within the Tribunal

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processes should stop an Aboriginal person from proceeding through the Court system if they wished to do so, however payment of CEP or by assessment of damages by the Tribunal would release the Commonwealth from any and all future claims.

- Consideration should be given to capping or waiving of legal costs.

2. Stolen Generations of Aboriginal Children Healing Foundation

- 2.1. The Commonwealth shall create a not for profit institution called the 'Stolen Generations of Aboriginal Children Healing Foundation' ('the Foundation') to support the objective of addressing the healing needs of Aboriginal People affected by the Stolen Generations of Aboriginal Children, including the intergenerational impacts, by supporting holistic and community-based healing to address needs of individuals, families and communities.
- 2.2. The Foundation will also provide religious groups, citizens, corporations, or institutions a facility to make additional financial contributions as either an act of practical reconciliation, or to acknowledge their own involvement or participation in actions or practices affecting the Stolen Generations of Children.
- 2.3. The Foundation shall promote activities which will have a positive effect upon capacity-building for communities to address their long-term healing needs arising from the Stolen Generation of Aboriginal Children.

Note:

The amount of the Funding for the Foundation should be the subject of discussion and negotiation between the Commonwealth and Aboriginal people.

3. Commemoration of the legacy of the Stolen Generations of Aboriginal Children

- 3.1. The Commonwealth shall undertake appropriate commemoration and educational services in relation to the legacy of the Stolen Generations of Aboriginal Children.
- 3.2. Such shall include funding of education programs and other services through universities and schools to promote a community understanding of the Stolen Generations of Aboriginal Children.

4. Negotiation

- 4.1. The key elements of any legislative framework should be determined by a negotiation of representatives of the Commonwealth and Aboriginal people.
- 4.2. The key points would include:

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- 4.2.1. the make-up of the Tribunal;
 - 4.2.2. the scope and functions of the Tribunal; and
 - 4.2.3. the scheme of compensation and the amounts that are compensable to members of the Stolen Generations of Aboriginal People.
- 4.3. The process will need to be properly funded and supported by the Commonwealth including legal and other expert support for the Aboriginal people.

5. General

- 5.1. Nothing contained herein shall diminish the Commonwealth's obligations to provide health and mental health support and assistance to Aboriginal persons.
- 5.2. The views expressed in this submission are those of the Ngarrindjeri Regional Authority Inc. and nothing contained in this submission is intended to reflect the views or opinions of any other person.

George Trevorrow, Rupelle
Interim Chairperson, Ngarrindjeri Regional Authority Inc.

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