



9 April, 2008

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

Dear Mr Hallahan,

Thank you for the opportunity to make a submission to the Parliamentary Inquiry into the *Stolen Generation Compensation Bill 2008* (the Bill).

The Australian Council of Social Service (ACOSS) is the peak council of the community services and welfare sector and the national voice for the needs of people affected by poverty, disadvantage and inequality.

ACOSS strongly supports the objective of the Bill to provide monetary compensation to members of the Stolen Generation for the suffering and harm caused by separation from their parents, families and communities.

The Human Rights and Equal Opportunity Commission report, *Bringing them Home*, set out serious human rights violations committed by previous Governments which enabled and often encouraged the removal of Indigenous children from their parents. The resulting trauma of separation and the loss of land, language and cultural connection have contributed to Indigenous disadvantage, and persist as causal factors in family and community dysfunction, poverty and social exclusion.

The *Bringing them Home* report made fifty-four recommendations, including that all Australian Parliaments make an official apology to Indigenous individuals, families and communities and that 'monetary compensation be provided to people affected by forcible removal'.

ACOSS welcomed the making of an official apology to the Stolen Generations by the Prime Minister on 13 February this year. The payment of compensation for those affected by the policy of forcible removal is the necessary next step in the process of reconciliation between non-Indigenous and Indigenous Australians.

Although ACOSS supports the general direction of the Bill, it is not clear that the proposed approach to monetary compensation is the most appropriate. HREOC recommended the payment of a minimum lump sum to all eligible claimants in recognition of the fact of removal (Recommendation 18), but it also recommended that monetary compensation be provided to people affected by forcible removal under a number of heads of damages (Recommendation 14). The approach

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recommended by HREOC would appear to provide greater flexibility and fairness than the model suggested in the Bill, enabling compensation to be assessed by reference to a broader range of factors including racial discrimination, abuse, pain and suffering and disruption of family life.

There are a number of other issues on which the Bill is unclear:

1. Whether any common law rights to damages would be extinguished by a successful claim under the Bill. ACOSS supports HREOC's recommendation that a statutory compensation mechanism should not displace claimants' common law rights to seek damages through the courts but that a claimant successful in one forum should not be entitled to proceed in the other.
2. The role of the State and Territory Governments in providing compensation to those affected by forcible removal. While the Bill excludes a person who has already received a payment under State or Territory Stolen Generation legislation from eligibility for an *ex gratia* payment under the Bill, it is not clear how the proposed Federal scheme will intersect with existing or future state schemes, who should carry the financial burden and on what basis. ACOSS notes that the payments from the proposed Fund are to be met from funds appropriated by the Federal Parliament for the purpose. This is in contrast to the HREOC proposal that COAG establish a joint Commonwealth/State National Compensation Fund.

ACOSS supports the establishment of a culturally appropriate and expeditious mechanism of minimal formality to determine compensation claims. We welcome the Bill's proposal to establish a Stolen Generation Tribunal to be constituted by a majority of Indigenous members. ACOSS also supports the proposal for funding for 'healing centres and services of assistance for people in receipt of compensation as a result of removal from their families' and for a Funeral Trust Fund.

Please contact me on (02) 9310 6200 to discuss any of these comments further.

Yours sincerely,

Andrew Johnson
Executive Director
Australian Council of Social Service (ACOSS)