

7 May 2008



Mr Peter Hallahan  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
Department of the Senate  
Parliament of Australia  
CANBERRA ACT 2600

By e-mail: legcon.sen@aph.gov.au

Dear Mr Hallahan

**Supplementary submission to the Inquiry into the Stolen Generations Compensation Bill**

We write on behalf of the Public Interest Advocacy Centre (PIAC) and the Australian Human Rights Centre (AHRC) following our appearance before the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Stolen Generations Compensation Bill, in Sydney on 16 April 2008.

In response to comments and questions from the Committee regarding the proposed Stolen Generations Reparations Bill which formed part of our original submission, we have refined the Reparations Bill to more explicitly allow for ex gratia payments to be paid as soon as practicable, as well as the broader reparations packages that are the focus of our proposal. Our refined Reparations Bill is attached as **Annexure A**.

During the hearing Senator Bob Brown asked whether our proposed Reparations Bill could be presented in the form of amendments to the Stolen Generations Compensation Bill. We note that Senator Brown's question was addressed to Dr Thalia Anthony of the Sydney Centre for International Law. In subsequent discussions with Senator Brown and Dr Anthony it was agreed that PIAC and the AHRC were best placed present our Reparations Bill proposal in the form of amendments to the Stolen Generations Compensation Bill. We attach proposed amendments as **Annexure B**. The amendments convert the Stolen Generations Compensation Bill to the Reparations Bill attached.

We are again grateful to Tom Poulton, Bianca Locsin and Chris Govey of Allens Arthur Robinson for their *pro bono* assistance in drafting the Reparations Bill and the amendments.

Yours sincerely  
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**Annexure A:**  
**Revised Stolen Generations Reparations Tribunal Bill**

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2008

The Parliament of the  
Commonwealth of Australia

THE SENATE

## **Stolen Generations Reparations Tribunal Bill**

**2008**

**No. , 2008**

*(Senator Bartlett)*

**A Bill for an Act to provide for the establishment of a Stolen  
Generations Tribunal to decide and make recommendations on  
claims for reparations and other matters**

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**A Bill for an Act to provide for the establishment of a Stolen Generations Tribunal to decide and make recommendations on claims for reparations and other matters**

**The Parliament of Australia enacts:**

**1. Short title**

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This Act may be cited as the *Stolen Generations Reparations Tribunal Act 2008*.

**2. Commencement**

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This Act commences on the day on which it receives the Royal Assent.

**3. Interpretation**

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In this Act, unless the contrary intention appears:

**Aboriginal or Torres Strait Islander person** means anybody who identifies as an Aboriginal or Torres Strait Islander descendant as defined in the *Aboriginal and Torres Strait Islander Act 2005*.

**Australian government** means the government of the Commonwealth of Australia or the government of an Australian State or Territory.

**Eligibility Criteria** means the criteria which determine whether a claimant for reparations is eligible for reparations as set out in section 5.

**ex gratia payment** means a payment referred to in section 4B(1).

**Indigenous** means Aboriginal or Torres Strait Islander.

**the Principles** means the Principles set out in subsection 3A(3).

**Stolen Generations** means persons eligible for ex gratia payments or reparations under this Act.

**Stolen Generations Fund** means the Fund established by section 10.

**Tribunal** means the Stolen Generations Reparations Tribunal established by this Act.

**Van Boven Principles** means the *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law* (UN Doc E/CN.4/Sub.2/1996/17, 24 May 1996) drafted in 1996 by Professor Theo van Boven.

**3A Stolen Generations Reparations Tribunal and establishing Principles**

- 
- (1) A tribunal, to be known as the Stolen Generations Reparations Tribunal, is established by this Act.
  - (2) The Tribunal is established in recognition of the Principles.

- 
- (3) The Principles are:
- (b) Acknowledgement that forcible removal policies were racist and caused emotional, physical and cultural harm to the Stolen Generations.
  - (c) Indigenous children should not, as a matter of general policy, be separated from their families.
  - (d) The distinct identity of the Stolen Generations should be recognised and they should have a say in shaping reparations.
  - (e) Indigenous people affected by removal policies should be given information to facilitate their access to the Tribunal and other options for redress.
  - (f) Reparations measures for the effects of forcible removals should be guided by the Van Boven Principles.

#### **4. Entitlement to reparations**

---

- (1) The Tribunal shall award reparations on a claim under this Act if the claimant satisfies one or more of the Eligibility Criteria.
- (2) Monetary reparations are payable from the Stolen Generations Fund.

#### **4A Reparations**

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- (1) The Tribunal may award reparations in the form of:
  - (a) resources for stolen generations groups to provide culture and history centres, or healing centres, including funding for land or premises;
  - (b) community education programs about the history of forcible removals;
  - (c) community genealogy projects for Indigenous communities to help identify membership of the Stolen Generations and their dependants;
  - (d) monetary payments for individuals to meet current needs such as funding to travel to see family;
  - (e) access to appropriate counselling services;
  - (f) access to appropriate health services;
  - (g) access to language and culture training;
  - (h) memorials that appropriately reflect the views of members of the Stolen Generations; and
  - (i) monetary compensation.
- (2) The Tribunal may award one or more of the forms of reparations set out in subsection (1) in response to a claim.

- 
- (3) The Tribunal may award reparations in the form set out in subsection (1)(i) to people who can prove that they suffered particular types of harm, such as sexual or physical assault.
  - (4) The Tribunal may vary the forms of reparations set out in subsection (1) as it sees fit.
  - (5) The Tribunal shall have regard to the Van Boven Principles in varying the forms of reparations set out in subsection (1).
  - (6) The Tribunal shall where practicable award reparations that maximise group rather than individual outcomes.
  - (7) In awarding reparations, the Tribunal must take into account whether the claimant has received an ex gratia payment under section 10, the nature and extent of any reparations received by the claimant under State or Territory legislation and any damages or compensation received by the claimant at common law or otherwise.
  - (8) If the Tribunal is satisfied that reparations should be awarded on a claim, the Tribunal must:
    - (a) notify the Trustee of the Stolen Generations Fund of the amount to be disbursed to cover the cost of the award; or
    - (b) recommend the reparation measure for action by the relevant government, church or non-government body.
  - (9) For the avoidance of doubt, for the purposes of this Act an ex gratia payment is not a form of monetary compensation.

#### **4B Ex gratia payments**

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- (1) The Tribunal may award an ex gratia payment in respect of a claim under this Act if the claimant satisfies the eligibility criteria in subsection 11(1), 11(3) or 11(4), and indicates, in the claim, that the claimant seeks an ex gratia payment.
- (2) The amount of an ex gratia payment in respect of a claim referred to in subsection (1), is an amount not exceeding \$20,000 as common experience payment and \$3,000 for each year that a child was removed from their family and community while under the age of eighteen years, and is payable from the Stolen Generations Fund.
- (3) A claimant may not receive more than one ex gratia payment.
- (4) In awarding ex gratia payments the Tribunal may take into account any reparations, damages or compensation awarded under State or Territory legislation, at common law or otherwise.
- (5) If the Tribunal decides to award an ex gratia payment in respect of a claim, the Tribunal must notify the Trustee of the Stolen Generations Fund of the amount to be disbursed to the claimant.
- (6) The Tribunal must decide a claim for an ex gratia payment as soon as is practicable.

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- (7) If a person claims both an ex gratia payment and reparations, the Tribunal may decide the claim for an ex gratia payment and defer assessment of the claim for reparations.

## **5. Eligibility criteria for an ex gratia payment or reparations**

---

- (1) To be eligible for an ex gratia payment or reparations under this subsection, a claimant must be:
- (a) a person who was, as a child, removed from their family under legislation that applied specifically to Aboriginal or Torres Strait Islander people; or
  - (b) an Aboriginal or Torres Strait Islander person who was, as a child, removed from their family prior to 31 December 1975, where that removal was carried out, directed or condoned by an Australian government or an agent of an Australian government.
- (2) An applicant will not be eligible for reparations under subsection (1) if the Tribunal is satisfied that the removal was in the best interests of the child.
- (3) To be eligible for an ex gratia payment or reparations under this subsection, a claimant must be:
- (a) an Aboriginal or Torres Strait Islander person; and
  - (b) a living descendant of a deceased person who would have satisfied the criteria in subsection (1).
- (4) To be eligible for an ex gratia payment or reparations under this subsection, a claimant must be:
- (a) an Aboriginal or Torres Strait Islander person; and
  - (b) a relative, family member or descendant of a person who satisfies or would have satisfied the criteria in subsection (1),
- who the Tribunal is satisfied suffered or was harmed as a consequence, in whole or in part, of the removal of that person.
- (5) A group of claimants may make a joint claim for reparations, provided that:
- (a) all members of the group are Aboriginal or Torres Strait Islander people
  - (b) all members of the group suffered detriment as a result of circumstances that gave rise to eligibility of any member of that group for reparations under subsection (1), (3) or (4).
- (6) The Tribunal shall have regard to statements by organisations such as Link Ups and Aboriginal and Islander Child Care Agencies for the purpose of determining eligibility under this section.



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## **6. Claims**

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- (1) A claim for an ex gratia payment or for reparations must be made to the Tribunal in such manner as it prescribes and shall include a certificate of Indigenous identity and a statement about the circumstances and impact of the removal.
- (3) A claim must be made within 10 years after the commencement of this Act.
- (4) A claimant may, with the consent of the Tribunal, amend a claim.
- (4A) A claim may be made by a group of persons.
- (5) A claim may be made on behalf of a person under a legal disability by a guardian of that person.
- (6) For the purposes of determining eligibility, the person under the legal disability is to be regarded as the claimant.

## **8. Time for completion of assessments**

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The Tribunal must decide a claim within 12 months after receiving it.

## **10. Establishment of Stolen Generations Fund**

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- (1) An account to be known as the Stolen Generations Fund is established:
  - (a) for the establishment and work of the Tribunal; and
  - (b) to disburse funds for reparations awarded to claimants eligible under this Act; and
  - (c) to fund ex gratia payments made under section 4B.
- (2) Payments from the Stolen Generations Fund are to be met from funds appropriated by the Parliament, together with any contributions from state or territory governments, church organisations involved in administering forcible removal policies, and any other contributors.
- (3) The Stolen Generations Fund will be administered by a Trustee to be appointed by the Attorney-General.
- (4) The fund is a special account for the purposes of the *Financial Management and Accountability Act 1997*.

## **13. Tribunal decision is reviewable**

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All decisions made by the Tribunal are eligible for judicial review. Review may be sought by the relevant claimant or by any government, church or non-government body that is the subject of a recommendation of the kind referred to in section 4A(8)(b).

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## 15. Composition of the Tribunal

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- (1A) The Tribunal shall consist of six members, at least half of whom must be Aboriginal or Torres Strait Islander persons.
- (1) The Attorney General must by writing determine a code of practice within 15 days of the commencement of this Act, for selecting persons to be nominated by the Attorney-General for appointment as members of the Tribunal, that sets out general principles on which the selections are to be made, including but not limited to:
- (a) merit; and
  - (b) independent scrutiny of appointments; and
  - (c) probity; and
  - (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Attorney-General must publish the code in the *Gazette*.
- (3) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (4) Schedule 1 has effect in relation to the Tribunal.

## 16. Functions of the Tribunal

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The Tribunal has the following functions:

- (a) to decide whether a claimant is eligible for reparations or an ex gratia payment;
- (aa) to decide on appropriate reparations to be granted in response to a claim;
- (ab) to decide on the appropriate amount of any ex gratia payment to be made in response to a claim;
- (ac) to provide a forum and process for truth and reconciliation under which Indigenous peoples affected by forcible removal policies may tell their story, have their experience acknowledged and be offered an apology by the Tribunal or others.
- (ad) to consider proposed legislation;
- (ae) to consider prejudicial policies and practices; and
- (b) such other functions as may be prescribed.

## 17. Powers of the Tribunal

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- (1) The Tribunal has power to do all things necessary or convenient to be done to perform their functions and, in particular, has power:
- (a) to obtain information from departments and agencies; and

- 
- (b) to obtain further information from the claimant, if unable to decide from the information obtained under paragraph (a) whether a claimant is eligible for reparations or an ex gratia payment.
  - (2) The Tribunal may exercise their powers notwithstanding any other legislation relating to the confidentiality or privacy of information.

## **17A Jurisdiction of the Tribunal to consider prejudicial policies and practices**

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- (1) Where any Aboriginal or Torres Strait Islander person claims that he or she, or any group of Aboriginal or Torres Strait Islander persons of which he or she is a member, is or is likely to be prejudicially affected:
  - (a) by any ordinance or any Act (whether or not still in force), passed at any time on or after 31 December 1975; or
  - (b) by any regulation, order, proclamation, notice or other statutory instrument made, issued, or given at any time on or after 31 December 1975 under any ordinance or Act referred to in paragraph (a) of this subsection; or
  - (c) by any policy or practice (whether or not still in force) adopted by or on behalf of an Australian government, any Government Agency or Church Organisation, or by any policy or practice proposed to be adopted by or on behalf of an Australian government, any Government Agency or Church Organisation; or
  - (d) by any act done or omitted at any time on or after 31 December 1975, or proposed to be done or omitted, by or on behalf of an Australian government, any Government Agency or Church Organisation,and that the ordinance or Act, or the regulation, order, proclamation, notice or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the Principles, he or she may submit that claim to the Tribunal under this section.
- (2) The Tribunal must inquire into every claim submitted under subsection (1).
- (3) If the Tribunal finds that any claim submitted to it under subsection(1) is well-founded it may, if it thinks fit, having regard to all the circumstances of the case, recommend to the relevant body that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.
- (4) A recommendation under subsection (3) may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the relevant body should take.
- (5) The Tribunal shall cause a sealed copy of its findings and recommendations (if any) with regard to any claim to be served on –
  - (a) the claimant;

- 
- (b) such relevant body as in the opinion of the Tribunal has an interest in the claim; and
  - (c) such other persons as the Tribunal thinks fit.

### **17B Jurisdiction of the Tribunal to consider proposed legislation**

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- (1) The Tribunal shall examine any proposed legislation referred to it under subsection (2) and shall report whether, in its opinion, the provisions of the proposed legislation or any of them would be contrary to the Principles.
- (2) Proposed legislation may be referred to the Tribunal, in the case of a Bill before the Parliament, by the relevant Minister or by a resolution of either house.

### **18. Protection from liability**

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The Tribunal does not incur any personal liability for an act done or omitted to be done by the Tribunal in good faith in the performance or exercise, or purported performance or exercise, of any of their functions or powers under this Act.

### **19. Confidentiality**

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- (1) The Tribunal must not divulge the information obtained under this Act otherwise than as provided by this section.
- (2) The Tribunal may divulge the information obtained under this Act in so far as it is necessary to do so to carry out their functions under this Act.

### **20. Annual reports**

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- (1) The Tribunal is to publish annual reports on the performance of their functions.
- (2) The Tribunal is to cause copies of any reports prepared in accordance with subsection (1) to be made widely available to the public.

### **21. Death of applicant**

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- (1) A claim under this Act does not lapse because the claimant dies before the claim is decided.
- (2) If a claimant dies before the claim is decided, any ex gratia payment or monetary compensation, if payable on the claim, is to be paid to the estate of the deceased.

### **23 Regulations**

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The Governor-General may make regulations for the purposes of this Act.

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## **Schedule 1**

### **Provisions in relation to the Stolen Generations Reparations Tribunal**

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[To comprise details concerning remuneration and conditions of appointment; staffing; sittings, etc.

Rules of evidence not to apply.

Tribunal to have investigative powers.

A claimant may be represented by a person who is not legally qualified.]

**Annexure B:**  
**Amendments to Stolen Generation Compensation Bill**

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2008

The Parliament of the  
Commonwealth of Australia

### **Stolen Generation Compensation Bill 2008**

*(Amendments to be moved by Senator [redacted] on behalf of the [Party] in committee of the whole)*

1. Title, omit "Generation Compensation" and insert "Generations Reparations Tribunal" between "Stolen" and "Bill".

**[title]**

2. Page 1 (lines 1, 2 and 3), omit "ex gratia payments to be made to the stolen generation of Aboriginal children, and for related purposes" and after "provide for" insert:  
"the establishment of a Tribunal to decide and make recommendations on claims for Stolen Generations reparations and other matters".

3. Clause 1, page 1 (lines 7 and 8) omit "Generation Compensation" and insert:  
"Generations Reparations Tribunal" between "Stolen" and "Act".

**[short title]**

4. Clause 3, page 2 (after line 5) insert:

**"Australian government** means the government of the Commonwealth of Australia or the government of an Australian State or Territory."

**[interpretation]**

5. Clause 3, page 2 (lines 6, 7 and 8) omit "for which determines whether an applicant for an ex gratia payment is eligible for the payment set out in section 5" and replace with:  
"which determine whether a claimant for reparations is eligible for reparations as set out in section 5".

**[interpretation]**

6. Clause 3, page 2 (line 9) omit "9" and replace with "4B(1)".

**[interpretation]**

7. Clause 3, page 2 (after line 9) insert:

**"Indigenous** means Aboriginal or Torres Strait Islander."

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**the Principles** means the Principles set out in subsection 3A(3).

**[interpretation]**

8. Clause 3, page 2 (lines 10 and 11) omit "stolen generations" and insert "Stolen Generations" before "means".

**[interpretation]**

9. Clause 3, page 2 (lines 10 and 11) insert "or reparations" after "ex gratia payments".

**[interpretation]**

10. Clause 3, page 2 (after line 11) insert:

**Stolen Generations Fund** means the Fund established by section 10.

**Tribunal** means the Stolen Generations Reparations Tribunal established by this Act.

**Van Boven Principles** means the *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law* (UN Doc E/CN.4/Sub.2/1996/17, 24 May 1996) drafted in 1996 by Professor Theo van Boven.

**[interpretation]**

11. Clause 3, page 2 (lines 12, 13 and 14) omit:

**Stolen Generations Tribunal** means a group of 6 persons, half or more of those persons being of Aboriginal or Torres Strait Islander descent.

**[interpretation]**

12. Clause 3, page 2 (after line 14) insert:

### **3A. Stolen Generations Reparations Tribunal and establishing Principles**

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- (1) A tribunal, to be known as the Stolen Generations Reparations Tribunal, is established by this Act.
- (2) The Tribunal is established in recognition of the Principles.
- (3) The Principles are:
  - (a) Acknowledgement that forcible removal policies were racist and caused emotional, physical and cultural harm to the Stolen Generations.
  - (b) Indigenous children should not, as a matter of general policy, be separated from their families.
  - (c) The distinct identity of the Stolen Generations should be recognised and they should have a say in shaping reparations.
  - (d) Indigenous people affected by removal policies should be given information to facilitate their access to the Tribunal and other options for redress.
  - (e) Reparations measures for the effects of forcible removals should be guided by the Van Boven Principles.



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13. Clause 4, page 2 (lines 15 to 27) omit section 4 in its entirety and replace with the following:

#### **4. Entitlement to reparations**

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- (1) The Tribunal shall award reparations on a claim under this Act if the claimant satisfies one or more of the Eligibility Criteria.
- (2) Monetary reparations are payable from the Stolen Generations Fund.

#### **4A Reparations**

---

- (1) The Tribunal may award reparations in the form of:
- (a) resources for stolen generations groups to provide culture and history centres, or healing centres, including funding for land or premises;
  - (b) community education programs about the history of forcible removals;
  - (c) community genealogy projects for Indigenous communities to help identify membership of the Stolen Generations and their dependants;
  - (d) monetary payments for individuals to meet current needs such as funding to travel to see family;
  - (e) access to appropriate counselling services;
  - (f) access to appropriate health services;
  - (g) access to language and culture training;
  - (h) memorials that appropriately reflect the views of members of the Stolen Generations; and
  - (i) monetary compensation.
- (2) The Tribunal may award one or more of the forms of reparations set out in subsection (1) in response to a claim.
- (3) The Tribunal may award reparations in the form set out in subsection (1)(i) to people who can prove that they suffered particular types of harm, such as sexual or physical assault.
- (4) The Tribunal may vary the forms of reparations set out in subsection (1) as it sees fit.
- (5) The Tribunal shall have regard to the Van Boven Principles in varying the forms of reparations set out in subsection (1).
- (6) The Tribunal shall where practicable award reparations that maximise group rather than individual outcomes.
- (7) In awarding reparations, the Tribunal must take into account whether the claimant has received an ex gratia payment under section 4B, the nature and extent of any reparations received by the claimant under State or Territory legislation and any damages or compensation received by the claimant at common law or otherwise.

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- (8) If the Tribunal is satisfied that reparations should be awarded on a claim, the Tribunal must:
- (a) notify the Trustee of the Stolen Generations Fund of the amount to be disbursed to cover the cost of the award; or
  - (b) recommend the reparation measure for action by the relevant government, church or non-government body.
- (9) For the avoidance of doubt, for the purposes of this Act an ex gratia payment is not a form of monetary compensation.

#### **4B Ex gratia payments**

---

- (1) The Tribunal may award an ex gratia payment in respect of a claim under this Act if the claimant satisfies the eligibility criteria in subsection 5(1), 5(3) or 5(4), and indicates, in the claim, that the claimant seeks an ex gratia payment.
- (2) The amount of an ex gratia payment in respect of a claim referred to in subsection (1), is an amount not exceeding \$20,000 as common experience payment and \$3,000 for each year that a child was removed from their family and community while under the age of eighteen years, and is payable from the Stolen Generations Fund.
- (3) A claimant may not receive more than one ex gratia payment.
- (4) In awarding ex gratia payments the Tribunal may take into account any reparations, damages or compensation awarded under State or Territory legislation, at common law or otherwise.
- (5) If the Tribunal decides to award an ex gratia payment in respect of a claim, the Tribunal must notify the Trustee of the Stolen Generations Fund of the amount to be disbursed to the claimant.
- (6) The Tribunal must decide a claim for an ex gratia payment as soon as is practicable.
- (7) If a person claims both an ex gratia payment and reparations, the Tribunal may decide the claim for an ex gratia payment and defer assessment of the claim for reparations.

***[entitlement to ex gratia payment]***

14. Heading to section 5, page 2 (line 28) insert "an" after "for" and insert "or reparations" after "payment".

***[eligibility criteria]***

15. Clause 5, page 2 (line 29) insert "or reparations" between "payment" and "under".

***[eligibility criteria]***

16. Clause 5, page 2 (lines 29 and 30) omit "an applicant" and replace with "a claimant".

***[eligibility criteria]***

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17. Clause 5, page 2 (line 30) omit "one of the following".
- [eligibility criteria]***
18. Clause 5, page 3 (lines 1 to 3) omit sub-clause (1)(a) in its entirety and replace with the following:
- (a) a person who was, as a child, removed from their family under legislation that applied specifically to Aboriginal or Torres Strait Islander people; or
- [eligibility criteria]***
19. Clause 5, page 3 (lines 4 to 8) omit sub-clause (1)(b) in its entirety and replace with the following:
- (b) an Aboriginal or Torres Strait Islander person who was, as a child, removed from their family prior to 31 December 1975, where that removal was carried out, directed or condoned by an Australian government or an agent of an Australian government.
- [eligibility criteria]***
20. Clause 5, page 3 (lines 9 to 20) omit sub-clause (2) in its entirety and replace with the following:
- (2) An applicant will not be eligible for reparations under subsection (1) if the Tribunal is satisfied that the removal was in the best interests of the child.
- [eligibility criteria]***
21. Clause 5, page 3 (lines 21 and 22) omit "an applicant" and replace with "a claimant".
- [eligibility criteria]***
22. Clause 5, page 3 (line 22) omit "one of the following".
- [eligibility criteria]***
23. Clause 5, page 3 (line 25) omit "." and replace with "in subsection (1)."
- [eligibility criteria]***
24. Clause 5, page 3 (lines 26 and 27) omit sub-clauses (3)(b)(i) and (3)(b)(ii) in their entirety.
- [eligibility criteria]***
25. Clause 5, page 3 (after line 27) insert:
- (4) To be eligible for an ex gratia payment or reparations under this subsection, a claimant must be:
- (a) an Aboriginal or Torres Strait Islander person; and
- (b) a relative, family member or descendant of a person who satisfies or would have satisfied the criteria in subsection (1),
- who the Tribunal is satisfied suffered or was harmed as a consequence, in whole or in part, of the removal of that person.
- (5) A group of claimants may make a joint claim for reparations, provided that:
- (a) all members of the group are Aboriginal or Torres Strait Islander people

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(b) all members of the group suffered detriment as a result of circumstances that gave rise to eligibility of any member of that group for reparations under subsection (1), (3) or (4).

(6) The Tribunal shall have regard to statements by organisations such as Link Ups and Aboriginal and Islander Child Care Agencies for the purpose of determining eligibility under this section.

***[eligibility criteria]***

26. Heading to Clause 6, page 3 (line 28) omit "Applications for ex gratia payment" and replace with "Claims".

***[applications]***

27. Clause 6, page 3 (lines 29 to 33) omit sub-clauses (1) and (2) in their entirety and replace with the following:

(1) A claim for an ex gratia payment or for reparations must be made to the Tribunal in such manner as it prescribes and shall include a certificate of Indigenous identity and a statement about the circumstances and impact of the removal.

28. Clause 6, page 4 (line 1) omit "An application" and replace with "A claim".

***[applications]***

29. Clause 6, page 4 (line 1) omit "7" and replace with "10".

***[applications]***

30. Clause 6, page 4 (line 1) omit "commencing on" and replace with "after the".

***[applications]***

31. Clause 6, page 4 (line 3) omit "An applicant for an ex gratia payment" and replace with "A claimant".

***[applications]***

32. Clause 6, page 4 (line 4) omit "Secretary of the Department" and replace with "Tribunal".

***[applications]***

33. Clause 6, page 4 (line 4) omit "an application" and replace with "a claim".

***[applications]***

34. Clause 6, page 4 (after line 4) insert:

(4A) A claim may be made by a group of persons.

***[applications]***

35. Clause 6, page 4 (line 5) omit "An application for an ex gratia payment" and replace with "A claim".

***[applications]***

36. Clause 6, page 4 (line 8) omit "applicant" and replace with "claimant".

***[applications]***

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37. Clause 7, page 4 (lines 9 to 12) omit clause 7 in its entirety.  
***[referral of application]***
38. Clause 8, page 4 (lines 14 to 16) omit "The Stolen Generations Tribunal must make their decision in relation to eligibility for an ex gratia payment within 12 months after receiving an application" and replace with "The Tribunal must decide a claim within 12 months after receiving it".  
***[time for completion]***
39. Clause 9, page 4 (lines 17 to 21) omit clause 9 in its entirety.  
***[Stolen Generations Tribunal to decide applications]***
40. Clause 10, page 4 (line 24) omit "to disburse funds to claimants eligible under this Act" and replace with ":"  
***[establishment of Fund]***
41. Clause 10, page 4 (after line 24) insert:
- (a) for the establishment and work of the Tribunal; and
  - (b) to disburse funds for reparations awarded to claimants eligible under this Act; and
  - (c) to fund ex gratia payments made under section 4B.
- [establishment of Fund]***
42. Clause 10, page 4 (line 26) omit "for the purpose" and replace with:  
", together with any contributions from state or territory governments, church organisations involved in administering forcible removal policies, and any other contributors".  
***[establishment of Fund]***
43. Clause 10, page 4 (lines 27 and 28) omit sub-clause (3) in its entirety and replace with:  
(3) The Stolen Generations Fund will be administered by a Trustee to be appointed by the Attorney-General.  
***[establishment of Fund]***
44. Clause 10, page 5 (line 1) omit "amount" and replace with "account".  
***[establishment of Fund]***
45. Clauses 11 and 12, page 5 (lines 3 to 13) omit clauses 11 and 12 in their entirety.  
***[ex gratia payment]***
46. Heading to Clause 13, page 5 (line 14) omit "Stolen Generations".  
***[decision reviewable]***
47. Clause 13, page 5 (line 15) omit "Stolen Generations".  
***[decision reviewable]***
48. Clause 13, page 5 (line 16) after "judicial review." insert:
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"Review may be sought by the relevant claimant or by any government, church or non-government body that is the subject of a recommendation of the kind referred to in section 4A(8)(b)."

***[decision reviewable]***

49. Clause 14, page 5 (lines 17 to 26) omit clause 14 in its entirety.

***[appointment of Tribunal]***

50. Heading to section 15, page 5 (line 27) omit "Procedures for merit selection of appointments under this Act" and replace with "Composition of the Tribunal".

***[composition of Tribunal]***

51. Clause 15, page 5 (after line 27) insert:

(1A) The Tribunal shall consist of six members, at least half of whom must be Aboriginal or Torres Strait Islander persons.

***[composition of Tribunal]***

52. Clause 15, page 6 (line 2) omit "to a position under this Act" and replace with "as members of the tribunal".

***[composition of Tribunal]***

53. Clause 15, page 6 (line 7) omit "; and" and replace with ".".

***[composition of Tribunal]***

54. Clause 15, page 6 (lines 8 and 9) omit sub-clause (1)(e) in its entirety.

***[composition of Tribunal]***

55. Clause 15, page 6 (after line 14) insert:

(4) Schedule 1 has effect in relation to the Tribunal.

***[composition of Tribunal]***

56. Heading to Clause 16, page 6 (line 15) omit "Stolen Generations" and replace with "the".

***[Tribunal functions]***

57. Clause 16, page 6 (line 16) omit "Stolen Generations".

***[Tribunal functions]***

58. Clause 16, page 6 (line 17) omit "an applicant" and replace with "a claimant".

***[Tribunal functions]***

59. Clause 16, page 6 (line 17) after "eligible for" insert "reparations or".

***[Tribunal functions]***

60. Clause 16, page 6 (after line 18) insert:

(aa) to decide on appropriate reparations to be granted in response to a claim;

(ab) to decide on the appropriate amount of any ex gratia payment to be made in response to a claim;

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- (ac) to provide a forum and process for truth and reconciliation under which Indigenous peoples affected by forcible removal policies may tell their story, have their experience acknowledged and be offered an apology by the Tribunal or others;
  - (ad) to consider proposed legislation;
  - (ae) to consider prejudicial policies and practices; and

***[Tribunal functions]***

61. Heading to Clause 17, page 6 (line 20) omit "Stolen Generations" and replace with "the".

***[Tribunal powers]***

62. Clause 17, page 6 (line 21) omit "Stolen Generations".

***[Tribunal powers]***

63. Clause 17, page 6 (line 25) omit "applicant" and replace with "claimant".

***[Tribunal powers]***

64. Clause 17, page 6 (line 27) omit "applicant" and replace with "claimant".

***[Tribunal powers]***

65. Clause 17, page 6 (line 27) after "eligible for" insert "reparations or".

***[Tribunal powers]***

66. Clause 17, page 6 (line 28) omit "Stolen Generations".

***[Tribunal powers]***

67. Clause 17, page 6 (after line 30) insert:

**17A Jurisdiction of the Tribunal to consider prejudicial policies and practices**

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- (1) Where any Aboriginal or Torres Strait Islander person claims that he or she, or any group of Aboriginal or Torres Strait Islander persons of which he or she is a member, is or is likely to be prejudicially affected:
- (a) by any ordinance or any Act (whether or not still in force), passed at any time on or after 31 December 1975; or
  - (b) by any regulation, order, proclamation, notice or other statutory instrument made, issued, or given at any time on or after 31 December 1975 under any ordinance or Act referred to in paragraph (a) of this subsection; or
  - (c) by any policy or practice (whether or not still in force) adopted by or on behalf of an Australian government, any Government Agency or Church Organisation, or by any policy or practice proposed to be adopted by or on behalf of an Australian government, any Government Agency or Church Organisation; or

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- (d) by any act done or omitted at any time on or after 31 December 1975, or proposed to be done or omitted, by or on behalf of an Australian government, any Government Agency or Church Organisation,
- and that the ordinance or Act, or the regulation, order, proclamation, notice or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the Principles, he or she may submit that claim to the Tribunal under this section.
- (2) The Tribunal must inquire into every claim submitted under subsection (1).
- (3) If the Tribunal finds that any claim submitted to it under subsection(1) is well-founded it may, if it thinks fit, having regard to all the circumstances of the case, recommend to the relevant body that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.
- (4) A recommendation under subsection (3) may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the relevant body should take.
- (5) The Tribunal shall cause a sealed copy of its findings and recommendations (if any) with regard to any claim to be served on –
- (a) the claimant;
  - (b) such relevant body as in the opinion of the Tribunal has an interest in the claim; and
  - (c) such other persons as the Tribunal thinks fit.

## **17B Jurisdiction of the Tribunal to consider proposed legislation**

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- (1) The Tribunal shall examine any proposed legislation referred to it under subsection (2) and shall report whether, in its opinion, the provisions of the proposed legislation or any of them would be contrary to the Principles.
- (2) Proposed legislation may be referred to the Tribunal, in the case of a Bill before the Parliament, by the relevant Minister or by a resolution of either house.

### ***[Tribunal powers]***

68. Clause 18, page 7 (line 2) omit "Stolen Generations".

### ***[protection from liability]***

69. Clause 18, page 7 (lines 3 to 4) omit "Stolen Generations".

### ***[protection from liability]***

70. Clause 19, page 7 (line 8) omit "Stolen Generations".

### ***[confidentiality]***

71. Clause 19, page 7 (line 10) omit "Stolen Generations".

### ***[confidentiality]***

72. Clause 20, page 7 (line 14) omit the entirety of clause 20 and replace with:



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## **20. Annual reports**

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- (1) The Tribunal is to publish annual reports on the performance of their functions.
- (2) The Tribunal is to cause copies of any reports prepared in accordance with subsection (1) to be made widely available to the public.

***[report]***

73. Clause 21, page 7 (line 22) omit sub-clauses (1) and (2) in their entirety and replace with:

- (1) A claim under this Act does not lapse because the claimant dies before the claim is decided.
- (2) If a claimant dies before the claim is decided, any ex gratia payment or monetary compensation, if payable on the claim, is to be paid to the estate of the deceased.

***[death of applicant]***

74. Clause 22, page 8 (line 1) omit clause 22 in its entirety.

***[additional support]***

75. Schedule 1, page 9 (lines 1 to 16) omit schedule 1 in its entirety and replace with:

### **Schedule 1**

### **Provisions in relation to the Stolen Generations Reparations Tribunal**

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[To comprise details concerning remuneration and conditions of appointment; staffing; sittings, etc.

Rules of evidence not to apply.

Tribunal to have investigative powers.

A claimant may be represented by a person who is not legally qualified.]