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Senator Trish Crossin
Committee Chair
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Trish

Dear Senator Crossin

Thank you for your letter dated 19 March 2008, inviting a submission from the ACT Government to the Standing Committee on Legal and Constitutional Affairs Inquiry into the Stolen Generation Compensation Bill 2008.

On behalf of my Government I offer the following comments relating to the Inquiry, for the consideration of the Standing Committee.

ACT Government submission to the Senate Inquiry into Stolen Generation Compensation Bill 2008 – a Bill for an Act to provide for ex-gratia payments to be made to the stolen generation of Aboriginal children, and for related purposes.

Background

While the needs of the Stolen Generations have yet to be met, there remains a pressing need for specific assistance tailored to the particular circumstances of those forcibly removed from their families. The compensation issue is but one of a range of issues that need to be resolved before genuine reconciliation can be achieved between Indigenous and non-Indigenous Australians.

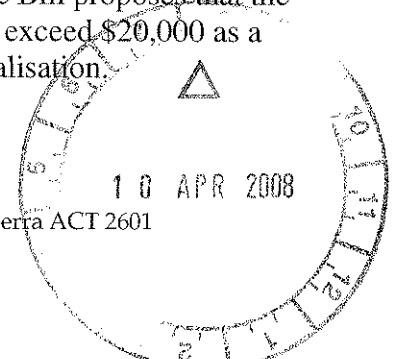
The Prime Minister's recent apology should be seen as the first step between governments and Stolen Generations groups in forging a partnership to resolve issues relating to the needs of the Stolen Generations as identified in the Bringing Them Home report – this joint effort should be comprehensive and involve a whole of government (and cross jurisdictional) approach.

The Stolen Generation Compensation Bill 2008 proposes a Stolen Generations Fund to be established to disperse funds to claimants eligible under the Act. The Bill proposes that the amount of an ex gratia payment in respect of an applicant should not exceed \$20,000 as a common experience payment and \$3,000 for each year of institutionalisation.

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The payments proposed in the Bill are to be met from funds appropriated by the Australian Parliament.

The Bill also proposes additional support in the form of funding for healing centres and services to be established in a variety of locations across Australia, and for a Funeral Trust Fund.

Proposed ACT Position

It should be noted that the ACT, which achieved self-government in 1989, has not taken decisions that contributed to the policy that resulted in the Stolen Generations. Prior to 1989, the administration of the ACT was the responsibility of the Commonwealth Government.

Notwithstanding this, the ACT recognises that the Prime Minister's recent apology and consideration for subsequent compensation are important ingredients in achieving a meaningful form of reconciliation between Indigenous and non-Indigenous Australians.

The ACT perspective is that opportunities should be made available for all aspects of compensation and additional support for the Stolen Generations to be comprehensively debated in the public domain.

Of particular interest would be the adequacy of the level of compensation to be provided to applicants.

Of more importance would be the opportunity for those removed from their families to come together to determine future policy in relation to the support required to address the effects of separation from their families for themselves and their children.

While recognising the ACT Government's limited role in responding to the issue of compensation by virtue of its history, every effort will be made to assist those claimants from Canberra who require documentation and other records that may be held by the ACT Government and that would provide support to their application for compensation.

The ACT Government will also assist the Australian Government to consult with members of the Stolen Generations residing in the ACT around the issues identified above and to implement any scheme that may be put in place in the future.

Comments on content of Bill

Title of Bill

While the Bill is intended to apply to both Aboriginal and Torres Strait Islander peoples, the title of the Bill and additional titles on page 1 need to reflect this broad application.

Section 3 – Interpretation

Utilising the Aboriginal and Torres Strait Islander Act 2005 is unlikely to diminish the difficulties in identifying the persons eligible for compensation who were forcibly removed and experienced suffering, with no Aboriginality, no identity and no culture ties. This may be achieved by accessing other schemes such as ones developed in relation to abuse in care (noting not all states and territories have such schemes).

Section 4 – Entitlement to ex gratia payment

Reparation Source

Section 4(1) refers to payments payable from funds appropriated by the Federal Parliament. In order to ensure all relevant parties acknowledge their part in the Stolen Generation it may be appropriate to also see contributions from States and church institutions.

Entitlement Issues

Section 4(3) refers to a once only entitlement to this form of compensation. If a person has already received compensation for injuries or trauma and the amount was minimal, ineligibility for this compensation may need to be considered, both from a monetary and a healing perspective. This discretion could rest with the Stolen Generations Tribunal.

Section 5 – Eligibility Criteria for ex gratia payment

It is not clear as to whether each descendant or only one descendant can apply.

Section 6 – applications for ex gratia payment

Section 6(3) refers to applications being made within 7 years of the commencement of this Act. The basis of this timing is not clear and may preclude people who ascertain their Aboriginal heritage and claim at a later date.

Section 11 - Amount of Ex Gratia Payment

The Bill proposes that the amount of an ex gratia payment in respect of an applicant referred to in subsection 5(3), is an amount not exceeding \$20,000 as a common experience payment and \$3,000 for each year of institutionalisation.

The Tasmanian and Queensland Governments have recently put arrangements in place to financially compensate members of the Stolen Generations resident in their respective jurisdictions. The above amounts are consistent with the level of payments under the Tasmanian scheme. One case has been recently resolved through the courts in South Australia (SA) which resulted in far more financial compensation than is provided under the Tasmanian and Queensland schemes or indeed than provided for under the Bill.

It would be helpful to understand on what basis the compensation figure was developed (noting for example similar schemes in other states relating to compensation for abuse in care). This monetary compensation evaluation may be problematic given that it is limited to one component which will account for racial discrimination, pain and suffering, abuse, disruption of family life, labour exploitation, economic loss, etc and payment of each year of institutionalisation. The ex gratia compensation is at the discretion of the Government (subject to parliamentary authorisation of appropriations) and presumably once this scheme is accessed, no further claims can be maintained, eg via the legal system. Some people are likely to feel they could achieve a better result via the court system, especially given the SA case, and it is assumed this avenue would remain an option.

Section 11 refers to the payments made for a successful application and refers to 'each year of institutionalisation'. It remains unclear if there is an upper limit to this period of time. It is proposed there should not be as some people may have remained in institutional care for many years beyond the age of 21.

Section 14 – Appointment of Stolen Generations Tribunal

Tribunal Composition

Section 14 refers to the appointment of the Tribunal members. Reference is made to Schedule 1. Neither the section nor Schedule address the replacement of members were they to resign or for some other reason leave. In addition, the Bill does not propose that the Aboriginal elders have a role in determining the Tribunal and it is hoped this is taken up as a matter of policy.

Section 15 – Procedures for merit selection of appointments under this Act

Section 15(1) refers to a membership of the Tribunal with at least three persons who identify as Aboriginal or Torres Strait Islander. Of additional importance is the minimum representation of Aboriginal or Torres Strait Islander members at a Tribunal hearing an application. This is currently not clear.

Section 17 - Powers of Stolen Generations Tribunal

Section 17 refers to the broad powers of the Tribunal to access information necessary to determine a claim. Section 19 refers to the need to protect and not divulge information otherwise than as provided by this section of the Bill. Of concern is the access by the Tribunal of information that is unknown to a family or community, that is significant and that may lead to claims by other people. The management of this highly critical information requires the Tribunal to enable others to receive the information balanced by the need for confidentiality in relation to the information received and issues relating to the access to records through an FOI or other legal process. Provision of such information must be accompanied by appropriate support and counselling, and is likely to increase demand for services such as that provided by healing centres.

Section 22 – Additional Support

Use of Healing Centres

Section 22 refers to healing centres to help people who have received compensation. As stated above, there are many points prior to determination that could also require the support of the healing centres. It should be noted in the Bill that even if people fail in their bid for monetary compensation that they are able to utilise the additional support, if this is required.

Advocacy and Support

A person should be able to bring an Elder with them to the Tribunal for moral support.

Funeral Services

Section 22 refers to the provision of funeral services for the deceased. It is unclear if the deceased person refers to an applicant, their guardian or a family member who has applied on behalf of an already deceased family member or any other person.

General Comment

Addressing Recommendation 3: Bringing Them Home report

Recommendation 3 of the Bringing Them Home report noted that reparation should consist of:

1. acknowledgment and apology;
2. guarantees against repetition;
3. measures of restitution;
4. measures of rehabilitation; and
5. monetary compensation.

In the Stolen Generation Compensation Bill 2008 we appear to be moving directly from point 1 to point 5 of the above recommendation from the Bringing Them Home report, with minimal acknowledgment of the other three points, apart from section 22 of the Bill which addresses some additional support (healing centres and related services).

Thank you for the opportunity to provide a submission to this Inquiry. The Standing Committee's consideration of the above issues is appreciated. The ACT Government would welcome an opportunity to provide further comment if required at a later date.

If you would like further information, please contact Ms Meredith Whitten, Acting Executive Director, Policy and Organisational Services, Department of Disability, Housing and Community Services, on 6205 0839.

Yours Sincerely



Jon Stanhope MLA
Chief Minister

3 April 2008