



Australian Government

Department of Families, Housing,
Community Services and Indigenous Affairs

THE SECRETARY

Box 7788 Canberra Mail Centre

ACT 2610

Telephone 1300 653 227

TTY 1800 260 402

Facsimile (02) 6244 7983

Email Jeff.Harmer@fahcsia.gov.au

www.fahcsia.gov.au

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


Dear Mr Hallahan

I refer to my letter of 10 April 2008 to the Committee Secretariat and the Department's appearance before the Committee on 16 April in Canberra.

At that hearing the Department agreed to provide certain further information to the Committee. The responses to the Questions on Notice that were taken by Departmental officials at the hearing are attached to this letter.

While the Government's position on compensation to the Stolen Generations is clear and unambiguous, it was evident from the hearing that the Department might be better able to assist the Committee with a more comprehensive explanation on the Government's position. The submission attached to this letter provides that information.

Yours sincerely



Dr Jeff Harmer

9 May 2008

SUBMISSION BY THE DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS TO THE INQUIRY INTO THE STOLEN GENERATION COMPENSATION BILL 2008 BY THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

May 2008

1. Introduction

The Department provides this submission to ensure that the Committee has a full explanation of the Government's position that there will be no compensation fund/arrangements for members of the Stolen Generations. For this reason the Department has no specific comments to make on such aspects of the draft bill.

2. Government Policy on Compensation

The Government has indicated on a number of occasions that it will not be providing compensation to members of the Stolen Generations. The following public statement by the Prime Minister indicates this position:

“We will not be establishing any compensation fund. I said that before the election, I say it again. And since the Stolen Generation report came out years and years ago, it has been open for any individual, Aboriginal person affected by that to engage their own legal actions through the courts of their State or Territory. That's fine. But at the level of national Government, we will not be establishing any compensation fund.” (*Channel 7 Sunrise Program, 29 January 2008*);

3. Further Explanation of Government's position

The *Bringing Them Home* (BTH) Report sets out recommendations for implementation by State and Territory Governments, churches and non government organizations, as well as by the Commonwealth Government.

The recommendation around reparations comprises five components: acknowledgement and apology; guarantees against repetition; restitution; rehabilitation and monetary compensation.

A theme in a range of submissions to the BTH inquiry was that people were seeking recognition of their pain and suffering and that compensation would provide some tangible evidence of that recognition. However, most submissions acknowledged that monetary compensation could never make up for the loss grief and trauma experienced by Aboriginal people as a result of past removal policies, laws and practices.

The Government offered the apology on 13 February 2008 in a spirit of respect, acknowledgement and recognition of the past mistreatment of Indigenous peoples, and particularly the profound grief, suffering and loss inflicted on the Stolen Generations. This is in keeping with relevant elements of the BTH recommendation around reparations.

The Government is now looking to the future and making restitution through its very strong focus on closing the 17 year gap in life expectancy between Indigenous and non-Indigenous Australians within a generation. This will be achieved by setting concrete targets and timeframes for meeting those targets, including within a decade: to halve the gap in mortality rates for Indigenous children under five; to halve the gap in Indigenous employment outcomes; and halve the gap in literacy, numeracy and reading achievements for Indigenous children. This will restore the same life chances and opportunities available to other Australians to all Indigenous Australians, including the Stolen Generations.

The Government recognises that the Stolen Generations are also in need of additional initiatives aimed at restoration and rehabilitation, such as critical services to help trace and reconnect their families. The initial Government package in 1999 totalled \$63 million for:

- Link-Up family tracing and reunion services nationally;
- specialist Indigenous mental health counsellors;
- professional support and training for counsellors;
- family support and parenting programs;
- improved access to Commonwealth records through the National Archives;
- an oral history project for those affected to tell their stories through the National Library; and
- language and culture maintenance programs through ATSIC.

In 2001-02 an additional \$53.8 million was provided to continue the Link-Up family tracing and reunion services, and the counselling and parenting elements of the original package of measures. Recently, the Rudd Government has committed an extra \$15.7 million from 2007-08 to ensure that Link Up, family history programs and Bringing Them Home counsellors are adequately resourced to meet demand.

Prior to the apology the Government engaged with representatives of the two national Stolen Generations organisations to ensure the apology reflected their priorities. The Government has continued that engagement after the apology, to ascertain their priorities on what their members believe are the initiatives needed to address their specific needs around restitution and rehabilitation.

Most recently a working group of Stolen Generation representatives from both national bodies has been established by the Department of Families, Housing, Community Services and Indigenous Affairs to move this partnership forward.

One of the main issues that has arisen through this engagement with the Stolen Generations organisations to date has been the critical need for healing services to restore a sense of worth and hope. The Canadian Healing Foundation is cited as a model that Australia should follow. The Commonwealth Government is looking at this suggestion, along with others, in considering how to respond most effectively to the identified needs for Stolen Generations members and their families. Any response will be based on evidence of what works in the Australian context.

4. States and Territories

Only one State (Tasmania) has established a compensation scheme for members of the Stolen Generations and their descendants. Other States (Queensland and Western Australia) have set up broader compensation schemes for past mistreatment of children in State care, which includes members of the Stolen Generations. They are responding to State laws, policies and practices that operated at the time of the removals. This is a decision for each State to make.

In the case of the Northern Territory, in the 2000 case of *Cubillo and Gunner*, the High Court found that there was no duty of care owed by the Commonwealth. Where future claims are made, the Commonwealth would respond in accordance with the *Legal Services Directions 2005*, which provide that the Commonwealth should:

- endeavour to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution; and
- seek to settle monetary claims in accordance with legal principle and practice.

5. Overseas experience with compensation payments

Evidence of the impact of lump sum payments from the Canadian experience may inform consideration about compensation in Australia.

In Canada, under the 2006 Indian Residential Schools Settlement Agreement, approximately 6,000 former residential school students stand to receive on average \$28,000 each in compensation, including \$8,000 as an advance payment. This wave of payments would represent a major, sudden influx of money into Aboriginal communities.

Anticipating this, the Canadian Aboriginal Healing Foundation undertook a Lump Sum Compensation Payments Research Project to assess the impact of compensation payments (through court awards, previous alternative dispute resolution payments and the \$8,000 advance payments) as experienced by survivors and their families.

The 2007 Report entitled, *The Circle Rechecks Itself*, found that many recipients used the payments to help out family, purchase needed items, clear up debts and to invest. On the negative side, payments in a range of cases led to increases in drug and alcohol abuse, pressure from family for money and encroachment by financial predators. Payments also triggered negative residential school memories for survivors.

The Report found that the failure to reform healing; reframe health; reinforce safety and security; reverse crises; and realign capacity had contributed to compensation payments aggravating the personal circumstances of some people.

Recipients and non-recipients 'were quick to emphasise a shared belief that money only goes so far towards compensating victims. As one recipient put it: "It's not about money: it's getting people accountable and telling our story."¹ It also recommended a formal apology to recognize the legacy of residential schools and effects. In the Canadian context, it has also been said:

¹ Aboriginal Healing Foundation, *Lump Sum Compensation Payments Research Project: The Circle Rechecks Itself*, 2007, at p 27.

“Symbolic measures like an apology and commemorative measures may be a vital component of any reparations scheme ... because they aim to create an atmosphere of dignity and respect that cannot be achieved through simply doling out compensation dollars.”²

The Australian Government’s apology on 13 February 2008 was well received both in Australia and overseas. For example, the national chief of the Assembly of First Nations in Canada, Mr Phil Fontaine, praised the Australian Government’s apology as of great significance, even monumental. In his view true reconciliation could not be achieved without an apology.

² Popic, L., *Compensating Canada’s ‘Stolen Generations’*, Indigenous Law Bulletin, Vol 7, Issue 2, Dec/Jan 2008, pp14-17 at p16.