

2008

The Parliament of the
Commonwealth of Australia

THE SENATE

Stolen Generation Compensation Bill 2008

No. , 2008

(Senator Bartlett)

**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**

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1 **A Bill for an Act to provide for ex gratia payments**
2 **to be made to the stolen generation of Aboriginal**
3 **children, and for related purposes**

4 The Parliament of Australia enacts:
5

6 **1 Short title**

7 This Act may be cited as the *Stolen Generation Compensation Act*
8 2008.

9 **2 Commencement**

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

1 **3 Interpretation**

2 In this Act, unless the contrary intention appears:

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

6 ***eligibility criteria*** means the criteria for which determines whether
7 an applicant for an ex gratia payment is eligible for the payment set
8 out in section 5.

9 ***ex gratia payment*** means a payment referred to in section 9.

10 ***stolen generations*** means persons eligible for ex gratia payments
11 under this Act.

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

15 **4 Entitlement to ex gratia payment**

16 (1) An ex gratia payment is payable from funds appropriated by the
17 Parliament for the purpose of this section on an application under
18 this Act if the applicant satisfies the eligibility criteria in subsection
19 5(1), (2) or (3).

20 (2) If a person makes an application under the eligibility criteria set out
21 in subsection 5(1), (2) or (3) and the Stolen Generations Tribunal
22 determines that the person satisfies one or more of the eligibility
23 criteria, the person is entitled to receive only one ex gratia
24 payment.

25 (3) A person who has already received a payment under State or
26 Territory Stolen Generation compensation legislation or like
27 legislation is not eligible for an ex gratia payment under this Act.

28 **5 Eligibility criteria for ex gratia payment**

29 (1) To be eligible for an ex gratia payment under this subsection, an
30 applicant must be one of the following:

- 1 (a) an Aboriginal or Torres Strait Islander person who was
2 subject to the Aborigines Ordinance (1911 or 1918) and was
3 removed from their family; or
4 (b) any Aboriginal or Torres Strait Islander person who was not
5 subject to the Aborigines Ordinance 1911 or 1918, but was
6 subject to similar legislation which resulted in their being
7 forcibly removed from their family prior to 31st December
8 1975.
- 9 (2) To be eligible for an ex gratia payment under this subsection, an
10 applicant must be one of the following:
11 (a) an Aboriginal or Torres Strait Islander person who was
12 removed from their family prior to 31st December 1975 and
13 was under the age of 21 years at the time of their removal,
14 and who the Stolen Generations Tribunal is satisfied was
15 subject to duress by a state agency as a consequence, in
16 whole or in part, of race-based policies operating at the time;
17 (b) an Aboriginal or Torres Strait Islander person who was
18 subject to the Aborigines Ordinance 1911 or 1918 or similar
19 legislation which permitted forcible removal of children from
20 their family.
- 21 (3) To be eligible for an ex gratia payment under this subsection, an
22 applicant must be one of the following:
23 (a) an Aboriginal or Torres Strait Islander person; and
24 (b) a living descendent of a deceased person who would have
25 satisfied the criteria:
26 (i) in subsection (1)(a) or (b); or
27 (ii) in subsection (2)(a) or (b).

28 **6 Applications for ex gratia payment**

- 29 (1) An application for an ex gratia payment is to be made to the
30 Secretary of the Department.
- 31 (2) An application may be presented through oral evidence to the
32 Stolen Generations Tribunal by the applicant/s either in person or
33 by other means necessary.

- 1 (3) An application must be made within 7 years commencing on the
2 commencement of this Act.
- 3 (4) An applicant for an ex gratia payment may, with the consent of the
4 Secretary of the Department, amend an application.
- 5 (5) An application for an ex gratia payment may be made on behalf of
6 a person under a legal disability by a guardian of that person.
- 7 (6) For the purposes of determining eligibility, the person under the
8 legal disability is to be regarded as the applicant.

9 **7 Referral of application to Stolen Generations Tribunal**

10 On receipt of an application under section 6, the Secretary of the
11 Department is to forward the application to the Stolen Generations
12 Tribunal.

13 **8 Time for completion of assessments**

14 The Stolen Generations Tribunal must make their decision in
15 relation to eligibility for an ex gratia payment within 12 months
16 after receiving an application.

17 **9 Stolen Generations Tribunal to decide applications**

18 If the Stolen Generations Tribunal is satisfied that an ex gratia
19 payment is payable on an application, he or she must, by notice in
20 writing, authorise the Secretary of the Department to make the ex
21 gratia payment.

22 **10 Establishment of Stolen Generations Fund**

- 23 (1) An account to be known as the Stolen Generations Fund is
24 established to disburse funds to claimants eligible under this Act.
- 25 (2) Payments from the Stolen Generations Fund are to be met from
26 funds appropriated by the Parliament for the purpose.
- 27 (3) Administration of the Stolen Generations Fund is by the
28 Department.

1 (4) The fund is a special amount for the purposes of the *Financial*
2 *Management and Accountability Act 1997*.

3 **11 Amount of ex gratia payment**

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

8 **12 Payment of ex gratia payment**

9 The Secretary of the Department is to make the ex gratia payment
10 to the applicant by electronic funds transfer, by cheque or in any
11 other manner determined by the Secretary of the Department on
12 receipt of a form, approved by the Secretary of the Department,
13 signed by the applicant.

14 **13 Stolen Generations Tribunal decision is reviewable**

15 All decisions made by the Stolen Generations Tribunal are eligible
16 for judicial review.

17 **14 Appointment of Stolen Generations Tribunal**

18 (1) Following nominations by the Attorney-General in accordance
19 with the merit selection process set out in section 15, the Stolen
20 Generations Tribunal is to be appointed by the Governor-General
21 by written instrument, for a period not exceeding 10 years.

22 (2) The Attorney-General must make the nomination mentioned in
23 subsection (1) within 14 days of the publication of the code
24 mentioned in subsection 15(2).

25 (3) Schedule 1 has effect in relation to the Office of the Stolen
26 Generations Tribunal.

27 **15 Procedures for merit selection of appointments under this Act**

28 (1) The Attorney-General must by writing determine a code of practice
29 within 15 days of the commencement of this Act, for selecting

- 1 persons to be nominated by the Attorney-General for appointment
2 to a position under this Act, that sets out general principles on
3 which the selections are to be made, including but not limited to:
4 (a) merit; and
5 (b) independent scrutiny of appointments; and
6 (c) probity; and
7 (d) openness and transparency; and
8 (e) at least three persons on the tribunal must identify as
9 Aboriginal or Torres Strait Islander.
- 10 (2) After determining a code of practice under subsection (1), the
11 Attorney-General must publish the code in the *Gazette*.
- 12 (3) A code of practice determined under subsection (1) is a legislative
13 instrument for the purposes of the *Legislative Instruments Act*
14 *2003*.

15 **16 Functions of Stolen Generations Tribunal**

- 16 The Stolen Generations Tribunal has the following functions:
17 (a) to decide whether an applicant is eligible for an ex gratia
18 payment;
19 (b) such other functions as may be prescribed.

20 **17 Powers of Stolen Generations Tribunal**

- 21 (1) The Stolen Generations Tribunal has power to do all things
22 necessary or convenient to be done to perform their functions and,
23 in particular, has power:
24 (a) to obtain information from departments and agencies; and
25 (b) to obtain further information from the applicant, if unable to
26 decide from the information obtained under paragraph (a)
27 whether an applicant is eligible for an ex gratia payment.
- 28 (2) The Stolen Generations Tribunal may exercise their powers
29 notwithstanding any other legislation relating to the confidentiality
30 or privacy of information.

1 **18 Protection from liability**

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

7 **19 Confidentiality**

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

13 **20 Report to Minister**

- 14 (1) The Stolen Generations Tribunal is to give the Minister a report on
15 the performance of their functions within 30 days after the day on
16 which they make a decision on the final application for an ex gratia
17 payment.
- 18 (2) The Minister is to cause a copy of the report prepared in
19 accordance with subsection (1) to be tabled in both Houses of
20 Parliament within 5 sitting days of receiving it.

21 **21 Death of applicant**

- 22 (1) An application for an ex gratia payment does not lapse because the
23 applicant dies before the application is decided.
- 24 (2) If an applicant for an ex gratia payment dies before the application
25 is decided, an ex gratia payment, if payable on the application, is to
26 be paid to the estate of the deceased.

1 **22 Additional support**

2 (1) Funding is to be allocated for healing centres and services of
3 assistance for people in receipt of compensation as a result of the
4 removal from their families.

5 (2) For the purpose of subsection (1), healing centres and related
6 services are to be set up in consultation with Aboriginal and Torres
7 Strait Islander persons of the Stolen Generation in a variety of
8 locations across Australia.

9 (3) Funding is to be allocated for a Funeral Trust Fund for the
10 provision of funeral services for the deceased.

11 **23 Regulations**

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

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Schedule 1— Provisions in relation to the Stolen Generations Tribunal

1 Remuneration and conditions of appointment

- (1) The Stolen Generations Tribunal is to be paid such remuneration, including travelling and other allowances, as is determined by the Remuneration Tribunal.
- (2) The Stolen Generations Tribunal holds office on such terms and conditions in relation to matters not provided for by this Act as are specified in their instrument of appointment.

2 Removal from office

The Governor-General may remove the Stolen Generations Tribunal if the Governor-General is satisfied on the basis of a written report and recommendation from the Minister that the Stolen Generations Tribunal is unable to perform adequately or competently the duties of office.