



**Australian Government**

**National Indigenous Australians Agency**

**OFFICIAL: SENSITIVE**

## **Submission to the Senate Finance and Public Administration Legislation Committee**

### **Inquiry into the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 and the Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021**

The National Indigenous Australians Agency (NIAA) welcomes the opportunity to provide input to the Inquiry into the Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021 (Facilitation Bill) and the Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021 (Consequential Amendments Bill).

In making this submission, the NIAA acknowledges it is responsible for the implementation and administration of the Territories Stolen Generations Redress Scheme (the Scheme).

The NIAA is also the responsible agency for the Scheme Bills.

#### **Background**

On 5 August 2021, the Prime Minister, the Hon Scott Morrison MP, announced the Australian Government's commitment to a \$378.6 million financial and wellbeing scheme for Stolen Generations survivors who were removed as children from their families in the Northern Territory or the Australian Capital Territory (prior to their respective self-government), or the Jervis Bay Territory (collectively known as the territories).

On 26 August 2021, the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP introduced into the House of Representatives the Facilitation Bill and the Consequential Amendments Bill.

On the same day, the Senate referred both Bills to the Senate Finance and Public Administration Legislation Committee (the Committee) for inquiry and report. This submission is intended to contribute to the Inquiry.

#### **The Bills**

##### Facilitation Bill

The Facilitation Bill provides for measures to facilitate the operation of certain aspects of the Scheme.

The Scheme is underpinned by the principle of 'do no further harm'. The redress payment available through the Scheme to eligible applicants is in recognition of the harm caused by forced removal and is aimed at healing.

Accordingly, the objective of the Facilitation Bill is to ensure that receipt of a redress payment does not (i) affect a participant's access to, or eligibility for, any pensions, payments, benefits or services

provided by the Commonwealth or (ii) require the repayment of an amount to the Commonwealth. The Bill also ensures that the redress payment is absolutely inalienable.

The Facilitation Bill is compatible with the following human rights—the Right to social security, the Right to an adequate standard of living, the Right to health, the Right to protection and assistance for the family, the Rights of equality and non-discrimination and Right to self-determination.

For further detail about the Facilitation Bill please refer to the Bill’s Explanatory Memorandum and Statement of Compatibility with Human Rights.

### Consequential Amendments Bill

The Consequential Amendments Bill is a companion bill to the Facilitation Bill. It provides for consequential amendments to Commonwealth Acts to facilitate the implementation of certain aspects of the Scheme. The objective of the Consequential Amendments Bill is to ensure that eligible participants will receive the full benefit of the redress payment and that receipt of the payment does not adversely affect income testing for other Commonwealth payments or benefits.

The Bill also facilitates the cross-checking of identity information provided by applicants with information held by the Department of Social Services or Services Australia should this be necessary to confirm an applicant’s identity.

The Consequential Amendments Bill makes amendments to the *Bankruptcy Act 1966*, the *Income Tax Assessment Act 1997*, the *Social Security Act 1991*, the *Veterans’ Entitlements Act 1986* and the *Social Security (Administration) Act 1999*.

The Bill is compatible with the same human rights as the Facilitation Bill. It is also compatible with the Right to privacy.

For further detail about the Consequential Amendments Bill please refer to the Explanatory Memorandum and Statement of Compatibility with Human Rights.

### Consultation in relation to drafting the Bills

The NIAA engaged across the Commonwealth in the development of the Bills to identify and address the potential interaction between redress payments and Commonwealth laws.

## **The Scheme**

The Scheme is for survivors of the Stolen Generations who were removed as children from their families whilst in the territories administered by the Commonwealth in the past—the Northern Territory or the Australian Capital Territory (prior to their respective self-government) or the Jervis Bay Territory. The Scheme is intended to operate from 1 March 2022 to 30 June 2026, and will be open for applications between 1 March 2022 and 28 February 2026.

The Scheme will provide to eligible participants:

- a one-off redress payment to recognise the harm caused by forced removal;
- a one-off healing assistance payment in recognition that the action required to facilitate healing will be specific to each individual;
- the opportunity, if they choose, to confidentially tell their story about the impact of their removal to a senior official within government and receive a face-to-face or written direct personal response acknowledging the trauma caused by removal.

This redress package has parity with the current New South Wales Stolen Generations Reparations Scheme (NSW Scheme), the only currently operating Stolen Generations reparations/redress scheme.

The NIAA will establish the Scheme so that it is in place to receive applications from 1 March 2022. The Scheme will be survivor-focused and will operate on the basis of restorative justice and healing-informed principles.

NIAA's governance arrangements include a small internal advisory board of Senior Executive staff to guide and monitor the Scheme's establishment and implementation. An external advisory body is being established and will ensure the Scheme is delivered in a trauma-informed and culturally sensitive manner. The Healing Foundation has agreed to participate as a member on the external advisory body. The NIAA, in consultation with The Healing Foundation, will seek potential members drawn from key organisations who work to support Stolen Generations survivors.

The Scheme will be largely administrative, with some limited legislation. The Scheme is modelled on the NSW Scheme which is also administratively based. This model was chosen as it:

- has the minimum of complexity regarding regulation which allows it to be more flexible and able to be changed to benefit applicants, where necessary
- reduces the administration and time to establish the Scheme (ie, the need to draft and pass substantial legislation)
- allows a streamlined application process to enable applications to be processed quickly.

### Scope of the Scheme

The Scheme is for survivors of the Stolen Generations who were removed as children from their families whilst in the territories.

Applications will be able to be brought forward for Stolen Generations survivors who pass between 5 August 2021 and 1 March 2022. This process is under development.

It is anticipated that about 3,600 people will be eligible for the Scheme. Eligibility numbers are based on data from an Australian Institute of Health and Wellbeing (AIHW) Report in June 2021.

### Direct personal responses

The direct personal response is an important component of the redress and healing process so it is critical to ensure the direct personal response is meaningful. In recognition of the impacts that forced removal have had on Stolen Generations survivors, the ability to receive a direct personal response will be available across the life of the Scheme.

NIAA's direct personal response process is modelled on the approaches under the National Redress Scheme, the Defence Reparations Scheme and the NSW Scheme (noting that the NSW Scheme only offers written direct personal responses).

In line with best practice approaches established by these schemes, direct personal responses delivered under the Scheme would:

- Consider involvement by the Minister for Indigenous Australians.
- Be delivered by a senior government official.
- Be delivered at a time, location and venue of the successful applicant's choice (in relation to face-to-face direct personal responses only). This would involve travel to a location where the successful applicant is comfortable for the direct personal response to occur.

- Be supported by an independent facilitator who provides support and debriefing to both the senior official and the eligible applicant before, during and after the direct personal response.

#### Supports provided to applicants through the Scheme

Applicants will be able to access free application support, free legal advice and free financial advice from independent Scheme-funded support services throughout the application and decision-making process.

- Organisations will be funded to support applicants through the application process. Organisations will be selected based on their current involvement with Stolen Generations survivors and their current relationship with the NIAA.
- The Scheme will procure independent legal and financial advisers to work with Scheme applicants.
- Applicants will not need to use their own funds to pay for legal costs (if they access the free services provided through the Scheme).

These supports, and a proposed simple application process, mean applicants should not need to access private firms or private advisers to make an application to the Scheme.

#### Privacy and confidentiality

The NIAA is cognisant of the sensitive nature of the information that will be provided and gathered through the Scheme and is establishing structures to support applicants' privacy and confidentiality. It is also possible the Scheme may have applications from prominent or well-known people.

The Consequential Amendments Bill will amend the *Social Security (Administration) Act 1999* to enable the NIAA to access social security protected information for the purposes of the Scheme. The protections applying to social security protected information will continue to apply to the information obtained by the NIAA. Those protections include criminal penalties for unauthorised obtaining, recording, disclosure or use of protected information.

The NIAA is ensuring that all personal and sensitive information obtained, recorded, held, used and disclosed in administering the Scheme is done so in accordance with the *Privacy Act 1988*.

The NIAA will include confidentiality requirements for any contracted Scheme staff, including the Independent Assessors. Australian Public Service staff are already bound by the APS Values, Code of Conduct, and the duties of officials in the *Public Governance, Performance and Accountability Act 2013*.

The NIAA is building a case management system for applications. The system will have in-built access protections to ensure the privacy and confidentiality of applicants.

#### Interaction with existing redress schemes

An applicant to the Scheme may also be eligible to apply to the National Redress Scheme for Institutional Child Sexual Abuse. Payments made under the Scheme will not impact applicants' payments from the National Redress Scheme as the schemes are separate.

It is possible that some applicants to the Scheme may have received a redress payment through a state-based redress scheme, as children were removed to other states.

If an applicant has already received relevant compensation or payments from other sources (e.g. existing redress schemes or via claims) in relation to forced removal from family, in determining the

amount of the redress payment under the Scheme, these payments would be deducted from the amount of the redress payment, however the applicant can still be eligible to access the healing assistance payment (if one was not part of their previous financial settlement) and the direct personal response.

### Consultation

The NIAA has an ongoing relationship with The Healing Foundation, the Link Up Services and Social Emotional Wellbeing providers and engages with these organisations regularly on issues relevant to Stolen Generations policy and programs. It is through these relationships and listening to these organisations that this Scheme has been developed.

In addition to being informed by the 1997 *Bringing them home* report and recommendations, the Scheme draws from The Healing Foundation's recent Stolen Generations reports:

1. - *Bringing them Home 20 years on: an Action Plan for Healing May 2017*.- *Our Healing: Recommendations for urgent action to meet the contemporary needs of Stolen Generations and to address intergenerational trauma*, submitted to the Department of the Prime Minister and Cabinet on 18 June 2018; and - The Foundation's 2021 report, *Make Healing Happen – It's time to act*.

The Healing Foundation, in its role in partnering with Stolen Generations survivors and organisations to address the ongoing trauma caused by forced removal of children from their families, is well placed to ensure the Scheme operates to best meet the needs of Stolen Generations survivors. The Healing Foundation consults regularly and extensively with Stolen Generations organisations about issues impacting and relevant to members of the Stolen Generations and their families.

Consultation with key Stolen Generations organisations is occurring during the establishment period to ensure that the Scheme delivers on being survivor-focussed and trauma-informed, and that support is available for those participating in the Scheme.

NIAA continues to engage with both the Department of Social Services and the Department of Defence about their respective redress schemes, the National Redress Scheme and the Defence Reparations Scheme (including its predecessor, the Defence Abuse Response Taskforce) and any learnings that may be applied to the Scheme. NIAA is also engaging with Aboriginal Affairs NSW in relation to the NSW Scheme.

### Additional Support

The Australian Government also continues to invest in programs that provide practical support for the Stolen Generations and their families in healing, and in 2021-22 is investing \$51.7 million in these supports, including:

- Over \$7.2 million for national projects through:
  - The Healing Foundation (\$6.6 million) to continue its work to support Aboriginal and Torres Strait Islander people with their healing, and
  - the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Family History Unit (\$0.6 million) to continue its work to help Aboriginal and Torres Strait Islander people looking for information about their families by providing family history research assistance, access to information, skills and knowledge.
- Over \$12.1 million for Link Up family tracing, reunion and support services through eight organisations in New South Wales, Queensland, Victoria, Northern Territory, South

Australia and Western Australia, and a further \$0.5 million for family tracing and support services in the Australian Capital Territory region.

- Over \$25.9 million for Social Emotional and Wellbeing (SEWB) Support Services that provide holistic support to improve Indigenous social and emotional wellbeing, including through individual and group counselling, case management work and referrals to other relevant support services. These SEWB activities work closely with Link Up Services and other relevant services and organisations to assist the needs of clients affected by past government policies, in particular Stolen Generations members, to provide culturally safe, holistic, person centred care.
- Over \$5.8 million for SEWB and Alcohol and Other Drugs Workforce Development and Support Units through seven organisations to support staff with professional development and training.

### **Final remarks**

The Scheme responds to calls by Indigenous community stakeholders for the establishment of a redress scheme.

The Australian Government is committed to a process of truth-telling as part of the nation's journey to reconciliation, and the development and implementation of the Scheme represents a major practical step forward towards healing, truth-telling and reconciliation following on from the *2008 Apology to Australia's Indigenous Peoples*.

Data shows that Stolen Generations survivors are worse off than other Aboriginal and Torres Strait Islander people of the same age on a range of health and socio-economic outcomes. Recognising this higher level of disadvantage, The Healing Foundation describes Stolen Generations survivors as 'the gap within the gap'. Stolen Generations survivors carry a legacy of social and economic disadvantage. Many have no ability to provide financial security for their families.

This Scheme supports Stolen Generations survivors to address their complex health and ageing needs and address the impacts of forced removal according to their own aspirations. This will likely have positive health outcomes for Stolen Generations survivors and their families, reducing the burden on services from poor mental and physical health in the future.

Thank you for the opportunity to respond to your inquiry.

If you have any questions regarding this joint submission or wish to discuss these issues in more detail, please contact Ms Andrea Kelly, A/g Group Manager, Social Policy and Programs on

Yours sincerely

Blair Exell  
A/g Chief Executive Officer  
National Indigenous Australians Agency

9 September 2021