

Connecting Home

A service for the Stolen Generations

ABN: 95 142 629 463



7 June 2010

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee members

re: Review of Government Compensation Payments

We are please to provide to the committee our submission to the above inquiry.

Connecting Home Limited, is a community based organisation providing a range of referral and and support services for members of the Stolen Generations in Victoria. Connecting Home also conducts research on issues of significance to Aboriginal and Torres Strait Islander people and their families impacted by past policies of child removal in order to develop an evidenced based policy and program environment.

The Inquiry's terms of reference state that as there have been previous inquiries in relation to compensation and Stolen Generations, Stolen Wages and Forgotten Australians (and as such opportunities for comment have been provided) the primary focus of this Inquiry will be to consider issues relevant to current government payment schemes in relation to children in care and other government schemes providing for discretionary payments.

However, while the opportunity to make comment on the specific subject matter of the inquiry is welcome, there remains a need to address issues of restitution to Indigenous Australians who continue to experience grief and trauma as a result of past government child removal policies.

Victoria does not have, nor is in the process of considering a financial redress scheme for persons who have experienced negative impacts of being in institutional care as a child. For many Aboriginal people, this experience meant that often they were forcibly removed from their family and community, and in many circumstances relocated to orphanages and other institutions far away from their families.

While other states such as Tasmania, Western Australia and Queensland have introduced redress schemes for people who were in institutional care as a child, the Victorian government refuses to establish any such scheme.

However, the Victorian government does provide funding for the delivery of services to members of the Stolen Generations (i.e. Connecting Home) and as recently as 2009 provided funding to establish a service to provide support for members of the group known as the Forgotten Australians. While this funding is extremely welcome and provides much needed services for these groups, it cannot substitute for compensation payments made to individuals in recognition and admission of the government's responsibility for the neglect and abuse experienced by many children in institutional care.

Presently, the only avenue for claiming compensation is via a personal injury claim through the court system. There are a range of barriers to accessing this process, and for many Aboriginal people, the legal system remains fraught with systemic impediments.

The *Scheme for Compensation for Detriment caused by Defective Administration* (CDDA Scheme), one of the areas of focus of this Inquiry, is a limited form of compensation and relies on the agency in question to 'provide compensation where there is a moral rather than a legal obligation to do so'.

According to the Commonwealth Ombudsman:

Common examples of the CDDA payments being made are when a person incurs expenses or loses eligibility for a benefit because of incorrect agency advice; a penalty or debt is wrongly imposed; personal property is damaged or documents are lost by an agency; or a computer error results in delayed payment or unreasonable delay in approving an application.¹

There is little information publicly available on the numbers of Aboriginal people who have made claim to the CDDA scheme. Although it is understood individual agencies report annually to the Auditor-General in relation to the scheme. However, it is not unreasonable to assume that information on this kind of redress is not commonly known throughout the Australian community, let alone in communities that experience poor literacy levels. It can be safely assumed that there is scant awareness of the CDDA scheme in the community.

Similarly, a cursory desktop review of some government websites revealed a lack of information of debt waiving schemes. Some members of the Aboriginal community, for a range of reasons, experience falling into debt with some government departments such as Centrelink and the ATO for example. Often people will attempt to avoid addressing debt, which only exacerbates their situation. This is largely because there is little information about the way government departments can negotiate with the debtor in relation to the amount outstanding.

As a corollary to this, a recent research paper investigating the lack of access to some Centrelink products revealed that many people are missing out on entitlements because of a lack of awareness. The research claims:

Finding out about the availability of entitlements and understanding the complexity of long forms and eligibility criteria can present hurdles to the

¹ Commonwealth Ombudsman (2010) *Compensation for detriment caused by defective administration*, Fact Sheet 9, Commonwealth Government, Canberra.

very people who have the most to gain from assistance and broader social participation. Thus, more needs to be done to raise the public's awareness of and simplify its access to the help that government offers.²

While the above research paper focuses on poor access to Centrelink entitlements as a result of a lack of awareness, mainly as a consequence of poor product promotion, it could be extrapolated that the same lack of promotion of government redress and debt waiving schemes might also result in low levels of awareness and subsequent uptake of debt waiving schemes. It is a recommendation of this submission that research be undertaken to identify the extent to which people, including a specific Aboriginal cohort, access and are aware of government redress and debt waiver schemes.

Further, the Australian National Audit Office 2003/04 review of Compensation Payment and Debt Relief in Special Circumstances concluded that:

... there was a need to improve certain aspects of particular compensatory mechanisms and the overall coordination of all the arrangements. Those improvements would provide for greater consistency and accountability across all the mechanisms examined, and for the processing of claims in a more timely manner. In particular, the ANAO considered that:

- a broad explanatory framework, or set of guidelines, should be developed for the increased awareness in managing, actioning and reporting of ex gratia payments.*

In Victoria the Aboriginal Credit & Debt Clinic (ACDC) is a joint project between the Public Interest Law Clearing House (PILCH) and the Victorian Aboriginal Legal Service (VALS). The project provides free legal advice and information on credit and debt matters to Aboriginal people at four locations in regional and rural Victoria.

PILCH in identifying the need for this project states:

It is well established that there is both a causal and consequential relationship between credit and debt problems on the one hand and financial disadvantage and social exclusion on the other. This relationship is particularly pronounced in relation to Aboriginal Australians, many of whom experience income poverty, have limited legal literacy and may be susceptible to financial exploitation.³

Overall, it appears that the lack of awareness of government schemes to provide compensation for defective government service and those that waive or reduce debts owed to government require widespread promotion so as to attain broad public awareness of such redress schemes. In order to promote such schemes throughout the Aboriginal community, innovative and culturally competent awareness materials must be developed.

² Baker, D. (2010) *Missing Out: Unclaimed government assistance and concession benefits*, Policy Brief No.14, Australia Institute, Manuka, ACT.

³ Public Interest Law Clearing House (2010) downloaded from website 2 June 2010
<http://www.pilch.org.au/Page.aspx?ID=436>

Finally, although one component of this inquiry is examining state statutory schemes relating to children in care, the scope is narrow and does not address matters of compensation for those Aboriginal and Torres Strait Islander people affected by past child removal policies.

Connecting Home in its role as advocate for Victorian members of the Stolen Generations takes this opportunity to call for the Australian government to develop a meaningful reparations scheme that fully acknowledges the gross human rights violations experienced by those who were removed from family, community and culture.

Dr Sarah Pritchard writes:

*The provision of monetary compensation is largely a symbolic act because the loss, grief and trauma experienced by victims of gross human rights violations can never be adequately addressed. Nonetheless, for many victims compensation is of major significance. From the victim's perspective, it has been suggested, monetary compensation "concretizes the confirmation of responsibility, wrongfulness, s/he is not guilty and somebody cares about it." This is not the money but what the money signifies - vindication. Importantly, as well, for many victims, monetary support can make a practical difference, can make the lives of communities and individuals easier.*⁴

If the Australian government is truly serious in its commitment to the project of reconciliation with the first Australians, then more steps must be taken to redress the wrongs of the past, and we urge the committee to consider the establishment of a compensation scheme for Aboriginal and Torres Strait Islander people who were removed from family.

Finally, we thank the committee for the opportunity to provide comment to the Inquiry and look forward to its outcomes.

Yours sincerely,

John Dommett
Chief Executive Officer
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⁴ Pritchard, S., "The Stolen Generations and Reparations" (1997) 4(3) UNSW Law Journal Forum 28, 28-29