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Stolen Generations Reparations Tribunal Bill 2008

No. , 2008

(Senator Siewert)

**A Bill for an Act to provide for the establishment of
a Stolen Generations Reparations Tribunal to
decide and make recommendations on claims for
reparation and other matters, and for related
purposes**

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1 **A Bill for an Act to provide for the establishment of**
2 **a Stolen Generations Reparations Tribunal to**
3 **decide and make recommendations on claims for**
4 **reparation and other matters, and for related**
5 **purposes**

6 The Parliament of Australia enacts:

7 **Part 1—Preliminary**
8

9 **1 Short title**

10 This Act may be cited as the *Stolen Generations Reparations*
11 *Tribunal Act 2008*.

Section 2

1 **2 Commencement**

2 This Act commences on the day on which it receives the Royal
3 Assent.

4 **3 Interpretation**

5 In this Act:

6 ***Aboriginal or Torres Strait Islander person*** means anybody who
7 identifies as an Aboriginal person or a Torres Strait Islander as
8 defined in the *Aboriginal and Torres Strait Islander Act 2005*.

9 ***Australian government*** means the government of the
10 Commonwealth of Australia or the government of an Australian
11 state or territory.

12 ***common experience payment*** means a lump sum payment that
13 recognises the experience of being a member of the Stolen
14 Generations and its impacts.

15 ***eligibility criteria*** means the criteria in section 30 which determine
16 whether a claimant for reparation is eligible for a form of
17 reparation or for an ex gratia payment.

18 ***ex gratia payment*** means a payment referred to in section 29.

19 ***Fund*** means the Stolen Generations Fund established under
20 section 33.

21 ***Indigenous person*** means an Aboriginal or Torres Strait Islander
22 person.

23 ***Principles*** means the Principles set out in section 5.

24 ***Stolen Generations*** means persons eligible for ex gratia payments
25 or reparation under this Act.

26 ***Tribunal*** means the Stolen Generations Reparations Tribunal
27 established by section 4.

28 ***Tribunal member*** means a member of the Tribunal appointed
29 under section 8 and includes the Chair of the Tribunal.

Section 3

1 ***Van Boven Principles*** means the Basic Principles and Guidelines
2 on the Right to Reparation for Victims of Gross Violations of
3 Human Rights and Humanitarian Law (UN Doc
4 E/CN.4/Sub.2/1996/17, 24 May 1996) drafted in 1996 by Professor
5 Theo van Boven.
6

Section 4

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Part 2—Stolen Generations Reparations Tribunal

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4 Establishment of Tribunal

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(1) The Stolen Generations Reparations Tribunal is established by this section.

6

7

(2) In carrying out its functions, the Tribunal is to have regard to the Principles set out in section 5.

8

9

5 The Principles

10

The Principles are:

11

(a) acknowledgement that forcible removal policies were racist and caused emotional, physical and cultural harm to the Stolen Generations;

12

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14

(b) Indigenous children should not, as a matter of general policy, be separated from their families;

15

16

(c) the distinct identity of the Stolen Generations should be recognised and they should have a say in shaping reparation;

17

18

(d) Indigenous persons affected by removal policies should be given information to facilitate their access to the Tribunal and other options for redress;

19

20

21

(e) reparation for the effects of forcible removals should be guided by the Van Boven Principles.

22

23

6 Constitution of Tribunal

24

(1) The Tribunal consists of the following members:

25

(a) a Chair;

26

(b) 6 other members, at least 3 of whom must be Aboriginal or Torres Strait Islander persons.

27

28

Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

29

- 1 (2) The Tribunal is constituted by the Chair and any 4 Tribunal
 2 members, 2 of whom must be Aboriginal or Torres Strait Islander
 3 persons.
- 4 (3) The Chair or the acting Chair, as the case may be, is to preside at a
 5 sitting of the Tribunal.

6 **7 Procedures for merit selection of appointment of Tribunal** 7 **members**

- 8 (1) The Attorney-General must, by writing, determine a code of
 9 practice within 15 days of the commencement of this Act, for
 10 selecting persons to be nominated by the Attorney-General for
 11 appointment as members of the Tribunal, that sets out general
 12 principles on which the selections are to be made, including but not
 13 limited to:
 14 (a) merit; and
 15 (b) independent scrutiny of appointments; and
 16 (c) probity; and
 17 (d) openness and transparency.
- 18 (2) After determining a code of practice under subsection (1), the
 19 Attorney-General must publish the code in the *Gazette*.
- 20 (3) A code of practice determined under subsection (1) is a legislative
 21 instrument for the purposes of the *Legislative Instruments Act*
 22 *2003*.

23 **8 Appointment of Tribunal members**

- 24 (1) Each Tribunal member is to be appointed by the Governor-General
 25 by written instrument.
- 26 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*
 27 *Act 1901*.
- 28 *Basis of appointments*
- 29 (2) The Chair of the Tribunal is to be appointed on a full-time basis.
- 30 (3) A Tribunal member (other than the Chair of the Tribunal) may be
 31 appointed on a full-time basis or a part-time basis.

Section 9

1

Validation

2

- (4) The appointment of an individual as a Tribunal member is not invalid because of a defect or irregularity in connection with the individual's appointment.

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4

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Period of appointment

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- (5) A Tribunal member holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.

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9

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

10

11

9 Acting appointments

12

Acting Chair of Tribunal

13

- (1) The Governor-General must appoint a person to act as the Chair of the Tribunal:

14

15

- (a) during a vacancy in the office of the Chair of the Tribunal, whether or not an appointment has previously been made to the office; or

16

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18

- (b) during any period, or during all periods, when the Chair of the Tribunal:

19

20

- (i) is absent from duty or Australia; or

21

- (ii) is, for any reason, unable to perform the duties of the office.

22

23

Acting Tribunal member (other than Chair of Tribunal)

24

- (2) The Governor-General may appoint an individual to act as a Tribunal member (other than the Chair of the Tribunal):

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26

- (a) during a vacancy in the office of a Tribunal member (other than the Chair of the Tribunal), whether or not an appointment has previously been made to the office; or

27

28

29

- (b) during any period, or during all periods, when a Tribunal member (other than the Authority Chair of the Tribunal):

30

31

- (i) is absent from duty or Australia; or

1 (ii) is, for any reason, unable to perform the duties of the
2 office.

3 (3) An acting appointment under subsection (1) or (2) must be in
4 accordance with subsection 6(1) and section 7.

5 (4) If a person has been appointed under this section to act as a
6 Tribunal member during the absence of a Tribunal member and the
7 Tribunal member ceases to hold office without having resumed
8 duty, the period of appointment of the person so appointed is,
9 subject to this Act, deemed to continue until he or she resigns the
10 appointment, the appointment is terminated by the
11 Governor-General or a period of 12 months elapses from the day
12 on which the absent Tribunal member ceases to hold office,
13 whichever first happens.

14 *Terms and conditions*

15 (5) A person acting as a Tribunal member is to act in that capacity on
16 such terms and conditions as the Governor-General determines.

17 *Resignation*

18 (6) A person who is acting as a Tribunal member may resign his or her
19 acting appointment by giving the Governor-General a written
20 resignation. The resignation takes effect on the day it is received by
21 the Governor-General or, if a later day is specified in the
22 resignation, on that later day.

23 *Exercise of powers*

24 (7) A person acting as a Tribunal member in accordance with this
25 section has and may exercise all the powers, and must perform all
26 the functions and duties, conferred or imposed by this Act on a
27 Tribunal member and, for the purposes of the exercise of those
28 powers, or the performance of those functions and duties, this Act
29 has effect as if a reference to a Tribunal member included a
30 reference to a person acting as a Tribunal member.

Section 10

Validation

- 1
- 2 (8) Anything done by or in relation to an individual purporting to act
- 3 under an appointment is not invalid merely because:
- 4 (a) the occasion for the appointment had not arisen; or
- 5 (b) there was a defect or irregularity in connection with the
- 6 appointment; or
- 7 (c) the appointment had ceased to have effect; or
- 8 (d) the occasion to act had not arisen or had ceased.

9 Note: See section 33A of the *Acts Interpretation Act 1901*.

10 **10 Functions of Tribunal**

11 The Tribunal has the following functions:

- 12 (a) to decide whether a claimant is eligible for reparation or an
- 13 ex gratia payment;
- 14 (b) to decide on the appropriate reparation to be made in
- 15 response to a claim;
- 16 (c) to decide on the appropriate amount of any ex gratia payment
- 17 to be made in response to a claim;
- 18 (d) to provide a forum and process for truth and reconciliation by
- 19 which Indigenous persons affected by forcible removal
- 20 policies may tell their story, have their experience
- 21 acknowledged and be offered an apology by the Tribunal or
- 22 others;
- 23 (e) to consider any proposed legislation in accordance with
- 24 section 11;
- 25 (f) to inquire into prejudicial policies and practices in
- 26 accordance with section 12;
- 27 (g) such other functions as may be prescribed.

28 **11 Additional function—consideration of proposed legislation**

- 29 (1) The Tribunal must examine any proposed legislation referred to it
- 30 under subsection (2) and must report whether, in its opinion, the
- 31 proposed legislation or any of provisions of the proposed
- 32 legislation would be contrary to the Principles.

- 1 (2) Proposed legislation may be referred to the Tribunal by the
2 relevant Minister, or in the case of a bill introduced in the
3 Parliament, by a resolution of either House of the Parliament.

4 **12 Additional function—inquiry into prejudicial policies and**
5 **practices**

- 6 (1) If any Aboriginal or Torres Strait Islander person claims that he or
7 she, or any group of Aboriginal or Torres Strait Islander persons of
8 which he or she is a member, is or is likely to be prejudicially
9 affected by:
10 (a) any ordinance or any Act (whether or not still in force),
11 passed at any time on or after 31 December 1975; or
12 (b) any regulation, order, proclamation, notice or other statutory
13 instrument made, issued or given at any time on or after
14 31 December 1975 under any ordinance or Act referred to in
15 paragraph (a); or
16 (c) any policy or practice (whether or not still in force) adopted
17 by or on behalf of an Australian government, an Australian
18 government agency or a church organisation, or by any
19 policy or practice proposed to be adopted by or on behalf of
20 an Australian government, an Australian government agency
21 or a church organisation; or
22 (d) any act done or omitted to be done at any time on or after
23 31 December 1975, or proposed to be done or omitted to be
24 done, by or on behalf of an Australian government, an
25 Australian government agency or a church organisation;
26 and that the ordinance, Act, regulation, order, proclamation, notice,
27 other statutory instrument, policy, practice, act or omission, as the
28 case may be, was or is inconsistent with the Principles, he or she
29 may submit that claim to the Tribunal under this section.
- 30 (2) The Tribunal must inquire into every claim submitted under
31 subsection (1).
- 32 (3) If the Tribunal finds that a claim submitted to it under
33 subsection (1) is well-founded it may, if it thinks fit and having
34 regard to all the circumstances of the case, recommend to the
35 relevant Australian government, Australian government agency or
36 church organisation that action be taken to compensate for or

Section 13

- 1 remove the prejudice or to prevent other Indigenous persons from
2 being similarly affected in the future.
- 3 (4) A recommendation under subsection (3) may be in general terms or
4 may specify the action which, in the opinion of the Tribunal, the
5 relevant Australian government, Australian government agency or
6 church organisation should take.
- 7 (5) The Tribunal must cause a sealed copy of its findings and
8 recommendations (if any) with regard to any claim under
9 subsection (1) to be provided to:
- 10 (a) the claimant; and
11 (b) the relevant Australian government, Australian government
12 agency or church organisation; and
13 (c) any other person whom the Tribunal thinks it is appropriate
14 to do so.

15 **13 Powers of the Tribunal**

- 16 (1) The Tribunal has power to do all things necessary or convenient to
17 be done to perform its functions and, in particular, has power:
- 18 (a) to obtain information from Australian governments and
19 Australian government agencies; and
20 (b) to obtain further information from the claimant, if unable to
21 decide from the information obtained under paragraph (a)
22 whether a claimant is eligible for reparation or an ex gratia
23 payment; and
24 (c) to conduct investigations for the purposes of the performance
25 or exercise of any of its functions.
- 26 (2) An investigation under paragraph (1)(c) is to be conducted as the
27 Tribunal thinks fit.
- 28 (3) The Tribunal may exercise its powers notwithstanding any other
29 Australian government legislation relating to the confidentiality or
30 privacy of information.

14 Remuneration and allowances

- 1
- 2 (1) A Tribunal member is to be paid the remuneration that is
3 determined by the Remuneration Tribunal. If no determination of
4 that remuneration by the Tribunal is in operation, the Tribunal
5 member is to be paid the remuneration that is prescribed in the
6 regulations.
- 7 (2) A Tribunal member is to be paid the allowances that are prescribed
8 in the regulations.
- 9 (3) This section has effect subject to the *Remuneration Tribunal Act*
10 *1973*.

15 Obligation to disclose interests before considering a particular matter

- 11
- 12
- 13 (1) If a Tribunal member has an interest in a matter being considered
14 or about to be considered by the Tribunal, and the interest is an
15 interest that could conflict with the proper performance of the
16 functions of the Tribunal member's office, as those functions give
17 the Tribunal member a role in deciding a matter, the Tribunal
18 member must disclose the nature of the interest:
- 19 (a) to the other Tribunal members; and
20 (b) if applicable, to the claimant in the matter.
- 21 (2) The disclosure must be made as soon as possible after the relevant
22 facts have come to the member's knowledge.
- 23 (3) The disclosure must be recorded in any record of the Tribunal's
24 consideration of the matter.
- 25 (4) Unless the other Tribunal members and, if applicable, the claimant
26 in the matter consent, the member:
- 27 (a) must not be present during any deliberation by the Tribunal
28 on the matter; and
29 (b) must not take part in any decision of the Tribunal in relation
30 to the matter;
31 (c) must not exercise any powers of the Tribunal in relation to
32 the matter.

Section 16

1 (5) Consent under subsection (4) must be recorded in any record of the
2 Tribunal's consideration of the matter.

3 (6) Subsection (1) applies to interests whether direct or indirect, and
4 whether or not pecuniary.

5 **16 Outside employment**

6 A Tribunal member appointed on a full-time basis must not engage
7 in paid employment outside the duties of his or her office without
8 the Attorney-General's approval.

9 **17 Leave of absence**

10 (1) A Tribunal member appointed on a full-time basis has the
11 recreation leave entitlements that are determined by the
12 Remuneration Tribunal.

13 (2) The Attorney-General may grant a Tribunal member appointed on
14 a full-time basis leave of absence, other than recreation leave, on
15 the terms and conditions as to remuneration or otherwise that the
16 Attorney-General determines.

17 **18 Resignation**

18 (1) A Tribunal member may resign his or her appointment by giving
19 the Governor-General a written resignation.

20 (2) The resignation takes effect on the day it is received by the
21 Governor-General or, if a later day is specified in the resignation,
22 on that later day.

23 **19 Termination of appointment**

24 (1) The Governor-General may terminate the appointment of a
25 Tribunal member for misbehaviour or physical or mental
26 incapacity.

27 (2) The Governor-General may terminate the appointment of a
28 Tribunal member if:
29 (a) the member:

- 1 (i) becomes bankrupt; or
2 (ii) applies to take the benefit of any law for the relief of
3 bankrupt or insolvent debtors; or
4 (iii) compounds with his or her creditors; or
5 (iv) makes an assignment of his or her remuneration for the
6 benefit of his or her creditors; or
7 (b) the Attorney-General is satisfied that the performance of the
8 member has been unsatisfactory; or
9 (c) the member is absent, except on leave of absence, for 14
10 consecutive days or for 28 days in any 12 consecutive
11 months; or
12 (d) the member engages, except with the Attorney-General's
13 approval, in paid employment outside the duties of his or her
14 office; or
15 (e) the member fails, without reasonable excuse, to comply with
16 section 15.

17 **20 Other terms and conditions**

18 A Tribunal member holds office on the terms and conditions (if
19 any) in relation to matters not covered by this Act that are
20 determined by the Governor-General.
21

Section 21

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Part 3—Claims for reparation or ex gratia payment

3

4

21 Entitlement to reparation

5

The Tribunal must award reparation under a claim under this Act if the claimant satisfies one or more of the eligibility criteria set out in section 30.

6

7

8

22 Form of claim

9

(1) A claim for an ex gratia payment or reparation under this Act must be made in the form prescribed in the regulations.

10

11

(2) A claim under this Act must be accompanied by a certificate of Indigenous identity and a statement about the circumstances and impact of the removal.

12

13

14

(3) A claim under this Act must be made within 10 years of the commencement of this Act.

15

16

(4) A claimant may, with the consent of the Tribunal, amend a claim under this Act.

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(5) A claim under this Act may be made by a group of Indigenous persons.

19

20

(6) A claim may be made on behalf of a person under a legal disability by the guardian of that person.

21

22

(7) For the purposes of a claim under subsection (6), in order to determine eligibility under section 30, the person under the legal disability is to be regarded as the claimant.

23

24

25

23 Representation before Tribunal

26

At the hearing of a claim before the Tribunal, a claimant may appear in person or may be represented by some other person.

27

24 Procedure of Tribunal

- 1
- 2 (1) At the hearing of a claim before the Tribunal:
- 3 (a) the procedure of the Tribunal is, subject to this Act and the
- 4 regulations and to any other enactment, within the discretion
- 5 of the Tribunal;
- 6 (b) the hearing is to be conducted with as little formality and
- 7 technicality, and with as much expedition, as the
- 8 requirements of this Act and of every other relevant
- 9 enactment and a proper consideration of the matters before
- 10 the Tribunal permit; and
- 11 (c) the Tribunal is not bound by the rules of evidence but may
- 12 inform itself on any matter in such manner as it thinks
- 13 appropriate.
- 14 (2) At the hearing of a claim before the Tribunal, an Australian
- 15 government, an Australian government agency or a church
- 16 organisation involved in any way in the claim must use its best
- 17 endeavours to assist the Tribunal in its consideration of the claim.

25 Circumstances in which hearing may be dispensed with

18

19 If it appears to the Tribunal that a claim can be adequately decided

20 in the absence of the claimant and the claimant consents to the

21 claim being decided without a hearing, the Tribunal may decide the

22 claim by considering the documents or other material lodged with

23 or provided to the Tribunal and without holding a hearing.

26 Hearings to be in public except in special circumstances*Public hearing*

- 24
- 25
- 26 (1) Subject to this section, the hearing of a claim before the Tribunal
- 27 must be in public.
- 28 (2) If, at a time a hearing is in public, a person participates in the
- 29 hearing by a means allowed under section 27, the Tribunal is to
- 30 take such steps as are reasonably necessary to ensure that the
- 31 public nature of the hearing is preserved.

Section 27

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Private hearing etc.

- (3) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence, document or matter or for any other reason, the Tribunal may, by order:
 - (a) direct that a hearing or part of a hearing must take place in private and give directions as to the persons who may be present; and
 - (b) give directions prohibiting or restricting the publication of the names and addresses of persons appearing before the Tribunal; and
 - (c) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal.

- (4) In considering whether the hearing of a claim should be held in private, the Tribunal must take as the basis of its consideration the principle that it is desirable that hearings of claims before the Tribunal should be held in public and that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to the public, but must pay due regard to any reasons given to the Tribunal why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

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25 **27 Participation by telephone etc.**

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- The Tribunal in the hearing of a claim may allow a person to participate by:
- (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of communication.

31 **28 Forms of reparation**

32

- (1) The Tribunal may award reparation in the form of:

Section 28

-
- 1 (a) funding for Stolen Generations groups to provide culture and
 2 history centres, or healing centres, including funding for land
 3 or premises;
- 4 (b) funding for community education programs about the history
 5 of forcible removals;
- 6 (c) funding for community genealogy projects for Indigenous
 7 communities to help identify membership of the Stolen
 8 Generations and their dependants;
- 9 (d) monetary payments for individuals to meet current needs
 10 such as funding to travel to see family;
- 11 (e) funding for access to appropriate counselling services;
- 12 (f) funding for access to appropriate health services;
- 13 (g) funding for access to language and culture training;
- 14 (h) funding for memorials that appropriately reflect the views of
 15 members of the Stolen Generations;
- 16 (i) monetary compensation;
- 17 (j) any other form of reparation which the Tribunal considers
 18 appropriate in the circumstances.
- 19 (2) Funding and monetary payments under subsection (1) are payable
 20 from the Stolen Generations Fund established under section 33.
- 21 (3) The Tribunal may award one or more of the forms of reparation set
 22 out in subsection (1) in response to a claim.
- 23 (4) The Tribunal may award reparation under paragraph (1)(i) to
 24 claimants who prove that they suffered particular types of harm,
 25 such as sexual or physical assault.
- 26 (5) The Tribunal must have regard to the Van Boven Principles in
 27 awarding any other form of reparation under paragraph (1)(j).
- 28 (6) The Tribunal must where practicable award reparation that
 29 maximises group rather than individual reparation.
- 30 (7) In awarding reparation, the Tribunal must take into account
 31 whether the claimant has received an ex gratia payment under
 32 section 29, the nature and extent of any reparation received by the
 33 claimant under State or Territory legislation and any damages or

Section 29

- 1 compensation received by the claimant at common law or
2 otherwise.
- 3 (8) If the Tribunal is satisfied that reparation should be awarded under
4 a claim, the Tribunal must:
- 5 (a) notify the Trustee of the Stolen Generations Fund of the
6 amount to be disbursed to cover the cost of the award; or
7 (b) recommend the reparation measure for action by the relevant
8 government, church or non-government body.
- 9 (9) For the avoidance of doubt, for the purposes of this Act an ex
10 gratia payment under section 29 is not a form of monetary
11 compensation.

12 **29 Ex gratia payments**

- 13 (1) The Tribunal may award an ex gratia payment in respect of a claim
14 under this Act if the claimant satisfies the eligibility criteria in
15 subsection 30(1), (3) or (4), and indicates in the claim that the
16 claimant seeks an ex gratia payment.
- 17 (2) An ex gratia payment made under this section is payable from the
18 Stolen Generations Fund established under section 33.
- 19 (3) The amount of an ex gratia payment made in respect of a claim
20 referred to in subsection (1) is an amount not exceeding \$20,000
21 for a common experience payment and \$3,000 for each year that a
22 child was removed from his or her family and community while
23 under the age of 18 years.
- 24 (4) A claimant is not entitled to receive more than one ex gratia
25 payment under this section.
- 26 (5) In awarding an ex gratia payment under this section the Tribunal
27 may take into account any reparation, damages or compensation
28 awarded under State or Territory legislation, at common law or
29 otherwise.
- 30 (6) If the Tribunal decides to award an ex gratia payment under this
31 section in respect of a claim, the Tribunal must notify the Trustee
32 of the Stolen Generations Fund of the amount to be disbursed to
33 the claimant.
-

- 1 (7) Subject to section 31, the Tribunal must decide a claim for an ex
2 gratia payment as soon as is practicable after receiving the claim.
- 3 (8) If a person claims both an ex gratia payment and reparation, the
4 Tribunal may decide the claim for an ex gratia payment and defer
5 assessment of the claim for reparation.

6 **30 Eligibility criteria for an ex gratia payment or reparation**

- 7 (1) To be eligible for an ex gratia payment or reparation under this
8 subsection, a claimant must be:
- 9 (a) a person who was, as a child, removed from his or her family
10 under legislation that applied specifically to Aboriginal or
11 Torres Strait Islander persons; or
- 12 (b) an Aboriginal or Torres Strait Islander person who was, as a
13 child, removed from his or her family prior to 31 December
14 1975, if that removal was carried out, directed or condoned
15 by an Australian government or an agent of an Australian
16 government.
- 17 (2) A claimant is not eligible for reparation under subsection (1) if the
18 Tribunal is satisfied that the removal was in the best interests of the
19 child.
- 20 (3) To be eligible for an ex gratia payment or reparation under this
21 subsection, a claimant must be:
- 22 (a) an Aboriginal or Torres Strait Islander person; and
23 (b) a living descendant of a deceased person who would have
24 satisfied the criteria in subsection (1).
- 25 (4) To be eligible for an ex gratia payment or reparation under this
26 subsection, a claimant must be:
- 27 (a) an Aboriginal or Torres Strait Islander person; and
28 (b) a relative, family member or descendant of a person who
29 satisfies or would have satisfied the criteria in subsection (1),
30 and who the Tribunal is satisfied suffered or was harmed as a
31 consequence, in whole or in part, of the removal of that
32 person from his or her family.

Section 31

- 1 (5) A group of persons may make a joint claim for reparation,
2 provided that:
3 (a) all members of the group are Aboriginal or Torres Strait
4 Islander persons; and
5 (b) all members of the group suffered detriment as a result of
6 circumstances that gave rise to eligibility of any member of
7 that group for reparation under subsection (1), (3) or (4).
- 8 (6) The Tribunal must have regard to statements by community and
9 other organisations such as Link Ups and Aboriginal and Islander
10 Child Care Agencies for the purpose of determining eligibility
11 under this section.

12 **31 Time for completion of assessment of claims**

13 The Tribunal must decide a claim under this Act within 12 months
14 of receiving the claim.

15 **32 Application of the *Administrative Decisions (Judicial Review) Act***
16 ***1977***

- 17 (1) The making of a decision by the Tribunal under this Act is subject
18 to judicial review under the *Administrative Decisions (Judicial*
19 *Review) Act 1977* and the Tribunal may be requested to give a
20 statement of reasons under section 13 of that Act.
- 21 (2) Judicial review may be sought by the claimant or by any
22 government, church or non-government body that is the subject of
23 a recommendation under paragraph 28(8)(b).
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Part 4—Stolen Generations Fund

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33 Establishment of Stolen Generations Fund

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(1) The Stolen Generations Fund is established by this section.

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(2) The purpose of the Fund is to fund:

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(a) reparation awarded to an eligible claimant under section 28;

8

and

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(b) an ex gratia payment made under section 29.

10

(3) Payments from the Fund are to be met from funds appropriated by

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the Parliament for that purpose, together with any contribution by

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an Australian government, a church organisation involved in

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administering forcible removal policies or any other contributor.

14

(4) The Stolen Generations Fund is to be administered by a Trustee to

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be appointed by the Attorney-General.

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Section 34

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Part 5—Organisation and administration of Tribunal

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34 Registrar

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(1) There is to be a Registrar of the Tribunal.

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(2) The Registrar is to be a person engaged under the *Public Service Act 1999*, or a person whose services are made available under an arrangement made under that Act, who is appointed as the Registrar by the Attorney-General by written instrument.

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Term of appointment

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(3) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of appointment, but is eligible for re-appointment.

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Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

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Remuneration as public servant

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(4) The office of Registrar is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

19

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Leave of absence

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(5) The Registrar has such recreation leave entitlements as are specified in the instrument of appointment.

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Resignation

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(6) The Registrar may resign his or her appointment by giving the Attorney-General a written resignation.

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Termination of appointment

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(7) The Attorney-General may, by writing, terminate the appointment of the Registrar.

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- 1 (8) The appointment of the Registrar is terminated if the Registrar
 2 ceases to be engaged under the *Public Service Act 1999* or to be a
 3 person whose services are made available under an arrangement
 4 made under that Act.

5 *Acting appointment*

- 6 (9) The Attorney-General may appoint a person engaged under the
 7 *Public Service Act 1999*, or a person whose services are made
 8 available under an arrangement made under that Act, to act as the
 9 Registrar:
 10 (a) during a vacancy in the office of Registrar (whether or not an
 11 appointment has previously been made to the office); or
 12 (b) during any period, or during all periods, when the Registrar is
 13 absent from duty or from Australia or is, for any reason,
 14 unable to perform the duties of the office.
- 15 (10) Anything done by or in relation to a person purporting to act under
 16 this section is not invalid merely because:
 17 (a) the occasion for the appointment had not arisen; or
 18 (b) there was a defect or irregularity in connection with the
 19 appointment; or
 20 (c) the appointment had ceased to have effect; or
 21 (d) the occasion to act had not arisen or had ceased.
- 22 (11) The Registrar holds office on such terms and conditions (if any) in
 23 respect of matters not provided for by this Act as are determined by
 24 the Attorney-General.

25 **35 Other staff of the Tribunal**

26 The staff required to assist the Registrar in the performance of his
 27 or her functions are to be persons engaged under the *Public Service*
 28 *Act 1999* or persons whose services are made available under
 29 arrangements made under that Act.

30 **36 Statutory Agency etc. for purposes of Public Service Act**

31 For the purposes of the *Public Service Act 1999*:

Section 37

- 1 (a) the Registrar and the APS employees assisting the Registrar
2 together constitute a Statutory Agency; and
3 (b) the Registrar is the Head of that Statutory Agency.

4 **37 Engagement of consultants etc.**

- 5 (1) The Registrar may, on behalf of the Commonwealth, engage
6 persons having suitable qualifications and experience as
7 consultants to, or to perform services for, the Registrar.
8 (2) An engagement under subsection (1) is to be made by written
9 agreement.

10 **38 Management of administrative affairs of Tribunal**

- 11 (1) The Registrar is responsible for managing the administrative affairs
12 of the Tribunal.
13 (2) For that purpose, the Registrar has power to do all things that are
14 necessary or convenient to be done, including, on behalf of the
15 Commonwealth:
16 (a) entering into contracts; and
17 (b) acquiring or disposing of personal property.
18 (3) The powers given to the Registrar by subsection (2) are in addition
19 to any powers given to the Registrar by any other provision of this
20 Act or by any other Act.
21 (4) Subsection (2) does not authorise the Registrar to:
22 (a) acquire any interest or right that would constitute an interest
23 in land for the purposes of the *Lands Acquisition Act 1989*; or
24 (b) enter into a contract under which the Commonwealth is to
25 pay or receive an amount exceeding \$250,000 or, if a higher
26 amount is prescribed, that higher amount, except with the
27 approval of the Attorney-General.
28 (5) The Attorney-General may, by legislative instrument, give the
29 Registrar directions regarding the exercise of his or her powers
30 under this Part.

1 **39 Arrangement of business**

2 (1) Subject to this Act and to the regulations, the Registrar is
3 responsible for ensuring the expeditious and efficient discharge of
4 the business of the Tribunal.

5 (2) The regulations may provide for:

- 6 (a) the operations of the Tribunal generally; and
- 7 (b) the operations of the Tribunal at a particular place; and
- 8 (c) the procedure of the Tribunal generally; and
- 9 (d) the procedure of the Tribunal at a particular place; and
- 10 (e) the consideration of matters by the Tribunal; and
- 11 (f) the arrangement of the business of the Tribunal; and
- 12 (g) the places at which the Tribunal may sit.

13 **40 Places of sitting**

14 Sittings of the Tribunal are to be held from time to time as required
15 at the places determined under the regulations, but the Tribunal
16 may sit at any place in Australia or in an external Territory.

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Section 41

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Part 6—Miscellaneous

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41 Protection from liability

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A Tribunal member does not incur any personal liability for an act done or omitted to be done by the Tribunal in good faith in the performance or exercise, or purported performance or exercise, of any of its functions or powers under this Act.

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42 Confidentiality

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(1) A Tribunal member must not divulge the information obtained under this Act otherwise than as provided by this section.

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(2) A Tribunal member may divulge information obtained under this Act in so far as it is necessary to do so to carry out a function, or exercise a power, of the Tribunal under this Act.

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43 Annual reports

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(1) As soon as practicable after each 30 June, the Tribunal must prepare a report on the operation of this Act for the 12 months ending on that 30 June and provide it to the Attorney-General.

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(2) The Attorney-General must cause a copy of a report prepared under subsection (1) to be laid before each House of the Parliament within 5 sitting days of that House after the day on which the Minister receives the report.

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(3) The Tribunal is to cause copies of a report prepared under subsection (1) to be widely available to the public.

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44 Death of claimant

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(1) A claim under this Act does not lapse because the claimant dies before the claim is decided.

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- 1 (2) If a claimant dies before the claim is decided, any ex gratia
2 payment or monetary reparation payable in relation to the claim is
3 to be paid to the estate of the deceased claimant.

4 **45 Regulations**

- 5 The Governor-General may make regulations prescribing matters:
6 (a) required or permitted by this Act to be prescribed; or
7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.