

South Australia

Stolen Generations (Compensation) Bill 2014

A BILL FOR

An Act to establish a scheme for ex gratia payments of compensation to be made to members of the Stolen Generations; and for other purposes.

Contents

Preamble

Part 1—Preliminary

- 1 Short title
- 2 Interpretation
- 3 Interaction between this Act and other laws

Part 2—Administration

- 4 Functions of the Minister
- 5 Delegation

Part 3—Ex gratia payment scheme

- 6 Eligibility for ex gratia payment under Act
- 7 Applications for ex gratia payment under Act
- 8 Minister may make ex gratia payment under Act
- 9 Minister to notify applicant of decision
- 10 Payments to be made from Victims of Crime Fund
- 11 Application may survive death of applicant

Part 4—Review

- 12 Certain decisions of Minister may be reviewed by SACAT

Part 5—Miscellaneous

- 13 Liability
 - 14 Confidentiality
 - 15 Annual report
 - 16 Regulations
-

Preamble

- 1 The Parliament of South Australia recognises that—
 - (a) former State and Commonwealth policies condoning or encouraging forcible removals were racist and caused emotional, physical and cultural harm to the Stolen Generations; and
 - (b) indigenous children should not, as a matter of general policy, be separated from their families; and
 - (c) the distinct identity of the Stolen Generations should be recognised.
 - 2 In further recognition of the experiences of members of the Stolen Generations, and the impact of that experience on them and their families, it is the intention of the Parliament of South Australia to make ex gratia payments to eligible members of the Stolen Generations and their children.
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Stolen Generations (Compensation) Act 2014*.

2—Interpretation

5 In this Act—

Aboriginal person means a person of the Aboriginal race of Australia;

child means a person under 18 years of age;

eligible person means a person who is, pursuant to section 6, eligible for an ex gratia payment under this Act;

10 *Victims of Crime Fund* means the Victims of Crime Fund continued under the *Victims of Crime Act 2001*.

3—Interaction between this Act and other laws

This Act does not exclude or derogate from rights to damages or compensation that exist under any other Act or law.

Part 2—Administration

4—Functions of the Minister

The Minister has the following functions under this Act:

- 20 (a) to determine whether an applicant is eligible for an ex gratia payment under this Act and, if so, to determine the appropriate amount of the payment;
- (b) such other functions as may be assigned to the Minister by or under this Act.

5—Delegation

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- 25 (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister to act in any matter; and
 - (d) is revocable at will.

Part 3—Ex gratia payment scheme

6—Eligibility for ex gratia payment under Act

- (1) A person is eligible for an ex gratia payment under this Act if he or she—
- 5 (a) is an Aboriginal person who was, as a child, removed from his or her family prior to 31 December 1975 (where the removal was carried out, directed or condoned by the State government or an agent of the State government); or
- (b) is the biological child of a deceased person contemplated by paragraph (a).
- (2) A person is not eligible for an ex gratia payment under this Act unless he or she is living at the time that this section comes into operation.
- 10 (3) A person is not eligible for an ex gratia payment under this Act if the Minister determines that the person's removal from his or her family was genuinely in the person's best interests.
- (4) A person is not eligible for an ex gratia payment under this Act if the person's removal from his or her family arose out of the person having been found guilty of the
- 15 commission of an offence.

7—Applications for ex gratia payment under Act

- (1) An application for an ex gratia payment under this Act must be made to, and in a manner and form approved by, the Minister.
- 20 (2) An application may, in accordance with any requirement of the Minister, be made on behalf of a person who purports to be an eligible person (and, in such a case, that person will be taken to be applicant).
- (3) An application must be made within 6 months after the commencement of this section.
- (4) An application must include such information as may reasonably be required by the Minister.

8—Minister may make ex gratia payment under Act

- (1) The Minister may, if he or she is of the opinion that an applicant for an ex gratia payment under the Act is an eligible person, make an ex gratia payment to the person as follows:
- 30 (a) in the case of an applicant contemplated by section 6(1)(a)—
- (i) the Minister may make a lump sum payment (not exceeding \$50 000) in recognition of the applicant's experience of being a member of the Stolen Generations and the impact of that experience; or
- 35 (ii) the Minister may make a payment (not exceeding \$50 000) of an amount of \$5 000 for each year, or part of a year, during which the applicant did not, as a child, reside on a permanent basis with his or her family as a consequence of having been forcibly removed;

(b) in the case of an applicant contemplated by section 6(1)(b)—subject to subsection (2), the Minister may make a lump sum payment (not exceeding \$5 000) in recognition of the impact of the applicant's parent having been a member of the Stolen Generations.

5 (2) In the case where there are multiple applicants consisting of the biological children of a particular deceased person, the total amount of all ex gratia payments made to the applicants—

(a) is not to exceed \$50 000; and

(b) is to be distributed equally among the applicants.

10 (3) In the case where there is likely to be multiple applicants consisting of the biological children of a particular deceased person, the Minister may defer determining and making an ex gratia payment under this Act to the applicants until the expiry of the period within which applications must be made.

Note—

15 That period expires 6 months after the commencement of section 7—see section 7(3).

(4) In determining whether an applicant is an eligible person, the Minister—

(a) is not bound by the rules of evidence and may inform himself or herself on any matter as he or she thinks fit; and

20 (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

9—Minister to notify applicant of decision

The Minister must, as soon as is reasonably practicable after determining an application and in accordance with any requirement set out in the regulations, notify an applicant for an ex gratia payment under the Act of the following:

25 (a) whether or not, in the Minister's opinion, the applicant is an eligible person (including, if the Minister is not of the opinion that the applicant is an eligible person, the reasons for that opinion);

(b) the amount of any ex gratia payment under this Act to be made to the applicant by the Minister;

30 (c) any other information required under the regulations.

~~10—Payments to be made from Victims of Crime Fund~~

—(1) ~~Despite a provision of the *Victims of Crime Act 2001*, an ex gratia payment under this Act is to be made from the Victims of Crime Fund (and any levy raised or other payment made into that fund under that Act before the commencement of this section will be taken to be valid, and to always have been valid).~~

35

—(2) ~~An ex gratia payment under this Act may be made by electronic funds transfer or any other manner the Minister thinks fit.~~

11—Application may survive death of applicant

40 (1) An application for an ex gratia payment under this Act does not lapse because the applicant dies before the application is decided.

- (2) If an applicant for an ex gratia payment under this Act dies before the application is decided, an ex gratia payment, if payable on the application, is to be paid to the estate of the deceased.
- (3) The executor of the estate of a person who dies after the commencement of section 7 may, subject to that section, make an application on behalf of the estate of the deceased person.

Part 4—Review

12—Certain decisions of Minister may be reviewed by SACAT

- (1) The Tribunal has jurisdiction to deal with a matter consisting of a review of a decision of the Minister that a particular person is, or is not, an eligible person.
- (2) A review of a decision of the Minister falls within the review jurisdiction of the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (3) An application for a review of a decision must be made to the Tribunal within 1 month after the applicant receives notice of the relevant decision (or such longer period as the Tribunal may allow).
- (4) In this section—
Tribunal South Australian Civil and Administrative Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.

Part 5—Miscellaneous

13—Liability

For the purposes of the law of this State, no admission of liability or fault is to be inferred from the enactment of this Act, or the making of a payment under this Act.

14—Confidentiality

- (1) An Act or law requiring a person to keep particular information confidential or in any way restricting the disclosure or publication of information does not prevent a person from providing information for the purposes of determining an application under this Act.
- (2) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in connection with the administration or enforcement of this or any other Act; or
 - (d) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- (3) Subsection (2) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

15—Annual report

- 5 (1) The Minister must, on or before 31 October in each year, prepare a report on the operation of this Act during the preceding financial year.
- (2) The Minister must, within 12 sitting days after receiving the Authority's report, have copies of the report laid before both Houses of Parliament.

16—Regulations

- 10 The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.