

TASMANIA

**STOLEN GENERATIONS OF ABORIGINAL
CHILDREN BILL 2006**

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STOLEN GENERATIONS OF ABORIGINAL CHILDREN BILL 2006

*(Brought in by the Premier, the Honourable Paul Anthony
Lennon)*

A BILL FOR

An Act to provide for ex gratia payments to be made to the Stolen Generations of Aboriginal children

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Stolen Generations
of Aboriginal Children Act 2006*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention
appears –

“Aboriginal person” has the same meaning
as in the *Aboriginal Lands Act 1995*;

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“eligibility criteria” means the criteria, set out in section 5, for determining whether an applicant for an ex gratia payment is eligible for the payment;

“ex gratia payment” means a payment referred to in section 9;

“Stolen Generations” means persons eligible for ex gratia payments under this Act;

“Stolen Generations Assessor” means the person appointed under section 14 as the Stolen Generations Assessor.

4. Entitlement to ex gratia payment

- (1) An ex gratia payment is payable on an application under this Act if the applicant satisfies the eligibility criteria set out in section 5(1), (2) or (3).
- (2) Where a person makes application under the eligibility criteria set out in section 5(1), (2) and (3) and the Stolen Generations Assessor determines that the person satisfies one or more of the eligibility criteria, the person is entitled to receive only one ex gratia payment.

5. Eligibility criteria for ex gratia payment

- (1) An applicant for an ex gratia payment –
 - (a) must be an Aboriginal person; and

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- (b) must have been living on 16 October 2006; and
 - (c) must on or before 31 December 1975 have been admitted as a child of the State under the *Infants' Welfare Act 1935* or committed under that Act to the care of the responsible Department in relation to the *Children, Young Persons and Their Families Act 1997* or admitted as, or declared to be, a ward of the State under the *Child Welfare Act 1960*; and
 - (d) after having been admitted as a child of the State under the *Infants' Welfare Act 1935* or after having been declared to be a ward of the State under the *Child Welfare Act 1960*, must have remained a child of the State or a ward of the State for a continuous period of 12 months or more, and must not have been in the care of an Aboriginal family during that period.
- (2) An applicant for an ex gratia payment –
- (a) must be an Aboriginal person; and
 - (b) must have been living on 16 October 2006; and
 - (c) must have been a person under the age of 18 years who was removed from his or her family during the period from 1 January 1935 to 31 December 1975 and remained removed from his or her family for a continuous period of 12

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months or more, and must not have been in the care of an Aboriginal family during that period; and

(d) must be a person who the Stolen Generations Assessor is satisfied –

(i) was removed from his or her family by the active intervention of an Agency, within the meaning of the *State Service Act 2000*, and without the approval of a parent or guardian of the applicant; or

(ii) was removed from his or her family by the active intervention of an Agency, within the meaning of the *State Service Act 2000*, and that duress or undue influence was applied to bring about that removal.

(3) An applicant for an ex gratia payment must be –

(a) an Aboriginal person; and

(b) a living biological child of a deceased person who satisfies the criteria in subsection (1)(a), (c) and (d) or subsection (2)(a), (c) and (d).

(4) If an applicant for an ex gratia payment was removed from his or her family as a result of being convicted of an offence, the applicant is not eligible for an ex gratia payment.

- (5) Subsection (4) does not apply to an applicant who has been convicted of being a neglected child under the *Infants' Welfare Act 1935* or the *Child Welfare Act 1960*.
- (6) For the purposes of this section –
 - “**Aboriginal family**” means a family in which one or both of the primary carers is an Aboriginal person.

6. Applications for ex gratia payment

- (1) An application for an ex gratia payment is to be made to the Secretary of the Department.
- (2) An application –
 - (a) must be in a form approved by the Secretary of the Department; and
 - (b) must contain the information required by the Secretary of the Department.
- (3) An application may only be made within a period of 6 months commencing on the commencement of this Act.
- (4) An applicant for an ex gratia payment may, with the consent of the Secretary of the Department, amend an application.
- (5) An application for an ex gratia payment may be made on behalf of a person under a legal disability by a guardian of that person.

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- (6) For the purposes of determining eligibility, the person under the legal disability is to be regarded as the applicant.

7. Referral of application to Stolen Generations Assessor

On receipt of an application under section 6, the Secretary of the Department is to forward the application to the Stolen Generations Assessor.

8. Time for completion of assessments

The Stolen Generations Assessor must make his or her decision in relation to eligibility for ex gratia payments within 12 months after the commencement of this Act.

9. Stolen Generations Assessor to decide applications

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

10. Establishment of Stolen Generations Fund

- (1) An account is to be established in the Special Deposits and Trust Fund to be known as the Stolen Generations Fund.

- (2) The Stolen Generations Fund is to be administered by the Department.
- (3) Without further appropriation than this subsection, an amount of \$5 million is to be paid from the Consolidated Fund into the Stolen Generations Fund.
- (4) Money in the Stolen Generations Fund is to be applied for the making of ex gratia payments.

11. Amount of ex gratia payment

- (1) The amount of an ex gratia payment –
 - (a) in respect of an applicant referred to in section 5(3), is, subject to subsection (2), an amount not exceeding \$5 000; and
 - (b) in respect of an applicant referred to in section 5(1) or (2), is an amount that is equal to the amount remaining in the Stolen Generations Fund, after deducting the payments referred to in paragraph (a), divided by the number of ex gratia payments authorised by the Stolen Generations Assessor in respect of applicants referred to in section 5(1) and (2).
- (2) The amount of ex gratia payments in respect of a family group of children is not to exceed \$20 000 and is to be distributed equally among the family group of children.

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(3) A person who, but for section 4(2), would have been entitled to receive ex gratia payments under section 11(1)(a) and section 11(1)(b) is entitled to receive the larger of those ex gratia payments.

(4) For the purposes of subsection (2) –

“family group of children” means applicants under section 5(3) who are the living biological children of a deceased person referred to in section 5(3)(b).

12. Payment of ex gratia payment

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

13. Stolen Generations Assessor decision final

The decision of the Stolen Generations Assessor in relation to an application for an ex gratia payment is final and is not subject to review, judicial or otherwise.

14. Appointment of Stolen Generations Assessor

(1) The Premier is to appoint a person to be the Stolen Generations Assessor.

- (2) Schedule 1 has effect in relation to the office of the Stolen Generations Assessor.

15. Functions of Stolen Generations Assessor

The Stolen Generations Assessor has the following functions:

- (a) to decide whether an applicant is eligible for an ex gratia payment;
- (b) such other functions as may be prescribed.

16. Powers of Stolen Generations Assessor

- (1) The Stolen Generations Assessor has power to do all things necessary or convenient to be done in connection with the performance of his or her functions and, in particular, has power –
- (a) to obtain information from Agencies, within the meaning of the *State Service Act 2000*; and
 - (b) to obtain further information from the applicant, if unable to decide from the information obtained under paragraph (a), whether an applicant is eligible for an ex gratia payment.
- (2) The Stolen Generations Assessor may exercise his or her powers notwithstanding the *Personal Information Protection Act 2004* or any other

legislation relating to the confidentiality or privacy of information.

17. Protection from liability

The Stolen Generations Assessor does not incur any personal liability for an act done or omitted to be done by the Stolen Generations Assessor in good faith in the performance or exercise, or purported performance or exercise, of any of his or her functions or powers under this Act.

18. Confidentiality

- (1) The Stolen Generations Assessor must not divulge the information obtained under this Act otherwise than as provided by this section.
- (2) The Stolen Generations Assessor may divulge the information in so far as it is necessary to do so to carry out his or her functions under this Act.

19. Death of applicant

- (1) An application for an ex gratia payment does not lapse because the applicant dies before the application is decided.
- (2) If an applicant for an ex gratia payment 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 16 October 2006 may make application under section 6 on behalf of the estate of the deceased person.

20. Report to Minister

- (1) The Stolen Generations Assessor is to give the Minister a report on the performance of his or her functions within 30 days after the day on which he or she makes a decision on the final application for an ex gratia payment.
- (2) The Minister is to cause the Stolen Generations Assessor's report to be laid before each House of Parliament.

21. State not liable

An ex gratia payment made to an applicant under this Act does not render the State liable for any action taken in respect of the applicant –

- (a) being admitted as a child of the State under the *Infants' Welfare Act 1935* or being declared to be a ward of the State under the *Child Welfare Act 1960*; or
- (b) being removed from his or her family in circumstances referred to in section 5(2)(d).

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22. Regulations

The Governor may make regulations for the purposes of this Act.

23. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Community Development; and
- (b) the department responsible to the Minister for Community Development in relation to the administration of this Act is the Department of Premier and Cabinet.

**SCHEDULE 1 – PROVISIONS IN RELATION TO
OFFICE OF STOLEN GENERATIONS ASSESSOR**

Section 14

1. Term of office

The Stolen Generations Assessor is to be appointed for the period specified in his or her instrument of appointment and may be reappointed.

2. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of Stolen Generations Assessor; or
- (b) accepting any remuneration payable in relation to the office of Stolen Generations Assessor.

3. Remuneration and conditions of appointment

- (1) The Stolen Generations Assessor is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Premier determines.
- (2) The Stolen Generations Assessor holds office on such terms and conditions in relation to matters

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not provided for by this Act as are specified in his or her instrument of appointment.

4. Removal from office

The Premier may remove the Stolen Generations Assessor from office –

- (a) if the Stolen Generations Assessor is convicted in Tasmania, or elsewhere, of a crime or offence punishable by imprisonment for a period exceeding 12 months; or
- (b) if the Stolen Generations Assessor becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (c) if the Premier is satisfied that the Stolen Generations Assessor is unable to perform adequately or competently the duties of office.