# Report of the Stolen Generations Assessor

## Stolen Generations of Aboriginal Children Act 2006

February 2008

Department of Premier and Cabinet

Tasmania

# Table of contents






Office of the Stolen Generations Assessor
Department of Premier and Cabinet

Contact: 1300 13 55 13

Published February 2008

ISBN 978 0 7246 5561 1

# 1. Introduction

The Report of the Human Rights and Equal Opportunities Commission's 1997 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, *Bringing Them Home*, contained extensive evidence of past practices and policies that resulted in the removal of Aboriginal children from their families.[1] The report found that between one in 10 and three in 10 Aboriginal and Torres Strait Islander children were forcibly removed from their families between 1910 and 1970. Invariably these practices had profound and lasting impacts on those who were removed in this way.

One of the principal recommendations of the *Bringing Them Home* report was that monetary compensation be provided to Aboriginal people affected by forcible removal.

In October 2006, Tasmanian Premier Paul Lennon unveiled legislation to address this issue.

Tasmania is the first state or territory in Australia to do so.

The *Stolen Generations of Aboriginal Children Act 2006* (the Act) was passed unanimously by both Houses of Parliament in November 2006. The Act made provision for a $5 million fund to provide payments to eligible members of the stolen generations of Aborigines and their children.

The legislation provided for the appointment of an independent assessor, with responsibility to assess the eligibility of applicants. The Hon. Ray Groom accepted the appointment as Stolen Generations Assessor in December 2006.

The Act became operational on 15 January 2007. The Office of the Stolen Generations Assessor also became operational on that day.

This report provides background to the issue of the stolen generations in Tasmania and outlines the process for assessing applications and related matters.

Chapter 2 gives an overview of the historical context of policies and practices in Tasmania that led to the creation of the stolen generations.

Chapter 3 examines the major provisions of the *Stolen Generations of Aboriginal Children Act 2006.*

Chapter 4 is an overview of the assessment process and the approach taken in examining applications.

Chapter 5 provides an overview of the applications received.

Chapter 6 includes statistics and results of applications.

Chapter 7 examines some key issues arising out of the applications.

Chapter 8 sets out the Assessor's reflections on the process.

Chapter 9 contains some concluding comments.

A total of 151 claims were received. After assessing each application, the Assessor determined that 106 were eligible to receive an ex-gratia payment. Eighty-four eligible members of the stolen generations each received $58,333.33. Twenty-two eligible children of deceased members of the stolen generations received either $5000.00 or $4000.00 each depending on how many people were within the particular family group.

[1] Human Rights and Equal Opportunities Commission: *Bringing Them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, 1997

# 2. Context of the legislation

## 2.1 Historical context

The history of the stolen generations in Tasmanian is obviously linked to the policies and practices of past Tasmanian governments toward Tasmanian Aborigines.

During most of the period covered by the Act (1935-1975), successive Tasmanian governments denied the existence of Tasmanian Aborigines and identified people with some Aboriginal ancestry as 'half castes'.

Although there were Aboriginal people living elsewhere in Tasmania, the focus of much of the public policy was on 'half-castes' living on the Furneaux Islands.

In 1881, 1,608 hectares of land was set aside for 'exclusive' use by Aboriginal descendants on Cape Barren Island. Residing there was a number of families, which successive government reports would refer to as the "half caste problem".[2]

The *Cape Barren Island Reserve Act 1912* formalised the strict system of governance established in the Reserve and invested responsibility for the welfare of 'half-castes' in the Minister for Land. His department was responsible for managing and regulating the Reserve.

This initial policy of partition and separation later changed to one of removal and assimilation.

This often involved examining methods by which young children on the Island could be separated from their traditional family connections. Witness, for example, the following lament of the Surveyor General and Secretary for Lands in December 1922:[3]

> "I find after consultation with the Parliamentary Draftsman that it would be contrary to the Common Law relating to the authority of parents to control their families, for the Government to take over the management of the younger members of the Half Caste community at the time of leaving School – with a view to their being distributed among the general population and further instructed during their minority in methods best adapted to their future welfare. That is to me disappointing and it would now seem that the best and only course open is to treat the community as a whole, and place the whole business under one uniform management, of a competent director who would devote the whole of his endeavours to ameliorate the condition of these people, by a careful and constant supervision over their daily life and habits, teaching and giving useful instructions to the young people in general employment and making good citizenship.
>
> In that way they, or at any rate a fair proportion of them would – I believe – voluntarily withdraw off to other parts of the State…"

It was a view reflected in 1929 by A W Burbury in his *Report on The Condition of Half Castes at Cape Barren Island Reservation*. His suggestion was equally clear: [4]

> "Get the children away from the Reservation on leaving school, teach the boys useful trades, and the girls house-work. In this way it is believed that they would mix with and become absorbed by the population elsewhere."

Following Burbury's 1929 report, the Government approached the Australian Board of Missions to take responsibility for the Island. Their refusal to do so was based on the view that the Islanders were not 'full bloods' and their suggestion to the Government was to follow a policy of active assimilation of the Islanders into the general community. In a letter dated 24 December 1930, written by J S Needham, Chairman of the Australian Board of Missions, addressed to the Tasmanian Attorney-General, he said:[5]

> "These defects of character will not be remedied without firm but kindly discipline and constant

[2] see in particular: Archdeacon Reibey: *Half-Caste Islanders in Bass's Straits*, Tasmanian Legislative Council, 1863 and J E C Lord, Commissioner of Police: *Furneaux Islands: Report Upon the State of the Islands, the Conditions and Mode of Living of the Half-Castes, the Existing Methods of Regulating the Reserves, and Suggesting Lines for Future Administration*. Parliament of Tasmania, 1908

[3] Memorandum Surveyor General and Director of Lands to the Minister for Lands, 4 December 1922.

[4] A W Burbury: *Report on the Condition of the Half Castes at Cape Barren Island Reservation*, Hobart 1929

[5] Letter from J S Needham, Chairman Australian Board of Missions, Sydney, to the Tasmanian Attorney-General, Hobart 24 December 1930 sourced from Riawunna, Centre for Aboriginal Education: Cape Barren Island 1850-1950: Reader One, University of Tasmania February 1998

instruction. There must be development from the ways of a nomad to a life based upon white civilisation."

And later he added:

> "We can not too strongly recommend the dispersal of the half-castes and their absorption in to the general community: for we feel that dispersal and absorption are the only permanent solution of the situation."

This view was reflected officially in further reports in the late 1940s. From that period onward, policy objectives focussed on closure of the reserve and the absorption of Aborigines living on the Islands into the Tasmanian community.

This policy was formalised in 1951 when the Act ceased to operate. In 1957, the then Premier, Robert Cosgrove, summarised the prevailing view in correspondence to the Department of Social Welfare:

> "I feel that segregation in such a remote area is a major factor preventing these unfortunate persons from leading normal lives, and feel that the only solution to the problem is their systematic removal and absorption into the Tasmanian community."

A priority was the removal of children from the influence of their Island community. The lives of those Island families that remained were closely scrutinised. Under the guise of looking after the 'welfare' of the Islanders, government authorities assumed constant supervision. Families were closely monitored and their futures carefully planned. An officer from the Department of Social Welfare was assigned to regularly visit the Island. Police were routinely asked to investigate possible cases of child neglect.

Officers visited the homes of Islanders and encouraged families to leave the Island. Parents were sometimes influenced to place their children in the care of the State by agreeing to have them declared wards of the State. Other options were actively pursued including persuading children to leave the Island to attend educational institutions on mainland Tasmania and also by providing housing in other areas of the State.

What followed was a period of intense distrust by the Aboriginal residents on Cape Barren Island of the motives of welfare authorities. They feared their main aim was to take the children from families on the Island. It was during this period that a number of members of the stolen generations recall children being hidden when welfare or other authorities visited.

Consistent policies of assimilation gradually began to have an impact, with more and more families moving off the Islands to live elsewhere in Tasmania. The evidence establishes that in many cases this was done reluctantly and as a result of significant pressure and influence. By 1960, only 50 people remained on Cape Barren Island, with many former residents scattered across Tasmania.

Following their departure, families found themselves marginalised and devoid of the support networks that had previously sustained them.

The result was an uneasy future for many families and a belief that they continued to suffer discrimination as 'half castes' in a non-Aboriginal society.

During this period, welfare laws and education policies and practices were the primary vehicle to achieve the government policy objective of assimilation in the wider community.

## 2.2 Child welfare and adoption laws

Tasmanian welfare laws and practices were used to separate Aboriginal children from their families during the period 1935-1975.

*The Infants Welfare Act 1935*

The *Infants Welfare Act 1935* consolidated laws relating to the welfare of children. Section 37 of that Act provided that a parent, near relative or a person of good repute could apply to the Minister for a child to become a child of the State. If the Minister agreed, the child was admitted into the care of the Department of Social Welfare. Section 38 provided that if a Justice believed that a child was uncontrollable, on the oath of an officer of the Department of Social Services or a police officer, a warrant could be issued for the apprehension of the child. Section 40 provided that if the Justice suspected a child was being ill-treated or neglected, on the oath of any person of good repute, a warrant could be issued for the apprehension of the child. Section 42 provided that pending a hearing for a child, a court or Justice may order that the child be detained in a receiving home, placed in charge of some respectable person, placed in the charge of a married probation officer, kept in gaol or admitted to bail. Under Section 45, if a children's court found that a child was neglected or uncontrollable, it may commit the child to the care of the Department of

Social Services, or to an institution or release the child on probation upon such terms and conditions and for such a period as the Court deemed fit.

*The Adoption Act 1920*

The *Adoption Act 1920* made provision for the adoption of children in Tasmania. Under the Act, adoptions could be conducted privately. This was a widespread practice until the 1960s. Adoptions were conducted privately and doctors, lawyers, ministers of religion or relatives and friends could apply to a magistrate for the adoption of a child.

Applications were made to a police magistrate who was required to be satisfied of the repute of the adoptive parties. The written consent of the parents was required, but orders could be made without consent if it was considered impractical to obtain it. Records were held by the Registrar General in Hobart or the Register of Births and Deaths in Launceston.

*The Child Welfare Act 1960*

The *Child Welfare Act 1960* replaced the 1935 legislation. The Child Welfare Act provided a more benevolent approach. It introduced the general principle that children should not be treated as criminals, but should be treated with the sort of care and discipline that should be given by parents.

For the first time, the Act gave the Minister the power to appoint honorary child welfare officers. This was to provide for child welfare officers in remote areas.

Section 31 of the Child Welfare Act set out a legislated definition of 'neglect'. Section 34 provided that if a Children's Court considered a child to be neglected or beyond control, it could make an order declaring the child a ward of the State, make a supervision order and/or make an order for the parent or guardian to enter into a recognisance.

The Act also made provision for juvenile justice issues to be dealt with according to welfare principles. A child could be arrested without warrant and, if a Justice believed that it was in the best interests of the child to be removed, the child could be placed in an institution or in the charge of someone suitable until dealt with by the Children's Court. It also provided that where a child was found guilty of an offence, the Court could impose a penalty, make a supervision order or order that the child be made a ward of the State.

*The Adoption Act 1968*

The *Adoption of Children Act 1968* was a significant improvement on the 1920 Act. The Act increased government supervision of adoption procedures. It provided for police magistrates to make adoption orders and required that a report from the Director of Social Welfare be provided regarding the proposed adoption. Purely private adoptions or adoptions arranged by private adoption agencies were outlawed.

*Welfare policies and procedures*

As welfare legislation evolved so too did the State's approach to welfare practices.

In 1966, welfare records were consolidated and formalised procedures were identified to govern the work of welfare officers. Children who were under the supervision of the Department were to be visited and reported upon regularly. Emphasis was placed on the careful selection of foster or institutional placements.

Notably, however, there was no requirement to consider the cultural background of the child and while there was a greater emphasis on placing children with their relatives, in many cases this was balanced against a view that children from socially deprived backgrounds should be discouraged from ongoing contact with their families. As a consequence, many Aboriginal children were denied contact with both their immediate and broader family groupings. In many cases, this resulted in an active denial of Aboriginal heritage and little or no understanding of cultural background or connections.

A number of applicants advised of their experience in finding out for the first time after many years in care that they were of Aboriginal descent. For some this was to prove problematic; for others there was emotional relief and everything then "finally fell into place".

## 2.3 Education policy and procedures

An understanding of the historical context of the stolen generations in Tasmania would not be complete without an examination of education policies, particularly as they were used to give effect to the broader policy of assimilation.

An issue that arose was the way in which education policies and practices toward children on Cape Barren Island in particular caused some children to be removed from their families.

As stated elsewhere in this report, the intent of these policies was well meaning. The aim was to ensure that the children were provided with the opportunities afforded to children in other parts of the State. This does not make them right. The outcome – removal from family often via placement in welfare institutions and the attendant dislocation from community and culture that accompanied it – in some cases had profound and disturbing impacts on the children.

During the course of considering applications, a small number of applicants told of being taken from their families, isolated in children's homes and feeling completely disconnected from their traditional communities. They felt they were being "punished" and told of being bewildered as to why this was happening to them.

For some, there was never again an opportunity to return to their families or to their Island homes. The removal of the children meant that families left on the Island felt under increasing pressure to leave. Some did leave with poorer outcomes for the family as a whole. Others recount how this period of dislocation led to a feeling that they never really "fitted in" again.

The Cape Barren Island children of today are able to continue secondary education on the Island. Primary school facilities have been provided on Cape Barren Island since the 1830s but it was not until 2005 that children had the opportunity to continue secondary education on the Island. The opening of the high school remains one of the most important social policy initiatives to assist Island children. They can stay with their families on the Island during their secondary school years and not be seriously disadvantaged.

In the late 1950s, the Cape Barren Island Committee was formed. The Committee's aim was to encourage and sponsor children to attend school on the Tasmanian mainland. Committee members sometimes travelled to the Island to encourage families to send their children away. They also worked closely with both the Department of Education and Department of Social Welfare to facilitate this aim.

Again it is important to stress that those involved on the Committee had the interests of the children at heart. During the course of the stolen generations assessments, the Assessor had discussions with a former member of the Committee that left him in no doubt that members of the Committee considered the interests of Islanders were paramount. The Assessor also spoke to some members of the Aboriginal community who were grateful for opportunities that the Cape Barren Island Committee afforded them.

Nevertheless, leaving the Island and family to pursue secondary education proved to be harmful for some. The reality was that in some cases it brought children into the welfare system in a way little different from their systematic removal under neglect or other provisions.

The experiences for these children were very similar to those who were placed in children's homes by other means. Siblings were sometimes separated and quite alone in institutions, devoid of contact with brothers and sisters and left to fend for themselves.

# 3. The Act

The *Stolen Generations of Aboriginal Children Act 2006* established a $5 million fund to enable the Tasmanian Government to make ex-gratia payments to members of the stolen generations.

The Act also enabled children of deceased members of the stolen generations to apply for payment.

A copy of the Act is appended to this report. The following summarises the major provisions of the Act.

## 3.1 Aboriginal person

To be eligible for payment under the Act, an applicant must be an Aboriginal person. Aboriginal person under the *Stolen Generations of Aboriginal Children Act 2006* has the same meaning as in the *Aboriginal Lands Act 1995*.

The *Aboriginal Lands Act 1995* provides that a person must be able to satisfy the following criteria:

1. The person must be able to demonstrate Aboriginal ancestry;
2. The applicant must self-identify as an Aboriginal person; and
3. There must be evidence of communal recognition of the applicant.

This three-part test is used by the Tasmanian Government to determine eligibility for Aboriginal and Torres Strait Islander specific programs and services provided by the State Government.

## 3.2 Eligible categories

Under the Act, a person was eligible for payment from the Stolen Generations Fund if they met the criteria under one of three categories. The criteria for each are set out in Section 5(1) 'Category 1', Section 5(2) 'Category 2', and Section 5(3) 'Category 3'.

**Category 1** applied to Aboriginal persons who were removed from their families between 1935 and 1975 under the Tasmanian *Infants Welfare Act 1935* or the *Child Welfare Act 1960.*

These children became a ward or child of the State. Most applicants were in this category. Applying to a Children's Court to have a child declared 'neglected' under these Acts was the primary avenue for children to be taken into State care. A child would normally remain a ward until they reached 18 years of age, although in some circumstances this was extended to 21 years or was for a shortened period. To be eligible under the Act, the person must have been alive on 16 October 2006, have remained a child or 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.

This provision prevents payments being made to children who were returned to the care of their family or another Aboriginal family within 12 months of separation from their family.

**Category 2** applied to Aboriginal people who were living at 16 October 2006, and who were removed while under the age of 18 years from their family between 1935 and 1975 as a result of the active intervention of a State Government agency.

As with Category 1, the child must have been removed from his or her family between 1935 and 1975 and have remained apart from their family for a continuous period of 12 months or more and must not have been in the care of an Aboriginal family during that period.

Under this category, the Assessor must also have been satisfied that the child was removed without the approval of parents or that duress or undue influence was applied by a State Agency to bring about the removal.

**Category 3** applied to living biological children of a deceased Aboriginal person who would have otherwise been eligible under either Category 1 or 2 of the Act.

## 3.3 Exclusion

The Act excluded payment to an applicant if that applicant was removed from his or her family as a result of being convicted of an offence other than neglect.

## 3.4 The Stolen Generations Fund

The Act established a $5 million Stolen Generations Fund administered by the Department of Premier and Cabinet.

The amount each eligible applicant received was dependent on whether that person was a successful Category 1 and 2 or 3 applicant.

A child of a member of the stolen generations who applied successfully under Category 3 of the Act was entitled to

a maximum of $5000, with a total of $20,000 per family group.

Those eligible under Category 1 or 2 shared equally in the balance of the amount remaining in the fund after the claims made by Category 3 applicants were determined and deducted.

## 3.5 Timeframes

Strict timeframes were set out in the legislation.

Applications were open for six months from the 15 January 2007 commencement date of the Act.

The Assessor was allowed a period of 12 months from the commencement of the Act to complete his assessments. All assessments were completed within the time period allowed.

## 3.6 The Stolen Generations Assessor

Section 14 of the Act provided for the appointment of a Stolen Generations Assessor.

The primary role of the Assessor was to decide whether an applicant was eligible for an ex-gratia payment.

The Assessor was provided with power to do all things necessary or convenient to enable him to carry out his functions. In particular this included the power to obtain information from State Government agencies and to seek further information from an applicant to enable a decision on eligibility.

The Assessor was bound by strict confidentiality provisions in the exercise of his functions.

# 4. The assessment process

As the Act did not set out detailed procedures to be followed by the Stolen Generations Assessor, it was necessary to determine appropriate procedures.

The overall approach adopted was a non-adversarial and informal assessment process with the objective of conducting each assessment in an administrative manner without formal hearings. The rules of evidence were not applied.

The following diagram provides an overview of the process.

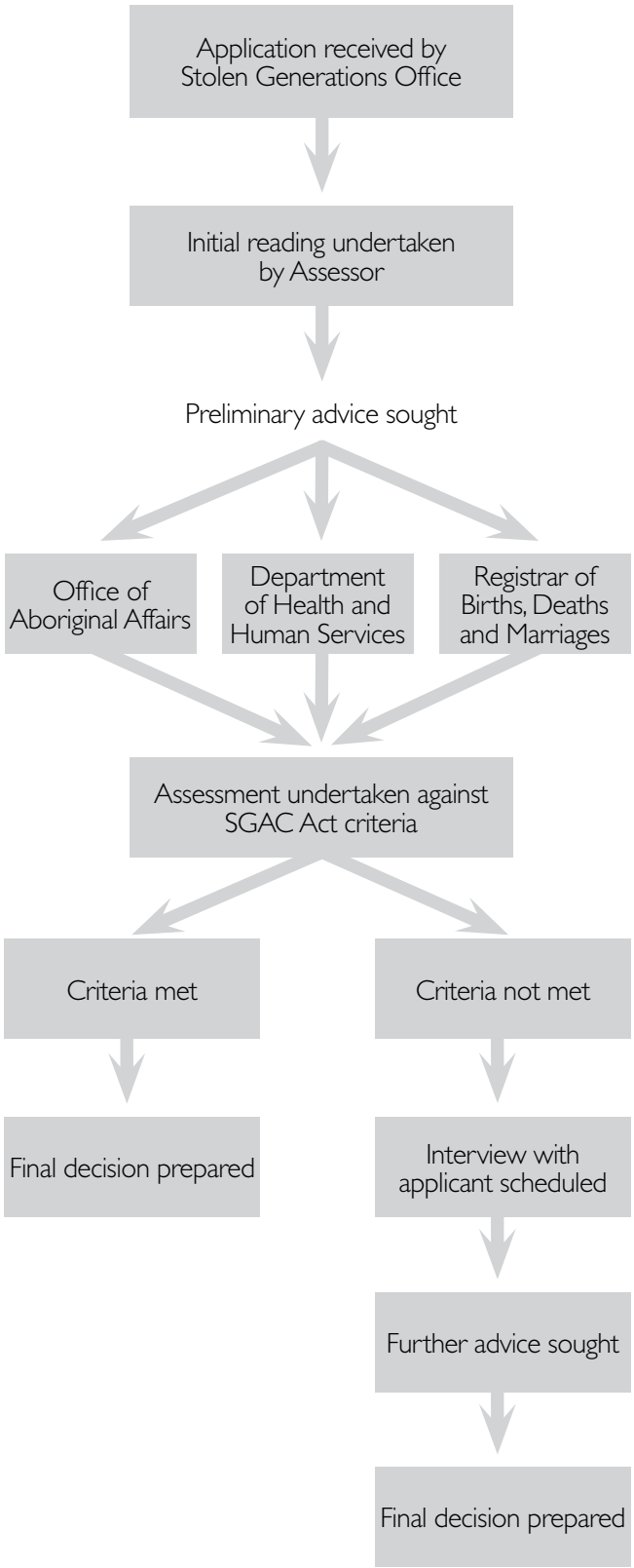
The emphasis was on informality and affording justice and fairness to each applicant.

An information package, including an application form, was prepared and an extensive advertising and media campaign conducted to inform potential applicants about the Act and how to apply for an ex-gratia payment.

- Advertisements appeared in the *Australian*, *Mercury*, *Examiner*, *Advocate*, *Koori Mail* and the *National Indigenous Times*. The Act was also promoted through the *Circular Head Chronicle*, *Cygnet and Channel Classifieds*, *Flinders Island News*, *Huon News*, *Kentish Chronicle*, *King Island Courier* and the *North Eastern Advertiser*.
- Articles were placed in Indigenous media
- Aboriginal organisations received correspondence regarding the process and were asked to inform members and contacts.
- Information packages were widely distributed through *Service* Tasmania and other government outlets.
- Information sessions were held in all major Tasmanian centres for potential applicants, attracting over 70 participants.
- A website was established and received in excess of 1000 visitors in the period up to the close of applications in July 2007.
- A 1300 Stolen Generations Information Phone Line was created to enable applicants to keep in touch with the Assessor and his staff.

The next step was for applicants to complete and lodge their application form. Some applications included only the essential information, while others attached a significant amount of supporting information such as copies of welfare records, family trees, correspondence and detailed written statements.

*Stolen Generations Assessment Process*



After receiving the completed application form, the Assessor undertook an initial examination of the written application, including enclosed material. Following that initial examination of the application, the Office of the Stolen Generations Assessor sought reports and searches, as appropriate, from the Department of Health and Human Services and the Office of Aboriginal Affairs. A birth certificate for each applicant was also requested from the Registrar of Births, Deaths and Marriages. In a number of cases where applicants had been born interstate, records were sought from the relevant authorities in that state or territory.

Officers of the Department of Health and Human Services and the Office of Aboriginal Affairs gained access to relevant files through the Archives Office of Tasmania, which stored much of the information required.

In appropriate cases, adoption files were examined and marriage and death certificates obtained.

When all of the reports and other information relating to a particular applicant had been provided to the Assessor's Office, Office Manager Leica Wagner prepared a summary of the facts and preliminary written advice to the Assessor.

If, after considering the material before him, the Assessor formed an initial view that a particular application may not succeed, the applicant was then advised of the problems with his or her application and afforded an opportunity to meet informally with the Assessor to discuss those issues and provide any further information that might overcome the apparent deficiencies.

In most cases applicants received correspondence outlining the reasons their application may not succeed and were invited to meet with the Assessor to discuss any deficiencies in the application.

Meetings with interstate or overseas applicants, for practical and cost reasons, were by telephone conference.

Those meetings and teleconferences, with few exceptions, were attended by the applicant, the Assessor and Ms Wagner. Applicants were advised that they could have a friend or relative accompany them and this often occurred.

The meetings were held in an informal manner. Evidence was not taken on oath. Issues were discussed openly and frankly. Often questions were put to the applicant by the Assessor to clarify issues. The aim was to give applicants a good understanding of any problems with their application and an opportunity to be heard and to provide any additional information to support their claim. Sometimes the Assessor agreed at the meeting to make further inquiries or to seek information from an identified source. All of the meetings were held in a friendly and cooperative spirit.

Sometimes it became clear during the meeting that an applicant would not be able to meet the criteria set out in the Act. In those cases, the Assessor frankly informed the applicant of that reality. Although sometimes disappointed, applicants were generally understanding and accepting of the advice.

Much of the work of the Assessor and his Office focused on those applications for which the outcome appeared unclear.

In the case of some of those uncertain applications, information continued to flow into the Assessor's Office until 14 January 2008 – the day before the Act required the Assessor to finalise all of his decisions.

All information provided to the Assessor, regardless of the source, was given thorough consideration before a final decision was made on each application.

Respect for the sensitivity of personal information and the need for confidentiality were important issues throughout the process. All information received was treated in the strictest confidence as required by the Act. Personal information about applicants was not disclosed to or discussed with any unauthorised personnel, only with applicants themselves, their friends or family members or people authorised by them and people involved in officially providing reports and records from government departments and agencies,.

All decisions were accompanied by written reasons. The decisions and reasons were forwarded by the Assessor to all applicants in January 2008.

As required by the Act, the Assessor wrote to the Secretary, Department of Premier and Cabinet, advising him of the names and addresses of all successful applicants.

# 5. Overview of applications

One hundred and fifty-one applications for payment were received under the Act.

The following are some key statistics:

## 5.1 Source of applications

- 115 applications were received from residents of Tasmania
    - 63 applications from the north of the State;
    - 38 applications from the south of the State; and
    - 17 applications from the north-west of the State.
- 32 applications were received from interstate.
- One application was received from overseas.

## 5.2 Category of applications

The following summarises the categories under which applications were assessed. Chapter 3 of this report provides further information on the categories.

| | |
|---|---|
| Category 1 applications | 94 |
| Category 2 applications | 34 |
| Category 3 applications | 23 |
| **Total** | **151** |

## 5.3 Sex of applicants

There were 72 male applicants and 79 female applicants. The following summarises the sex of applicants by the categories under which applications were assessed.

| | | |
|---|---|---|
| Category 1 males | | 51 |
| Category 1 females | | 43 |
| *Total Category 1* | *94* | |
| Category 2 males | | 13 |
| Category 2 females | | 21 |
| *Total Category 2* | *34* | |
| Category 3 males | | 8 |
| Category 3 females | | 15 |
| *Total Category 3* | *23* | |
| **Total** | | **151** |

## 5.4 Age profile of Category 1 and 2 applicants

The majority of applicants under categories 1 and 2 of the Act were born between 1950 and 1970. The oldest applicant was born in 1928 and the youngest applicant was born in 1981.

| Year of birth | No. of applicants |
|---|---|
| 1920-39 | 1 |
| 1930-39 | 8 |
| 1940-49 | 14 |
| 1950-59 | 48 |
| 1960-69 | 50 |
| 1970-79 | 5 |
| 1980-89 | 2 |
| **Total** | **128** |

## 5.5 Age profile of Category 3 applicants

All Category 3 applicants were born between 1940 and 1980, with 11 applicants born in the 1970s.

| Year of birth | No. of applicants |
|---|---|
| 1920-39 | 0 |
| 1930-39 | 0 |
| 1940-49 | 1 |
| 1950-59 | 6 |
| 1960-69 | 5 |
| 1970-79 | 11 |
| 1980-89 | 0 |
| **Total** | **23** |

## 5.6 Family groupings

Individuals from a total of 76 family groups submitted applications under Category 1 and 2. Twenty-five of these family groups accounted for approximately two-thirds of the applications received (100).

Seven family groups were represented among Category 3 applicants.

# 6. Results of applications

Of the 151 claims assessed under the Act, 106 were eligible to receive a payment. The following are statistics on the results of the assessment process.

## 6.1 Outcome of claims

| | | |
|---|---|---|
| **Category 1** | | **94** |
| Eligible for payment | 68 | |
| Not eligible for payment | 26 | |
| **Category 2** | | **34** |
| Eligible for payment | 16 | |
| Not eligible for payment | 18 | |
| **Category 3** | | **23** |
| Eligible for payment | 22 | |
| Not eligible for payment | 1 | |
| Total eligible for payment (all categories) | 106 | |
| Total not eligible for payment (all categories) | 45 | |
| **Total** | **151** | **151** |

## 6.2 Characteristics of Category 1 and 2 applicants eligible for payment

A total of 106 applicants were assessed as eligible for payment under the Act. Of these applicants, 84 were eligible under category 1 or 2 as living members of the stolen generations. The following provides an overview of these applicants:

### Age of eligible Category 1 and 2 applicants

| Age | Male | Female | Total |
|---|---|---|---|
| 30–40 years | 1 | 1 | 2 |
| 40–50 years | 18 | 17 | 35 |
| 50–60 years | 18 | 15 | 33 |
| 60 + years | 5 | 9 | 14 |
| **Total** | **42** | **42** | **84** |

### Age at first removal of eligible Category 1 and 2 applicants from Aboriginal family

| Age | No. of applicants |
|---|---|
| 0–5 years | 31 |
| 5–10 years | 22 |
| 10–15 years | 30 |
| 16–18 years | 1 |
| **Total** | **84** |

### Care arrangements

The following summarises the care arrangements of eligible Category 1 and 2 applicants. Applicants may in some instances be counted in more than one category. This is dependent on whether their care arrangements altered during their period of removal from family.

| Care arrangements | No. of applicants |
|---|---|
| Ward or Child of the State | 68 |
| Adoption | 16 |
| Other | 6 |

### Total period of removal

| Years in care | No. of applicants |
|---|---|
| 1–2 years | 8 |
| 3–4 years | 15 |
| 5–6 years | 12 |
| 7–8 years | 5 |
| 9–10 years | 8 |
| 10+ years | 21 |

### Number of placements during period of removal

All but 12 eligible Category 1 and 2 applicants had two or more placements during their period of removal. Placements include departmental institutions and foster homes. The highest number of placements for a single individual was 12, with the longest period of care being 21 years.

| Number of placements | No. of applicants |
|---|---|
| 1 placement | 12 |
| 2 placements | 14 |
| 3 placements | 18 |
| 4 placements | 9 |
| 5 or more placements | 16 |

### Institutions, residential care and approved children's homes resided in by applicants

Members of the stolen generations were placed in over 26 various homes and institutions. These included receiving homes, approved children's homes and departmental institutions.

| Institution | No. of applicants |
|---|---|
| Abermere | 2 |
| Aikenhead House | 2 |
| Ashley Home for Boys | 10 |
| Binnowee Receiving Home | 2 |
| Barrington Boys' Home | 2 |
| Carinya Family Group Home | 2 |
| Casablanca Receiving/Family Group Home | 8 |
| Clarendon Children's Home | 4 |
| Gilburn Receiving Home | 6 |
| Girls' Industrial School | 1 |
| Glenara/Northern Tasmanian Home for Boys | 11 |
| Kanangra Receiving Home | 11 |
| Kennerley Children's Home | 3 |
| Launceston Girls' Home | 5 |
| Malmesbury Receiving/Family Group Home | 8 |
| Mardon Receiving Home | 1 |
| Maylands Girls' Home | 2 |
| Miroma Receiving Home | 3 |
| Moseley | 1 |
| Mt St Canice (Magdalene Home) | 2 |
| Omaru Receiving Home | 10 |
| Rochebank Receiving Home | 5 |
| Roland Boys' Home | 1 |
| Weeroona Girls' Training Centre | 5 |
| West Winds Boys' Home | 2 |
| Wybra Hall | 4 |

## 6.3 Characteristics of applicants ineligible for payment

A total of 45 applicants were assessed as ineligible for payment under the Act. The following summarises the characteristics of these applicants and provides an overview of the reasons their applications were ineligible.

### Unsuccessful applications by category

| | |
|---|---|
| Category 1 | 26 |
| Category 2 | 18 |
| Category 3 | 1 |
| **Total** | **45** |

### Primary reason for unsuccessful Category 1 and 2 applications

The following provides reasons for unsuccessful applications under the Act.

| Reason | No. of applicants |
|---|---|
| No Tasmanian State Agency intervention | 11 |
| Aboriginality unable to be confirmed | 17 |
| Not removed from family for a period exceeding 12 months | 6 |
| Removed after 1975 | 10 |
| **Total** | **44** |

# 7. Key issues

A range of issues of interpretation arose during the assessment process:

## 7.1 Conviction of an offence

The Act relevantly provides as follows at Section 5:

> (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) Sub-section (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.*

When considering this issue, the Assessor examined the wording on the face of any court record to determine whether or not the removal resulted from a 'conviction' for an offence. In many cases where minor offences were involved, the Children's Court did not proceed to a formal conviction and the word 'conviction' did not appear on the record. In those cases, it was determined that Section 5(4) did not apply.

In a number of cases applicants were convicted only of being a neglected child and those applicants, if they satisfied the remaining criteria in the Act, were eligible to receive an ex-gratia payment.

## 7.2 Not cared for by an Aboriginal family

Under the eligibility criteria in both Sections 5(1) and 5(2) of the Act, a child had to be removed for at least a continuous period of 12 months and "…must not have been in the care of an Aboriginal family during that period".

In Section 5(6), Aboriginal family is defined as "a family in which one or both of the primary carers is an Aboriginal person".

This was clearly one of the fundamental requirements of the Act. It was necessary for the Assessor to be satisfied that there was removal from not only family but also cultural influences for at least a continuous period of 12 months. One of the complexities which arose during the assessment of applications was that a child sometimes returned very briefly, perhaps for a weekend or a few days, to stay with his or her parents or another Aboriginal family. After considering this issue, the Assessor determined that a short stay of that kind did not break the continuity of the period of removal. This was because the basic care and maintenance responsibilities of the child still remained with the institution or foster family concerned.

## 7.3 Adoptions

Some adopted children qualified for an ex-gratia payment under the provisions of Section 5(2) of the Act. It is important to appreciate that these cases involved not only a removal from the child's biological mother but also from culture.

For an adoption-based application to succeed, it was necessary to establish that the removal was brought about "by the active intervention" of a State Agency and without the consent of the mother or, if there was consent, that the removal involved "…duress or undue influence".

In all of the successful applications based on adoption there was some persuasive evidence of State involvement in bringing about the adoption. In a number of cases, the Assessor could not be satisfied that the consent given by the mother was genuine. For example, in one case a very young mother was said to have given her written consent on the very same day as her baby was born.

In some cases, adoptive parents were not informed that their adoptive child had Aboriginal ancestry.

## 7.4 Education

The background to the issue of education is explained in Chapter 2 of this report.

A number of applicants were removed for the express purpose of furthering their education. Some applicants in this category were able to satisfy the eligibility requirements of Section 5(2) of the Act, while others were not. If it was clear on the material provided that a parent had genuinely consented, an application did not succeed. In a small number of cases, the Assessor was satisfied on the information before him that the particular child's removal had resulted from undue influence applied by a government department. Although well-intentioned, removals sometimes resulted in not only complete separation from parents and siblings but also in the adverse influences and stresses of residing in an institution. The evidence indicates that sometimes such a removal caused more pain and suffering than may have been apparent at the time.

## 7.5 Communal recognition

As explained in Chapter 3 of this report, there must be evidence of communal recognition of the applicant to establish that he or she is an Aboriginal person. This has long been interpreted to mean recognition by the Aboriginal community or part of that community.

Communal recognition was a difficult issue in a number of applications because children had been totally removed at a young age from their Aboriginal culture and community. It was not possible for there to be a pre-existing recognition when the Aboriginal community had absolutely no knowledge of the person concerned.

The Aboriginal community took a very fair approach on this issue. When the matter of communal recognition arose and there was clear evidence of Aboriginal ancestry, recognition of the person removed was readily acknowledged.

## 7.6 Involvement of a Tasmanian Government agency

Some persuasive evidence of State agency involvement in a removal was an essential element of every successful claim. This was a straightforward matter in respect to Section 5(1) applications where the person concerned was declared to be a child or ward of the State. In Section 5(2) applications it had to be established through the material before the Assessor.

For the purposes of the Act, an 'agency' was as defined in the *State Service Act 2000* (see Section 5(2)(d) of the Act).

In a number of cases there was no evidence of Tasmanian Government agency involvement in the removal. Those applications were therefore unsuccessful. An example was where the removal occurred on the Australian mainland with no Tasmanian department or agency involvement and cases where a purely private removal took place in Tasmania. In a number of instances, parents made private arrangements to place their child with another family. Such a private arrangement did not satisfy the eligibility criteria set out in the Act.

## 7.7 Aborigines removed in other states/territories

A number of applications were lodged by mainland Aboriginal people who were born in another state or territory. The Act applies not only to Aboriginal people descended from the original Tasmanian Aborigines but also to mainland Aboriginal people.

As previously stated, the Act required that there be evidence of the active involvement in the removal by an agency of the Tasmanian Government of the day.

In all but one of the applications in this category there was no involvement of an agency of the Tasmanian Government in the removal.

All of the applicants in this group were Aboriginal people who were adopted or fostered in another state or territory but who eventually came to Tasmania at a young age.

The unsuccessful applicants who were removed in these circumstances may well succeed if in the future the relevant state or territory enacts legislation similar to the Tasmanian Act.

## 7.8 Aboriginality

This was obviously a very difficult and sensitive issue in the assessment process.

It was recognised from the outset by the Assessor that a decision that a person was not Aboriginal could not be made lightly and without careful and thoughtful analysis of all available information.

It was, however, an essential prerequisite to any entitlement under the Act that the applicant was an Aboriginal person.

As previously mentioned, the Act incorporates the same three-part test of Aboriginality as set out in the *Aboriginal Lands Act 1995*.

The Assessor had to be positively satisfied on the balance of probabilities after taking into account all of the evidence before him that an applicant was an Aboriginal person. The Assessor was not looking for possibilities. He had to reach a state of mind where he was satisfied to the above-mentioned standard that a particular applicant was an Aboriginal person.

A finding under the Act that the Assessor was not satisfied on all of the evidence before him that a person was Aboriginal is not a conclusive finding that a person is not Aboriginal. The Assessor did not make any such conclusive finding on any application but in some cases did find that he was not satisfied on all of the material before him that a particular applicant was an Aboriginal person.

On the issue of Aboriginality, consideration was given to the decision of Merkel J in Edwina Shaw & Anor v Charles Wolf & Ors [1998] 389FCA, the Administrative Appeals Tribunal decision in Patmore & Ors and the Independent Indigenous Advisory Committee [2002] AATA926 as well as other relevant authorities on the issue.

The principal issue was usually the applicant's ancestry. A great deal of family research was undertaken by the Archives Office of Tasmania and family trees prepared. Applicants often provided a substantial amount of information. All of the available information was carefully considered before the Assessor made his final decision.

# 8. The Assessor's reflections

The Act under which I was appointed was the first of its kind to be enacted anywhere.

After working with the Act for a year, I have concluded that it was well drafted. It avoided many complexities that in other circumstances may have been included. The fact that the quantum of a successful applicant's entitlement was set by the Act itself greatly simplified the process. That successful Category 1 and 2 applicants would each receive the same payment was widely accepted by applicants and the Aboriginal community. It avoided the need to make difficult assessments and judgments.

As there were no prescribed detailed procedures for assessing applications, it was necessary to decide on an appropriate process.

Uppermost in my mind was the need to be just to all applicants and, in the process, to afford each fairness and natural justice.

It has been a privilege but also a most serious responsibility to work with the Tasmanian Aboriginal community over a period of a year on this sensitive and important issue.

Throughout the year I have had many very personal meetings with applicants and discussed with them the most intimate details of their family backgrounds, childhoods and adult lives. Most of these meetings were heart rending and emotional. Quite frankly it would not have been possible to conclude the task without the generous cooperation of applicants and their families and the wonderful support of staff in the Office of the Stolen Generations Assessor and others.

One of the conclusions I have reached following this year of meetings, discussions and reading personal records and histories is that in this the 21st century, some 204 years after the European settlement of Tasmania, there remain many proud Aboriginal people living in this State. For this special group of people their Aboriginality and Aboriginal culture is central to their lives.

Theirs is a truly remarkable story of resilience, strength and survival after the near annihilation, within a few decades of European settlement, of the ancient civilisation of Aboriginal people of Tasmania.

Whenever there is discussion about the stolen generations it is often said "yes, but they were removed for their own welfare…for their own good".

Sadly, on the evidence I have received, the end result in most cases was more harm than good. With some applicants the outcome was devastatingly bad. They have been adversely affected for the whole of their lives.

A detailed examination of the records and other information made available to me has satisfied me that for the most part, the people involved in the removal of Aboriginal children from their families were well meaning. Most believed they were doing the right thing by the children. I am speaking here of welfare officers, other departmental officials, policemen, lawyers, doctors, nurses and others.

However, simply because these people sincerely believed at the time they were doing the right thing for the children does not mean that they actually were. These, of course, are judgments made many years later with our increased knowledge and understanding.

There is ample evidence in the records I have seen that government policy through much of the period covered by this Act encouraged the removal of Aboriginal children from their families and culture with a view to their integration into the wider community.

That policy was evident at senior government levels and within departments.

Until relatively recent times, a widespread belief existed in Tasmania, as it did throughout much of Australia, that Aboriginal children would be advantaged by being taken away from their families and from the conditions in which they lived. Those conditions were judged not to be up to the standards enjoyed by the wider community. The view was that the children should be removed so that they might become 'civilised' and enjoy more suitable living conditions.

The criticisms directed at Aboriginal people and the way they lived and behaved completely failed to recognise the tragic history of the Tasmanian Aboriginal people and the impact European settlement had on their lives and those of their forebears. The official records I have seen include many unfair generalisations.

An example is the following statement by a senior officer made on a departmental file in 1942:

> "If….and his wife are from Cape Barren Island or Flinders Island they are not likely to

> improve regarding cleanliness. Practically all the descendants of Flinders Island and Cape Barren Island half-castes and quarter-castes live under filthy conditions and are too lazy to look after themselves or their children and squander any money they receive."

Although the intention of removal was to improve their lives, the reality was that children were usually worse off when taken from family and culture through the various mechanisms of State-influenced removal. Official records reveal that although there was a good deal of interest and concern about the welfare of the children leading up to the removal, in many cases, other than formal brief reports, very little real interest was shown in the children's later progress and welfare.

Children were frequently placed in institutions rather than private homes. Some were constantly on the move, being shunted from one institution to another. Those who were placed in private foster arrangements were also frequently moved from one foster home to another. In some cases, there was an extraordinary number of moves for the children concerned. This constant moving could hardly give a child a secure, stable and happy home life.

There were, of course, exceptions. A number of applicants who had been removed from their families expressed gratitude for the love, care and support received from foster or adoptive parents. They said they were treated as part of the family. That group of applicants tended to be healthier and happier and had relatively contented lives. But they still felt there was something missing.

Others who had obviously experienced extremely difficult childhoods had somehow managed to battle on and to lead very useful and productive lives.

However, the more common result of removal was emotional hurt – a feeling of "not belonging" and not being "really wanted". There was a surprising consistency in the way individuals at separate meetings expressed how they felt following their removal as young children from their family and culture.

I am satisfied that a number of children were subjected to serious sexual and physical abuse following removal. This occurred in a minority of cases that I considered, but nevertheless is obviously a most serious matter. I did not have the opportunity to hear from the party said to be responsible for the abuse. Making final determinations on claims of abuse was not part of my role. However, I am satisfied that the claims of sexual or physical abuse were credible. I do not doubt that the applicants who made those claims were being truthful.

In more recent years, experts have come to realise that in most cases the systematic and arbitrary removal of a child from his or her natural family and culture is unlikely to benefit that child.

As one enlightened child welfare officer noted in a child's departmental file in 1975:

> "This officer's experience has been that children of Cape Barren Islanders are generally less emotionally disturbed by remaining with their own families in pretty unstable circumstances than in the care of the Department."

Obviously in considering applications I did not have an unfettered discretion but was bound by the terms of the Act passed by the Parliament.

I am sure that all 151 applications were genuine. No application was dishonest or fraudulent. Each and every applicant, whether ultimately successful or not, had suffered some serious difficulties in his or her childhood. Unfortunately not all applicants were able to satisfy the criteria in the Act. But each was given an opportunity to be heard and to provide any information they could to support their application. All of the information provided to me from whatever source was given careful consideration before final decisions were made.

I am satisfied that all applicants were afforded the intended fairness and natural justice in considering and deciding their applications.

There were many added benefits for applicants, successful or not, flowing from the operation of the Act and the assessment process. They had the opportunity to tell their story. They had access to files and learned about their families and heritage. Some were able to make contact for the first time with siblings or parents. Counselling was available for those who needed that help.

# 9. Appreciation

Thank you to all applicants, whether successful or unsuccessful, for their applications, for telling their stories and for the goodwill and cooperation all have shown throughout the process.

I express my deep gratitude to the two staff members of the Office of the Stolen Generations Assessor, Office Manager Leica Wagner and Executive Assistant Kate McVea. Without their absolute commitment, dedication and hard work, it would not have been possible to complete this substantial task within the timeframes set by the legislation.

A sincere thank you also to each of the following people who have made a significant contribution to the successful completion of the assessment process and associated responsibilities, in particular Karen Brown and Laurette Thorp from the Office of Aboriginal Affairs; Sheila Banks, Carole Smeaton and Una Hobday from the Department of Health and Human Services; Kerrie Lawrence and Marita Bullen from the Registry of Births, Deaths and Marriages; Robyn Eastley and Ian Pearce from the Archives Office of Tasmania; Dr Becky Shelley, Mat Rowell and Matt Rogers from the Premier's Office and Greg Brown from the Office of the Minister for Community Development.

Many people from the Department of Premier and Cabinet also provided valuable assistance throughout the project. I thank them also. In particular Jamie Bayly-Stark, Kerrie Jordan, Georgina Hill and Christine Standish from the Policy Division; Phil Foulston and Sally Shepherd from the Executive Unit; Peter Wright and Pam Wright from Finance; Lisa Baker, Jeanette Donohue and Clare Jacobs from the Records Unit; Jane Lonergan from the Government Communications Office; and Julie Pellas, Mark Franklin and Mandy Smith from the Communications and Marketing Unit.

TASMANIA

# STOLEN GENERATIONS OF ABORIGINAL CHILDREN ACT 2006

## No. 34 of 2006

# CONTENTS

# STOLEN GENERATIONS OF ABORIGINAL CHILDREN ACT 2006

## No. 34 of 2006

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

**[Royal Assent 18 December 2006]**

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*;

**"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

(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 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.

(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.

(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).

**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 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.

*[Second reading presentation speech made in:– House of Assembly on 21 November 2006 Legislative Council on 28 November 2006]*


0122