

## **Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Stolen Wages**

by

**Australians for Native Title and Reconciliation (ANTaR)**

### **Introduction**

In his address to the 2005 National Reconciliation Planning Workshop, Prime Minister, John Howard spoke of his concerns that too often reconciliation has focussed on symbolic gestures rather than practical measures to redress Indigenous disadvantage.

*If I can speak very bluntly, I think part of the problem with some earlier approaches to reconciliation was that it left too many people, particularly in white Australia, off the hook. It let them imagine that they could simply meet their responsibilities by symbolic expressions and gesture rather than accepting the need for an ongoing persistent rendition of practical, on-the-ground measures to challenge the real areas of indigenous deprivation.<sup>1</sup>*

The lack of practical action to overcome the deprivation caused by stolen wages is yet another area where white Australia, particularly white Australian Governments, has been let off the hook.

Governments around Australia controlled wages, savings and benefits belonging to Aboriginal and Torres Strait Islander people for most of the 20th century. Payments withheld included child endowment, pensions and even soldiers' pay. Much of the money held in trust was withheld from its owners. Trust account funds were transferred to public revenue, or disappeared through fraud or negligence along with many of the records.

This practice condemned generations of Indigenous families to lives of poverty at the same time as their labour was used to establish lucrative industries such as beef cattle and pearling.<sup>2</sup>

In Queensland alone, it has been estimated that as much as \$500 million in today's value was lost or stolen from Indigenous families.<sup>3</sup>

To date only the Queensland and NSW Governments have established schemes to enable Indigenous people recover all or part of the wages withheld from them, while action has begun urging Victoria to look into the issue. The Queensland scheme in particular has been widely criticised by Indigenous people because it has offered to repay only a fraction of what is owed to claimants as a "gesture of reconciliation."

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<sup>1</sup> The Hon John Howard MP, *Address At The National Reconciliation Planning Workshop*, 30 May 2005, [http://www.reconciliation.org.au/downloads/156/Speech\\_by\\_Prime\\_Minister.doc](http://www.reconciliation.org.au/downloads/156/Speech_by_Prime_Minister.doc)

<sup>2</sup> Loretta de Plevitz, "Working For the Man: Wages Lost to the Queensland Workers 'Under the Act,'" *Indigenous Law Bulletin*, Volume 3 Number 81, June 1996, <http://www.law.unsw.edu.au/centres/ilc/ilb/vol3/june/deplevitz.asp>

<sup>3</sup> Rosalind Kidd, *Trustees on Trial: Recovering the Stolen Wages*, Aboriginal Studies Press, 2006, p.9.

In response to this situation, Indigenous groups in all States supported by Australians for Native Title and Reconciliation (ANTaR) have sought to have withheld wages and other payments recovered from State Governments. These groups have also called for a national inquiry into stolen wages so the full extent of the practice can be determined.

ANTaR welcomes the Senate Legal and Constitutional Affairs Committee Inquiry on Stolen Wages as an important step in enabling Australians to better understand the impact of withholding wages and other payments from Indigenous workers. We hope the Inquiry will also be a step forward in delivering justice to the thousands of Indigenous workers affected by the practice as well as their families and communities.

ANTaR is an Australia-wide, community-based organisation committed to the rights of Australian Indigenous people. It comprises member organisations in the States and Territories. Our mission is to generate in Australia both a moral and legal recognition of, and respect for, the distinctive status of Indigenous Australians as First Peoples and for the protection of the rights of Indigenous Australians, including their relationships to land, the right to self-determination, and the maintenance and growth of their unique cultures.

More than 300,000 people have signed ANTaR's *Sea of Hands* in support of native title and reconciliation. For the past five years ANTaR members particularly in Queensland and New South Wales have participated in a campaign to bring greater attention to Indigenous stolen wages and achieve a just resolution to this issue.

The content of this submission reflects the fact that most of ANTaR's activities in relation to stolen wages have up to now taken place in Queensland and New South Wales. However, this should not imply that ANTaR considers that this issue is confined to these two States. All States and Territories controlled the labour of Indigenous Australians. The scale and impact of this control requires further investigation – particularly as it relates to those States and Territories that have yet to adequately consider this issue. ANTaR hopes this current inquiry may add to our knowledge of how the control of Indigenous payments operated in these jurisdictions.

This submission draws extensively on material prepared by members of the NSW Stolen Wages Working Group, a loose coalition of organisations active in this issue since 2004. ANTaR understands the Working Group also intends making a submission to the Inquiry. ANTaR commends the Working Group's submission to the Committee.

ANTaR's response to the Committee's Terms of Reference is as follows:

***a. the approximate number of Indigenous workers in each state and territory whose paid labour was controlled by government; what measures were taken to safeguard them from physical, sexual and employment abuses and in response to reported abuses;***

Although records are incomplete, historians estimate that tens of thousands of Indigenous people had their labour controlled by State and Territory Governments during the twentieth century.

ANTaR will later this year publish a national report on stolen wages written by historian and ANTaR member, Dr Ros Kidd. We would be pleased to provide a pre-publication copy of Dr Kidd's report to the Committee as soon as it has been completed.

Dr Kidd has provided a partial break down of worker numbers for each State and Territory:

*This category includes child workers, and workers in the pastoral industry and on missions and government settlements, some of whose controlled labour was paid in rations and 'maintenance'.*

**Queensland:** *between 4000-5500 pastoral workers annually 1920s-1960s; around 2500 waged workers on missions and settlements in 1979 reduced to 765 in 1986; over 600 girls and women domestics in 1915, around 588 in the late 1930s.*

**Western Australia:** *4000 pastoral workers in 1900; 2300 working in the Kimberley in 1918; 'dependants' also forced to work; most provided substandard food and shelter in lieu of wages; unknown number of child workers and domestics.*

**Northern Territory:** *2500 licensed workers plus 1500 'dependants' in 1919; 1946 survey confirms all dependants work for rations; most provided substandard food and shelter in lieu of wages; unknown number of child workers and domestics.*

**New South Wales:** *300 children sent to work from Warangesda by 1909; 570 girls sent to work between 1916-1928; 400 boys sent to work from Kinchela to the 1970s.*

**South Australia:** *350 girls processed through Colebrook 1943-1972; pastoral workers known to be denied cash or provisions commensurate with their labour.*<sup>4</sup>

Behind these statistics are thousands of individual lives condemned to poverty by exploitative government practices. During 2006 the *Koori Mail* has published profiles of a number of Queensland Indigenous people whose wages were withheld. These profiles, written by ANTaR Queensland President, Christine Howes, provide valuable insights into how stolen wages impacted on the lives of Indigenous people as well as the determination of these now elderly people to seek justice. These profiles are included as Appendix 2 to this submission.

Ros Kidd's book, *Trustees on Trial: Recovering the Stolen Wages* contains a number of shorter profiles. ANTaR commends these profiles to the committee.<sup>5</sup>

Control of wages and other payments was part of a complex system that determined where and how Aboriginal people could live, attempted to prevent the transmission of language and culture, and included the widespread practice of forcible separation of Aboriginal children from their families.

However, there was variation across Australia and within individual States and Territories in relation to the nature and extent of this government control. This control also changed over time.

For example, in Queensland adult labour was controlled, but in NSW the controls extended to child labour only. In Victoria, adult Aboriginal labour and child labour of so-called 'half castes' was also controlled.

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<sup>4</sup> [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/stolen\\_wages/submissions/sub49.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/stolen_wages/submissions/sub49.pdf)

<sup>5</sup> Kidd, *Trustees on Trial*, pp.84-85.

In Queensland, Indigenous men, women and children were contracted out to work under the *Aboriginal Protection and Restriction of the Sale of Opium Act* (1897). They had no control over wage rates and no direct access to wages and savings.

After the introduction of the 1897 Act the Queensland Government was vested with the authority to declare any Aboriginal person a ward of the state and empowered to control every aspect of that person's life. Until 1972 the Queensland State Government controlled the wages of all Indigenous Australians 'under the act.' In 1968 the Queensland Government started a wage economy on reserves and workers were paid 50 percent of the state minimum wage. From 1968 equal wages was enforced in the pastoral industry and forced contracting ceased. From 1971 forced confinement on reserves ceased. From 1972 forced control over wages and savings (bank books) ceased, although people had to request to be free from financial management.

From 1979 the Queensland Government knew that underpaying reserve workers was illegal. However, during this time their wages remained only 72 percent of the state minimum. As recently as 1986 the Queensland Government was continuing to pay reserve workers only 75 percent of the award.

The key legislation in New South Wales was the *Aborigines Protection Act* (1909) and its regulations, which governed the activities of the Aborigines Protection Board and the Aborigines Welfare Board. In this State separated children were eventually 'apprenticed' as agricultural labourers or domestic servants. In this and other States, the issue of "stolen wages" is inextricably linked with "stolen children".

During these years, the Board was responsible for the removal of more than five thousand Aboriginal children from their families. Often they were placed directly into indentured service as domestic or farm labourers or they were placed in children's homes, such as Bomaderry, Cootamundra and Kinchela.<sup>6</sup>

According to Doukakis, some 1.5 per cent of unskilled domestic labour in the State was provided by Aboriginal girls during the 1920s:

"As this workforce declined by some 12 per cent a year, the Board concentrated on 'apprenticing' girls in order to stave off this decline as well as fulfill ideological considerations."<sup>7</sup>

Doukakis also comments that the Board's control changed over time. In 1940:

*the Aborigines Protection Board became the Aborigines Welfare Board. The definition of a "neglected child" was theoretically the same as that for white children under the Child Welfare Act 1939, though "neglected" Aboriginal children were made wards of the Board rather than the Minister of Child Welfare. The Board could determine whether the ward was placed in employment, a home or an institution, and while it no longer had the responsibility*

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<sup>6</sup> NSW Government, Department of Aboriginal Affairs Fact Sheet, [http://www.daa.nsw.gov.au/publications/FamRecords\\_FSheet%201.pdf](http://www.daa.nsw.gov.au/publications/FamRecords_FSheet%201.pdf)

<sup>7</sup> Anna Doukakis, *The Aboriginal People, Parliament & "Protection" in New South Wales 1856–1916*, The Federation Press, 2006, p.144.

*of educating them, they were still responsible for custody and maintenance. Wages were paid to the Board to be held in trust.*<sup>8</sup>

Until it was abolished in 1969, the Board kept detailed records on children that were removed, including correspondence, school reports, education and health information. Not all these records, however, have survived.

Between 1869 and 1957, the Victorian Government controlled the terms of employment of Aboriginal people. The Board for the Protection of Aborigines could direct that money payable to Aboriginal people be paid to a local guardian on their behalf. The guardian could use the money for the benefit of the Aboriginal person or any member of their family. Further, the Board controlled money from the sale of goods produced on a reserve.

From 1886, the powers of the Board were extended to control the conditions on which 'half caste' children could be licensed to work or be apprenticed. Their wages were paid to an inspector who did not have to pay half to them until the end of their service or apprenticeship.

From 1957, conditions improved slightly, though substantial power was still retained by government over Aboriginal employment until 1974, when legislation dealing specifically with Aboriginal People in Victoria was repealed.

The nature of government control could also change as some Aboriginal people were moved across State or Territory borders. According to Kidd:

*work by Cameron Raynes in SA has identified that children were sent from Koonibba mission as servants to Lutheran families in NSW & Victoria into the 1940s. Tony Austin says children were sent from Alice Springs to work in SA, especially Adelaide. A few from Qld travelled interstate as servants in the early days but this was rare and not government policy.*<sup>9</sup>

Although much political attention has been focussed on the situation in Queensland and New South Wales, the practice also occurred in other areas of Australia.

Thalia Anthony's research indicates that Aboriginal people working on cattle stations in the Northern Territory and Kimberley region of Western Australia had their wages controlled and withheld.<sup>10</sup> **Dr Anthony proposes a Federal Government reparations scheme for NT Indigenous cattle station workers. ANTaR urges the Committee to consider Dr Anthony's proposal.**

According to Anna Haebich, Aboriginal young people sent out to work from children's missions in Western Australia had their wages deposited into government trust accounts. Former workers claim to have never received the full monies due to them.<sup>11</sup> Professor Haebich says it would be difficult to calculate the numbers of Aboriginal people whose paid work was controlled by the Government in the area she has researched, the south west of Western Australia. However, she has called on the WA Government to examine all of its records to provide suitable estimates.

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<sup>8</sup> Doukakis, *The Aboriginal People*, p.146.

<sup>9</sup> Rosalind Kidd, personal communication to ANTaR member, Elizabeth Rice.

<sup>10</sup> Thalia Anthony, *The Ghost of Feudalism: Aboriginal land and labor dependencies*, PhD Thesis, University of Sydney, 2005.

<sup>11</sup> Anna Haebich, *For their own good: Aborigines and government in the south west of Western Australia 1900-1940*, UWA Press, 1988.

ANTaR supports Professor Haebich's call and **urges the Committee to recommend that all State and Territory Governments examine their records to determine how many Indigenous people had their labour controlled by government, how many had wages and other payments withheld and the value of these withheld payments.**

Throughout Australia, Indigenous people whose labour was controlled by a system ostensibly set up to "protect" them were vulnerable to physical, sexual and employment abuses. The nature of these abuses has been discussed in the *Bringing them Home* report, as well as in research by Haebich, Kidd and the Indigenous Law Centre.<sup>12</sup>

According to Haebich, young Aboriginal women working under government supervision in south west Western Australia received little protection from sexual abuse, often at the hands of their employers. In 1931, for example, thirty young women were sent back to the Moore River settlement pregnant.<sup>13</sup>

The combined impacts of this system, of which control over labour and finances was only one part, continue to be expressed in the high levels of Aboriginal socio-economic disadvantage, including low levels of income, poor health, inadequate housing, and significant over-representation in the child protection, juvenile justice and adult prison systems.

***b. all financial arrangements regarding their wages, including amounts withheld under government control, access by workers to their savings and evidence provided to workers of transactions on their accounts; evidence of fraud or negligence on Indigenous monies and measures implemented to secure them; imposition of levies and taxes in addition to federal income tax***

The loss or deliberate destruction of records and the practice of State Governments continuing to restrict access to researchers has meant that the picture of financial arrangements relating to withheld wages and other payments is incomplete.

The most comprehensive research on stolen wages was produced by Ros Kidd after she was authorised privileged access to previously reserved Queensland State Government files.<sup>14</sup>

However, Dr Kidd's subsequent research indicates that in almost every State and Territory money belonging to Indigenous peoples was improperly withheld and misspent by governments. This money included wages, social security payments like child endowment and pensions, soldier's pay, workers' compensation, and inheritances.

These moneys were instead directed into the coffers of government agents such as police protectors. Fraud by police protectors was allegedly so common in Queensland that

<sup>12</sup> Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997; Anna Haebich, *For their own good*; Ros Kidd, *The Way We Civilise*, 1997, Indigenous Law Centre, *Eventually they get it all*.

<sup>13</sup> Anna Haebich, *For their own good*.

<sup>14</sup> Ros Kidd, 'Indigenous archival records at risk,' *Australian Academic and Research Libraries*, v.36, no.2, June 2005: (159)-167 at 160. For further research by Ros Kidd, see, *The Way We Civilise: Aboriginal Affairs: The Untold Story*, University of QLD Press, Brisbane, 1997; *Black Lives, Government Lies*, UNSW Press, Sydney, 2000; and *Trustee on Trial: Recovering the Stolen Wages*, Aboriginal Studies Press, Canberra, 2006.

thumbprints were introduced in 1904 and in 1921, and further, in 1933 bulk savings were brought to Brisbane with the intent of reducing police fraud. Even in the mid-1960s auditors alleged there was no way of knowing whether witnessed receipts were authentic.

More research is needed to determine the extent of these kinds of practices in other states.

***c. what trust funds were established from Indigenous earnings, entitlements and enterprise; government transactions on these funds and how were they secured from fraud, negligence or misappropriation;***

Records in Queensland show some funds from trust accounts were transferred to public revenue and used for development and infrastructure, some ‘disappeared’ through negligence, fraud and corrupted banking systems.<sup>15</sup>

The New South Wales Government Aboriginal Trust Repayment Scheme website describes how labour and finance controls operated in that State:

*Prior to 1969, successive NSW Governments deducted money from some Aboriginal people's pensions, family endowment payments, apprentice wages, inheritances and lump sum compensation payments. Sometimes this happened without peoples' consent or knowledge.*

*This money was paid into Trust Funds operated first by the Aborigines Protection Board and then the Aborigines Welfare Board.*<sup>16</sup>

The University of New South Wales Indigenous Law Centre report *Eventually they get it all: Government Management of Aboriginal Trust Money in New South Wales*, details the various ways the NSW Government took money from Aboriginal people, placed it in trusts and then resisted attempts to have this money returned. ANTaR commends this report and understands the Indigenous Law Centre will be providing a copy of it to the Committee.<sup>17</sup>

***d. all controls, disbursement and security of federal benefits including maternity allowances, child endowment and pensions, and entitlements such as workers compensation and inheritances;***

The Indigenous Law Centre report *Eventually they get it all*, contains much information about how pensions, maternity allowances, child endowment and other Federal payments to Aboriginal people were controlled by the NSW Government. ANTaR urges the Committee to consult this report.

Controls exercised by State/Territory Governments over both the State and Commonwealth pensions, benefits and other entitlements occurred whether or not the Aboriginal person's paid labour was controlled by government at that time.

**To avoid inadvertently excluding a very large number of Aboriginal people from the Senate Committee's considerations, ANTaR recommends that the Committee allow consideration of control of Federal payments to Indigenous people, unconstrained by**

<sup>15</sup> Ros Kidd, 'You can trust me – I'm with the government,' *Queensland Review*, v.1, no.1 June 1994: 38-46 at 44.

<sup>16</sup> <http://www.premiers.nsw.gov.au/AboutUs/OurStructure/AboriginalTrustFundRepaymentScheme/Background/default.htm>

<sup>17</sup> Indigenous Law Centre, *Eventually they get it all: Government Management of Aboriginal Trust Money in New South Wales*, University of New South Wales, June 2006.

**the Preamble to the Terms of Reference, which refers to “Indigenous workers whose paid labour was controlled by government.”**

**Should the Committee consider that financial arrangements other than paid labour are not within its Terms of Reference, ANTaR urges it to recommend the issue of other payments be investigated by a broader national inquiry, perhaps to be conducted by the Human Rights and Equal Opportunity Commission.** Unless this issue is resolved, the Inquiry risks excluding the experience of large numbers of Aboriginal people from its considerations.

***e. previous investigations by states and territories into official management of Indigenous monies;***

Research by Ros Kidd indicates that the Queensland Government was not only constantly warned of the disappearance of Indigenous monies and of both ‘active’ and ‘passive’ breaches of its fiduciary duties as legal trustee, but consistently failed to implement the checks necessary to prevent massive financial loss.<sup>18</sup> Indigenous people in that state recovered control of their savings accounts in the 1970s, but only if requested. Many balances reflected little return for decades of work.

***f. current measures to disclose evidence of historical financial controls to affected Indigenous families; the extent of current databases and resources applied to make this information publicly available; whether all financial records should be controlled by a qualified neutral body to ensure security of the data and equity of access;***

Although invaluable research has been conducted into the issue of stolen wages by Ros Kidd and others, there are still considerable gaps in our understanding of how the ‘protection’ system operated as a whole and what happened to individual Indigenous people controlled under this system, including the impact on their labour and finances.

There are four potential sources for determining the nature and extent of government controls over payments to Indigenous people:

- the legislation governing what various bodies and individuals were required to do or to **not** do (including the Acts and Regulations governing the operations of ‘protection’ boards, as well as the relevant State/Territory/Commonwealth legislation governing – at least - labour, taxation, social security, social welfare and financial administration);
- the administrative material which indicates how the legislation was interpreted by the bureaucracy;
- station, mission and reserve records, as well as those of the police and others involved in administering ‘protection’ legislation, which indicate the action apparently taken in response to administrative directives; and
- the experiences of the Aboriginal people in respect of whom action was or was not taken.

<sup>18</sup> Ros Kidd, ‘Profiting from Poverty: State Policies and Aboriginal Deprivation’, *Queensland Review* (St Lucia, Qld), v.4, no.1, Apr 1997: 81-86 at 85



The only complete record among all these sources is the legislation. For all other sources, the records are incomplete for reasons ranging from loss, deliberate destruction to failure to collect the relevant information in the first place.<sup>19</sup>

The NSW Department of Aboriginal Affairs recently established a Family Records Unit to assist Aboriginal people who are members of the Stolen Generations reconnect with their families and culture. This service may be able to better help Indigenous people find out about withheld payments.

The NSW Government also reports that specialist archivist staff and record indexer positions have been established in both the Department of Aboriginal Affairs and State Records NSW to work with the Aboriginal Trust Funds Repayment Scheme.

NSW also publishes *A Guide to New South Wales State Archives relating to Aboriginal People*<sup>20</sup> and provides web pages relating to archival *Resources for Indigenous People*.<sup>21</sup>

The material associated with its current exhibition *In Living Memory: an exhibition of surviving photographs from the records of the NSW Aborigines Welfare Board, from 1919 to 1966* also provides useful information.<sup>22</sup>

However, delays to processing claims, caused in part by the need to reconcile accessing records with privacy concerns, have been reported to ANTaR by New South Wales claimants. ANTaR also understands that counseling support needs to be made available to families who are accessing potentially disturbing records. This is an area in need of greater resourcing.

**In light of these concerns, ANTaR considers the Committee would benefit from a report by NSW Government representatives on progress relating to claims and possible barriers to accessing records under the Aboriginal Trust Funds Repayment Scheme.**

Despite the efforts of government archives to improve access for Indigenous and other researchers, accessing documentary evidence is still a major barrier to Indigenous people proving stolen wages claims.

Then NSW Minister for Community Services, Carmel Tebbutt has acknowledged that in NSW the Government's records of how trusts were managed are "patchy."<sup>23</sup>

In addition, records were not necessarily collated in a way that facilitates the sorts of investigations that are now being made by Aboriginal people and others conducting inquiries.

A further problem with the incomplete nature of archival materials is that written records do not always correspond to Aboriginal people's accounts of what happened in relation to their wages and other monies (eg from pensions, benefits, and other entitlements and enterprise) or the conditions under which they worked and lived.

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<sup>19</sup> NSW Government, Family Records Unit: Fact Sheet *About The Service*,

[http://www.daa.nsw.gov.au/publications/FamRecords\\_FSHEET%201.pdf](http://www.daa.nsw.gov.au/publications/FamRecords_FSHEET%201.pdf)

<sup>20</sup> <http://www.records.nsw.gov.au/publications/aboriginalguide/aboriginalguidetoc.htm>

<sup>21</sup> [http://www.records.nsw.gov.au/archives/resources\\_for\\_indigenous\\_people\\_1471.asp](http://www.records.nsw.gov.au/archives/resources_for_indigenous_people_1471.asp)

<sup>22</sup> [http://www.records.nsw.gov.au/archives/whats\\_on\\_at\\_the\\_state\\_records\\_gallery\\_8327.asp](http://www.records.nsw.gov.au/archives/whats_on_at_the_state_records_gallery_8327.asp).

<sup>23</sup> Indigenous Law Centre, *Eventually they get it all*, p.5.

Addressing these issues requires:

- recognition that the written records are incomplete
- acknowledgement that even where written records exist, it is likely that there were significant differences between, on the one hand, written policy and administrative directions and, on the other hand, the way these were put into practice
- the establishment of a system of evidence taking that responds to the way Aboriginal people want to tell their story as it relates to mandatory controls
- the establishment of a system of evaluating evidence that specifically addresses issues relating to oral evidence – either in the absence of a written record, or where it conflicts with the written record.

**Given the age of many of the people affected, ANTaR recommends that the Committee request all States/Territories and the Commonwealth to provide sufficient funding and staff resources to ensure that the indexing of their current Aboriginal records can be completed within three years of the Committee’s report to the Australian Parliament.**

The history of governments destroying and later withholding records relating to stolen wages has understandably led to considerable suspicion from Indigenous people. There is also an undoubted conflict of interest between governments being responsible for providing access for citizens to their records and seeking to protect their legal liability.

It would therefore be desirable for historical records relating to withholding payments to be administered by a body at arm’s length from government.

**ANTaR urges the Committee to recommend the creation of a qualified, community controlled, independent, culturally competent, and adequately resourced body or bodies to administer access to the records of Indigenous people held by State, Territory and Federal governments.**

Oral history is also an invaluable resource if we are to arrive at a better understanding of how payments were withheld from Indigenous people under state control.

Historians including Henry Reynolds, Dawn May, Ann McGrath and Robert Hall<sup>24</sup> have conducted extensive research incorporating oral history on the contribution of Aboriginal labour to the Australian economy and conditions of employment.

Some of this research deals in part with controls on Aboriginal labour. However, with the exception of Ros Kidd’s work, largely focusing on Queensland, there has been insufficient research with a specific focus on all the issues associated with “stolen wages” or the broader issue of Aboriginal trust funds. While the research may overlap these issues, they have not up to now been its primary focus. For example, Dr Susan Greer has commented that when she commenced her work on *Governing Indigenous Peoples: A History of Accounting Interventions in the New South Wales Aborigines Protection and Welfare Boards 1883-1969*, she was not examining the records with a "stolen wages" eye as that was not its focus.<sup>25</sup>

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<sup>24</sup> See for example, Henry Reynolds, *With the White People*, Penguin 1990; Dawn May, *From bush to station: Aboriginal labour in the North Queensland pastoral industry, 1861-1897*, James Cook University, 1983; Dawn May, *Aboriginal Labour and the Cattle Industry: Queensland from White Settlement to the Present*, Cambridge University Press, 1994; Ann McGrath, *Born in the Cattle: Aborigines in Cattle Country*, Allen and Unwin, 1987; Robert Hall, *The Black Diggers*, Aboriginal Studies Press, 1997.

<sup>25</sup> Personal communication with ANTaR member, Elizabeth Rice.

ANTaR understands that commissioning specialist research is likely to be beyond the scope of the Senate Inquiry. However, this additional research is desperately needed if we are to come to a more complete understanding of the scale and impact of stolen wages across Australia. **ANTaR therefore urges the Committee to recommend that Federal, State and / or Territory Governments fund national research of this nature drawing on both archival and oral sources. This research could perhaps be carried out in conjunction with a broad, national inquiry into stolen wages conducted by the Human Rights and Equal Opportunity Commission.**

As a starting point, the current Senate Inquiry could add to knowledge of stolen wages by providing a hearings system and environment which will encourage Aboriginal people to speak directly to the Committee about their experiences.

**ANTaR therefore recommends that the Committee:**

- **develop a hearings system and environment that will allow and encourage Indigenous people to speak directly to it of their experiences on matters that relate to the Inquiry**
- **consult Indigenous people on what is required to create a hearings system and environment that will meet this purpose.**

***g. commitments by state and territory governments to quantify wages, savings and entitlements missing or misappropriated under official management; the responsibility of governments to repay or compensate those who suffered physically or financially under 'protection' regimes;***

To date, only Queensland and New South Wales have established schemes to attempt to resolve the stolen wages issue. There are significant differences between the approaches of these two State Governments.

The Queensland scheme in particular has been roundly criticised by Indigenous and non-Indigenous people. According to then Aboriginal and Torres Strait Islander Social Justice Commissioner, Bill Jonas:

*What was initiated as an act of reconciliation and an attempt at a just settlement of a long outstanding abuse has been so poorly handled by the Queensland Government that it has in fact turned into another slap in the face for Queensland's Indigenous people*

As recently as 14 September this year, Human Rights and Equal Opportunity Commission President, John Von Doussa said that the Queensland Stolen Wages Reparation Process,

*has not resolved many of the key issues. This failure to reach a just and equitable outcome in response to one of the great scandals of Australia history continues to act as a bar to reconciliation.*

The Queensland scheme had its genesis in 1985 when seven Palm Island workers started an action at the Human Rights Commission for legal wages. Two years later the Government handed control of communities over to Aboriginal councils, but their budgets were insufficient to cover award rates.

In 1996 the Queensland Government lost the Human Rights and Equal Commission case on under award wages; but refused to pay suggested compensation of \$7000 to each of the six workers. The workers commenced Federal Court action; the Government capitulated in 1997. In 2000 the Beattie Government made \$25 million available to pay all workers after losing several more cases on under award wages.

This process made available a single payment of \$7000 to people employed by the Government in Aboriginal Reserves between 31 October 1976 the date the *Race Discrimination Act* commenced and 29 October 1986 from which point ordinary award wages were paid to everyone.

Mission workers were not able to receive payments and legal action on behalf of a number of these people is ongoing.

From 2000 Queensland Aboriginal & Islander Legal Service Secretariat (QAILSS) began to collect testimony from over 2000 people who wanted to take action against the Government for missing, unpaid and underpaid wages, misused trust funds, unpaid child endowment, workers' compensation and deceased estates.

In 2002 the Beattie Government made an offer of \$55.6 million to pay \$4,000 to some people, and \$2,000 to others, as settlement for all claims on any of these matters.

The Queensland Government has acknowledged that the one-off payments to elderly Aboriginal people are only a fraction of what was withheld from these people over their working lives. Premier Beattie argued that the offer was a gesture of reconciliation, not intended to replace unpaid wages.

It is questionable whether a government that claims to stand up for the rights of working people would expect any other group in society to accept the return of only a fraction of their entitlements as a "gesture" "in the spirit of reconciliation." Yet this is what the Queensland Government expected from some of its elderly and most vulnerable citizens.

The deadline for claimants to register for the Queensland scheme expired on 31 January 2006.

The Government received a total of 8765 claims, less than half the 20,000 claimants originally anticipated. Of which 8606 claims that had been assessed, 5486 (64 percent) were eligible and 3120 ineligible.

On May 10, Premier Peter Beattie told Parliament that \$35.4 million remained unspent from the original allocation of \$55.6 million. He said that State Cabinet 'will shortly consider a strategy on how best to allocate the unspent funds'.

Some of the options under consideration include:

- spending the funds on activities to promote indigenous culture;
- placing the money into the Aboriginal Welfare Fund, to be used to establish a foundation for the benefit of indigenous people;
- consideration of additional payments to eligible claimants;

- the funding of innovative programs in education, health and welfare; and
- funding of training opportunities.

However, Premier Beattie's comment that the unspent amount was "taxpayers' money" angered many Indigenous Queenslanders who consider that it belongs to the Indigenous workers whose wages were never paid.

In light of the hurt and anger caused by Premier Beattie's comments, **ANTaR urges the Committee to recommend to governments that they avoid giving the misleading impression that repayments to people whose wages have been withheld are "taxpayers' money"**. Instead these monies are the legitimate entitlement of the Indigenous workers whose wages were denied to them. Government communications should reflect this rather than promoting misconceptions which could lead to resentment in the broader community.

Indigenous Stolen Wages Working Group members from Queensland have told ANTaR that they consider money left in the fund should be paid to individual claimants whose monies were withheld, not spent on community programs that the Government has a responsibility to fund out of general revenue.

The Queensland scheme has also been widely criticized on the following grounds:

- The capped payments were only a fraction of what is owed to claimants who had their wages withheld.
- Descendants of deceased workers were not eligible to claim.
- Oral evidence was not admissible and many government records have been lost or destroyed.
- Claimants had to surrender their legal rights to compensation in order to be paid.
- Claimants were not given access financial advice on how much they were owed prior to being asked to accept payments.

The Queensland scheme also does nothing to address what Anna Haebich describes as the "consequential poverty" experienced by Indigenous families as a result of stolen wages:

*By denying generations of Aboriginal people the right to decent and productive work, proper wages, sufficient services and adequate welfare, governments laid the basis for an Aboriginal underclass without sufficient land property, capital, economic skills or employment prospects. This is a stark irony in a nation proud of its history as a 'workers' paradise.'*<sup>26</sup>

Some Indigenous leaders have suggested to ANTaR that a separate allocation should be made to assist young Indigenous people to access education and employment. This

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<sup>26</sup> Anna Haebich, *Stolen Wages and Consequential Indigenous Poverty: A National Issue*, Kathleen Fitzpatrick Lecture, University of Melbourne, 20 May 2004, pp.3-4.

allocation would be in recognition of the fact that these opportunities have denied to young Indigenous people as a result of the poverty enforced on their parents and grandparents.

Given the widespread criticisms of the Queensland scheme, **ANTaR urges the Committee to request the Queensland Government to re-open negotiations with stolen wages claimants and other community representatives from that State so that a fairer resolution can be developed in conjunction with and to the satisfaction of Indigenous people in that State.**

**ANTaR urges the Committee to recommend to Federal, State and Territory Governments that they implement properly funded employment and education programs targeted to assist young Indigenous people overcome the intergenerational poverty caused by stolen wages. The details of these programs should be developed in conjunction with Indigenous community representatives in each State and Territory.**

The NSW Government's Aboriginal Trust Funds Reparation Scheme was established following the Queensland scheme. The NSW Government estimates that there may be between 3500 and 11000 eligible claimants in that State. It has admitted severe misuse of Indigenous wages under the *Aborigines Protection Act 1909* between 1900 and 1969.<sup>27</sup>

In 1998 the NSW Government drafted a submission establishing a project to investigate the issue of outstanding Aboriginal Trust Fund balances. This was later obtained by the NSW Public Interest Advocacy Centre (PIAC) under Freedom of Information provisions.

A resulting draft Cabinet Minute (which, although presumably circulated among relevant NSW Government agencies, was apparently never considered at a Cabinet meeting) was leaked to the *National Indigenous Times* and published on 4 February 2004.

A second Cabinet Minute was prepared after the issue gained renewed momentum in NSW and resulted in the appointment of a panel to investigate an Aboriginal Trust Fund Reparation Scheme. The report of that panel was adopted in full by the NSW Cabinet in December 2004, and forms the basis of the NSW Government's Aboriginal Trust Fund Repayment Scheme (ATFRS).<sup>28</sup>

ANTaR considers the NSW scheme to be fairer than the Queensland scheme for the following reasons:

- Claimants will be fully reimbursed for money owed in today's value;
- There is no demand to surrender legal rights;
- Both direct and descendant claimants are eligible; and
- Oral evidence will be considered.

However, research that informed the development of the NSW Government Cabinet Minutes and the resulting Trust Fund Repayment Scheme is still not publicly available. This research

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<sup>27</sup> Aileen Teo, 'Establishment of the NSW Aboriginal Trust Fund Repayment Scheme,' *Indigenous Law Bulletin*, v.6, no.9, Feb 2005: 12-14 at 12. Also Ros Kidd, 'Indigenous archival records at risk,' at 164.

<sup>28</sup> <http://www.premiers.nsw.gov.au/NR/rdonlyres/A1F8674E-2742-457C-825B-9C74413E89A3/0/ATFfinalreportDec05.doc>

may provide valuable insights into the scale and operation of monies withheld from Aboriginal people in that State.

**ANTaR recommends that the Committee requests the NSW Government to make available the detailed research which informed the development of all Cabinet Minutes prepared on the issue of Aboriginal Trust Funds since 1998.**

Although the principles underpinning the NSW scheme are fairer than the Queensland one, it remains to be seen whether the operation of the program will, in the words of the Committee's Terms of Reference, adequately "repay or compensate those who suffered physically or financially under 'protection' regimes" in that State.

It would be useful if the Committee had access to as much current information as possible about the operation of the NSW scheme as a guide to the development and operation of possible future schemes.

Both the NSW Government and others familiar with the development and operation of the current NSW scheme would be able to provide relevant information to the Committee.

To enable the Committee to obtain community feedback on both the adequacy of the NSW Government's commitments in its ATFRS, and the implementation of these commitments so far, **ANTaR recommends that the Committee invite representatives from the NSW ATFRS, Link-Up (NSW) and advocacy groups such as PIAC and relevant Community Legal Centres to report on progress in the implementation of the NSW scheme.**

ANTaR considers that all Australian Governments have, in the words of the Committee's Terms of Reference, a "responsibility ... to repay or compensate those who suffered physically or financially under 'protection' regimes."

Any approaches which aim to take this responsibility need to address:

- the monies themselves (unpaid, underpaid and/or missing monies, as well unpaid or underpaid labour, pensions, benefits and other entitlements);
- the discriminatory regimes which operated during the relevant period in at least the following areas: civil rights, industrial relations, social security, social welfare, and financial administration;
- the financial losses to Aboriginal individuals, families and communities from those discriminatory regimes;
- the ways those financial losses affected Aboriginal people's opportunities **at the time**
- the subsequent – and **continuing** - inter-generational impacts of the socio-economic disadvantage that resulted from those lost opportunities;
- the need for measures that address the financial losses within a moral framework, not just an administrative and legal one, in accordance with the human rights and social justice issues involved;
- the need to locate these measures in a context that acknowledges the coexisting impacts of unresolved rights and justice issues in relation to land, law and culture – and preferably within a context where steps are being taken to address these core issues;
- the need for recognition that resolving these issues requires a "cross-government" approach; and

- the need for governments to resolve these issues through negotiation, not just consultation, with Aboriginal people.

In particular, any future schemes to repay monies withheld from Indigenous people under government control should ensure that:

- Claimants are fully reimbursed for money owed in today's value;
- There is no demand to surrender legal rights;
- Both direct and descendant claimants are eligible;
- Oral evidence will be considered;
- Claimants are given access to free, independent legal and financial advice and all records concerning their case prior to being asked to accept an offer; and
- Claimants and family members are able to access appropriate case management counselling support. This support should also be available to staff administering such schemes (as occurs currently in NSW).

**ANTaR recommends that these principles be incorporated into the Committee's recommendations concerning the establishment of future repayment schemes.**

In developing just responses to the stolen wages issue, governments also need to distinguish between repayments and compensation, as well as considering issues relating to physical abuse, cultural and social abuse and evidence.

### **Repayment**

It is crucial to distinguish between repayment and compensation. Repayments relate to the return of people's own monies to them, with interest added at an appropriate rate.

One area it would be useful for the Committee to examine is the adequacy of the interest rates used so far in schemes to bring Aboriginal people's historical trust account balances up to current values.

Repayments will not in themselves address the root causes of current Aboriginal socio-economic disadvantage that result from the former mandatory controls over all aspects of Aboriginal people's lives. However, a just repayment system is a vital part of the process of taking responsibility for addressing the damage created by those controls.

### **Compensation**

Compensation is a complex area and includes attempts to redress the damage caused by mandatory controls over Aboriginal people's labour and/or finances.

There are several reasons why the lost opportunities associated with those controls cannot be reclaimed simply by returning individual Indigenous people's historical trust account balances to them at current values:



- even though financial controls may have been exerted over particular individuals, the impacts were also experienced by their families and communities, regardless of whether every family or community member was subjected to those controls;
- financial controls were accompanied by formal and informal controls over civil rights that together denied Indigenous individuals, families and communities access to standards of education, health and housing which are commonly regarded as the foundation of a decent life.
- as Indigenous people were also denied access to their monies, they were denied the ability to choose the direction their lives and those of their children would take;
- the impacts of this denied access have compounded over time.

However, financial controls are only one factor that should be taken into account in considering compensation for the impacts of mandatory controls. Others include:

- the physical abuses that resulted from mandatory control over Aboriginal people's labour; and
- the system of forcible separation of children from their families, which is inextricably linked with controls over Aboriginal child labour and finances, has had severe and ongoing impacts on Aboriginal culture and society.

These cannot be addressed or recompensed simply by returning lost finances.

Finally, compensation alone will not resolve any of these issues. Any proposed compensation package also needs to be accompanied by measures to resolve outstanding rights and justice issues affecting Indigenous Australians.

### **Physical Abuse**

Physical abuse includes sexual abuse, some of which was child sex abuse. This affected both boys and girls (particularly in NSW, as child labour was controlled by government). For girls it was often accompanied by pregnancy to employers or others in their households or work force. This often led to further abuse, when their own children were then taken from them.<sup>29</sup>

The damage of this abuse – including its ongoing inter-generational impacts - cannot be recompensed solely by repayment of monies owed for labour or pensions, benefits, other entitlements or enterprise.

### **Cultural and Social Abuse**

The controls exerted over Aboriginal people's lives went directly to the heart of Aboriginal cultural and social organisation, and attacked Aboriginal attachment to land, spirituality, language, and family and community functioning. These abuses have resulted in low levels of social and emotional wellbeing among Aboriginal people, and high levels of socio-economic disadvantage, including low levels of income, poor health, inadequate housing, and significant over-representation in the child protection, juvenile justice and adult prison systems.

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<sup>29</sup> See for example Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997.

These impacts also would need to be addressed in any compensation scheme.

A submission ANTaR (NSW) made in August 2004 to the then NSW Aboriginal Trust Funds Reparation Scheme Panel on the preferred characteristics of a scheme to address the issue of outstanding balances in Aboriginal Trust Fund accounts in NSW is attached as Appendix 3. Although responding to the situation in NSW at that time, that submission contains points that remain relevant to any inquiry into controls on Aboriginal labour and finances in Australia.

***h. what mechanisms have been implemented in other jurisdictions with similar histories of Indigenous protection strategies to redress injustices suffered by wards; and***

Both Canada and the United States of America have similar histories of Indigenous protection strategies. While the ‘protection’ systems that operated were not identical to those in Australia, they do share significant similarities with Australia’s, and research into approaches they have taken to redressing the damage of ‘protection’ regimes could be useful.

Ros Kidd’s book, *Trustees on Trial* discusses litigation and government responses to control of Indigenous peoples’ finances in Canada and the United States of America. The Committee is likely to find her discussion of the Individual Indian Monies class action, the Synar Report to Congress on the mismanagement of the Indian Trust Fund and the 1994 *Indian Trust Fund Management Reform Act* particularly useful.<sup>30</sup>

***i. whether there is a need to 'set the record straight' through a national forum to publicly air the complexity and the consequences of mandatory controls over Indigenous labour and finances during most of the 20th century.***

To quote the Terms of Reference, ANTaR believes there is a need to both: “set the record straight” on the complexity and consequences of mandatory controls over Indigenous labour and finances during most of the 20th century **and** take steps to address these consequences.

A national forum organised in conjunction with Indigenous people could assist to help to ‘set the record straight.’ However, of even greater importance would be a proper process of addressing the damage caused by ‘protection’ regimes.

ANTaR considers that a reparations tribunal along the lines proposed in the PIAC report *Restoring Identity* should also be considered as part of a comprehensive settlement to the stolen wages issue.<sup>31</sup>

**ANTaR urges the Committee to recommend that:**

- **the issues of repayment of monies owed, and of compensation for the impacts of ‘protection’ regimes, be referred to the Human Rights and Equal Opportunity Commission (HREOC) to assess the impacts and make appropriate recommendations on how to address them**

<sup>30</sup> Kidd, *Trustees on Trial* pp.29-35.

<sup>31</sup> <http://www.piac.asn.au/publications/pubs/RIsummary.pdf>

- **HREOC be charged to give priority to obtaining Aboriginal perspectives on these matters**
- **HREOC be adequately resourced to enable it to access a sufficient amount of the wide range of skills required (whether in the form of employees, contractors or consultants) to undertake all these activities.**

## **Conclusion**

Over the past year there has been a significant national debate on the issue of workers' wages and entitlements following the introduction of new industrial relations laws by the Federal Government.

However, scant attention has been given to the wages and entitlements denied to Indigenous workers throughout much of the last century. State Governments that have been outspoken in their opposition to the new Federal laws have been silent about their own responsibility to ensure elderly and vulnerable Indigenous people finally receive the payments that were denied to them for so many years.

These Governments have also yet to face up to their responsibility to end the intergenerational poverty caused by the practice of controlling the labour and withholding wages and other payments to Indigenous workers.

Many of these workers faced a double injustice because they were also members of the Stolen Generations. They were removed from their families and culture and then had their wages and entitlements removed from them. The twin practices of child removal and stolen wages took many Indigenous people into a form of cultural and economic exile, denied a place in Indigenous society and then prevented from gaining the economic stake so essential to enabling decent life in the mainstream.

The unresolved issue of stolen wages remains one of the nation's greatest barriers to reconciliation and justice for Indigenous people.

ANTaR commends the Senate for initiating this Inquiry and wishes the Committee well in its deliberations.

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## **Appendix 1 - ANTaR Recommendations**

- 1. ANTaR urges the Committee to consider a Federal Government reparations scheme for NT Indigenous cattle station workers as proposed by Dr Thalia Anthony.**
- 2. ANTaR urges the Committee to recommend that all State and Territory Governments examine their records to determine how many Indigenous people had their labour controlled by government, how many had wages and other payments withheld and the value of these withheld payments.**
- 3. To avoid inadvertently excluding a very large number of Aboriginal people from the Senate Committee's considerations, ANTaR recommends that the Committee allow consideration of control of Federal payments to Indigenous people, unconstrained by the Preamble to the Terms of Reference, which refers to "Indigenous workers whose paid labour was controlled by government."**
- 4. Should the Committee consider that financial arrangements other than paid labour are not within its Terms of Reference, ANTaR urges it to recommend the issue of other payments be investigated by a broader national inquiry, perhaps to be conducted by the Human Rights and Equal Opportunity Commission.**
- 5. ANTaR considers the Committee would benefit from a report by NSW Government representatives on progress relating to claims and possible barriers to accessing records under the Aboriginal Trust Funds Repayment Scheme.**
- 6. Given the age of many of the people affected, ANTaR recommends that the Committee request all States/Territories and the Commonwealth to provide sufficient funding and staff resources to ensure that the indexing of their current Aboriginal records can be completed within three years of the Committee's report to the Australian Parliament.**
- 7. ANTaR urges the Committee to recommend the creation of a qualified, community controlled, independent, culturally competent, and adequately resourced body or bodies to administer access to the records of Indigenous people held by State, Territory and Federal governments.**
- 8. ANTaR therefore urges the Committee to recommend that Federal, State and / or Territory Governments fund national research of this nature drawing on both archival and oral sources. This research could perhaps be carried out in conjunction with a broad, national inquiry into stolen wages conducted by the Human Rights and Equal Opportunity Commission.**
- 9. ANTaR recommends that the Committee:**
  - develop a hearings system and environment that will allow and encourage Indigenous people to speak directly to it of their experiences on matters that relate to the Inquiry.**
  - consult Indigenous people on what is required to create a hearings system and environment that will meet this purpose.**
- 10. ANTaR urges the Committee to recommend to governments that they avoid giving the misleading impression that repayments to people whose wages have been withheld are "taxpayers' money".**
- 11. ANTaR urges the Committee to request the Queensland Government to re-open negotiations with stolen wages claimants and other community representatives from that State so that a fairer resolution can be developed in conjunction with and to the satisfaction of Indigenous people in that State.**

- 12. ANTaR urges the Committee to recommend to Federal, State and Territory Governments that they implement properly funded employment and education programs targeted to assist young Indigenous people overcome the intergenerational poverty caused by stolen wages. The details of these programs should be developed in conjunction with Indigenous community representatives in each State and Territory.**
- 13. ANTaR recommends that the Committee requests the NSW Government to make available the detailed research which informed the development of all Cabinet Minutes prepared on the issue of Aboriginal Trust Funds since 1998.**
- 14. ANTaR recommends that the Committee invite representatives from the NSW ATFRS, Link-Up (NSW) and advocacy groups such as PIAC and relevant Community Legal Centres to report on progress in the implementation of the NSW scheme.**
- 15. ANTaR recommends that the following principles be incorporated into the Committee's recommendations concerning the establishment of future repayment schemes:**
  - Claimants are fully reimbursed for money owed in today's value;**
  - There is no demand to surrender legal rights;**
  - Both direct and descendant claimants are eligible;**
  - Oral evidence will be considered;**
  - Claimants are given access to free, independent legal and financial advice and all records concerning their case prior to being asked to accept an offer; and**
  - Claimants and family members are able to access appropriate case management counselling support. This support should also be available to staff administering such schemes (as occurs currently in NSW).**
- 16. ANTaR urges the Committee to recommend that:**
  - the issues of repayment of monies owed, and of compensation for the impacts of 'protection' regimes, be referred to the Human Rights and Equal Opportunity Commission (HREOC) to assess the impacts and make appropriate recommendations on how to address them,**
  - HREOC be charged to give priority to obtaining Aboriginal perspectives on these matters,**
  - HREOC be adequately resourced to enable it to access a sufficient amount of the wide range of skills required (whether in the form of employees, contractors or consultants) to undertake all these activities.**