

## **The Aboriginal Trust Fund Repayment Scheme Panel: Submission to the Senate Inquiry into “Stolen Wages”**

### **Introduction**

The ATFRS Panel noted at its meeting on 12 July 2006 that the Senate Legal and Constitutional Affairs Committee is undertaking an *Inquiry into Indigenous Workers Whose Paid Labour Was Controlled by Government* [Stolen Wages] and intends to report on this issue by early December 2006.

The ATFRS Panel agreed that it would make a submission to the Inquiry on its work to date on the NSW Aboriginal Trust Fund Repayment Scheme and on matters arising from that work that may be of interest to the Inquiry.

The ATFRS Panel is aware of the NSW Government’s submission to the Inquiry and the Panel considers its submission to be complementary.

Nonetheless, the Panel wishes to inform the Senate Inquiry of the unique nature of the NSW Aboriginal Trust Fund Repayment Scheme. It repays to Aboriginal people the full amount of money they are owed from the Trust Funds, calculated at its present value which includes both interest and inflation. Repayments are not capped. The Scheme also makes repayments to the descendants of deceased Aboriginal people whose money was placed into Trust Funds and never repaid.

It is designed to be culturally sensitive and to assist and support Aboriginal people throughout the process. This includes funding a specialised ATFRS officer with Link-Up NSW to provide support and practical assistance to claimants and their families.

It needs to be strongly stressed, however, that the ATFRS is not a compensation scheme. The Scheme is evidence based and specialised indigenous staff undertake a search of the archival records to find evidence of money that might be owed. Copies of all the relevant records relied on when assessing claims are provided to claimants free of charge. The aim of the Scheme is to be as open and transparent in its processes as possible.

Negotiations with the Commonwealth government have ensured that any repayments will be tax free and will not be assessed as income under the *Social Security Act 1991*. Therefore, most pensions and benefits will not be affected.

Additional written or oral evidence can be considered by the ATFRS Panel, and the Scheme gives the Panel the scope to consider such evidence in making recommendations to the Minister on possible repayments. Under the NSW Scheme, claimants are not asked to relinquish any of their future legal rights, although they are asked to sign an acknowledgement on repayment that they have received an ex-gratia payment from the NSW Government.

## Background

Prior to 1969, NSW Governments collected some monies owed to Aboriginal people. These were paid into Trust Funds operated first by the Aborigines Protection Board and then by the Aborigines Welfare Board.

The Trust Funds were set up to ensure savings during the period of a ward's apprenticeship, with expenditure often not permitted until they reached 18 or 21 years, with a small amount remitted to apprentices as "pocket money". In addition Aboriginal people living on reserves and stations sometimes had their wages and social security benefits such as maternity allowances, paid into trust accounts. Lump sum compensation payments, such as payments to infants for parents killed in work based accidents were also put into the Trust Funds.

Under these paternalistic policies, Aboriginal people had to apply to the Board for permission to withdraw money from their trust accounts, which was not always granted.

In March 2004, the NSW Premier Bob Carr formally apologised to the Aboriginal people in NSW, stating "I want to assure the Aboriginal community that if we can establish any individual is owed money they will have it returned... these funds were held in trust, and our predecessors failed that trust."

In May 2004, the Premier announced the creation of the first Aboriginal Trust Funds' Panel to talk to the Aboriginal community and report back to Government on the design of a scheme to repay money to Aboriginal people who had wages or other payments placed into Trust Funds. The Panel members were Brian Gilligan (Chair), Terri Janke and Sam Jeffries.

The Panel was requested to undertake comprehensive and appropriate consultation with Aboriginal communities and report to government on the scope and nature of the issues associated with monies withheld from Aboriginal people and the design of an evidence based repayment scheme.

During 2004, the Panel was briefed by government agencies on information known about records, categories of claimants and the history of developing a repayment scheme. A 1800 free call number was established and an Aboriginal Trust Fund Repayment Scheme web site set up. Information sheets were developed and circulated.

The Panel undertook a series of visits to locations across NSW to seek the opinion of Aboriginal people about how a payment scheme should work.

During June and July 2004, advertisements and media releases were placed in the *Sydney Morning Herald*, the *Daily Telegraph*, the *National Indigenous Times*, *Koori Mail* as well as local media outlets in Dubbo, Wagga Wagga, Broken Hill, Moree, Tamworth, Liverpool, Macarthur, Lismore, Kempsey, Hunter Valley and Maitland.

Approximately 538 people attended meetings with the Panel in:

Wagga Wagga	Dubbo	Broken Hill
Mount Druitt	Moree	Tamworth
Picton	Lismore	Kempsey
Metford	Newcastle	Redfern
Dareton	Nowra	Walgett

The Panel also held meetings with representatives of the Department of Aboriginal Affairs, State Records, and the Public Trustee. Separate meetings were held with Link-Up, the Indigenous Law Centre, the University of New South Wales and the Public Interest Advocacy Centre to further explore issues raised by the submissions and during the meetings.

Thirteen submissions were received from individuals and organisations such as Link-Up, Australians for Native Title and Reconciliation, the Department of Aboriginal Affairs (DAA), the Indigenous Law Centre University of New South Wales, the Public Interest Advocacy Centre (PIAC), the Women's Legal Service and the NSW Reconciliation Council.

The Panel submitted its report to Government in October 2004. On 15 December 2004 the NSW Government announced it accepted the report and all of its recommendations and it would establish an Aboriginal Trust Fund Repayment Scheme to repay wages or other money paid into the Aboriginal Trust Funds between 1900 and 1968 that was never repaid.

### **The work of the second ATFRS Panel**

The appointment of a professional and expert indigenous ATFRS Panel to advise the NSW Aboriginal Trust Fund Repayment Scheme was announced by the then NSW Special Minister of State, John Della Bosca on 31 May 2005.

The Government welcomed the experience of the new Panel members:

- **Mr Aden Ridgeway (Chair)**  
Mr Ridgeway was a Senator in the Australian Parliament until mid 2005, and was then the only indigenous member of the Federal Parliament. He is a Gumbaynggir man originally from the Nambucca Valley area of NSW.
- **Mr Sam Jeffries**  
Mr Jeffries was born and raised in Brewarrina NSW and has been active in indigenous affairs for 25 years. He has held numerous senior roles in the Murdi Paaki area of Western NSW. He was a Councillor in Walgett Shire and was an ATSI Regional Councillor, and Regional Chairperson of Murdi Paaki Regional Council amongst other senior roles within ATSI.
- **Ms Robynne Quiggin**  
Ms Quiggin is from the Wiradjuri Nation. She is a lawyer and has worked in many legal, academic and community positions including the Human Rights and Equal Opportunity Commission and Link-Up NSW. She was also a member of the Community Justice Centre Council Advisory Board to NSW Attorney-General, Community Justice Council (NSW) 1998-2002.

### **Overview of the role of the Aboriginal Trust Fund Repayment Scheme Panel.**

The ATFRS Panel commenced work on 1 July 2005 and is an integral and vital component of the NSW Scheme. A detailed outline of its role in the Scheme is contained in the ATFRS Guidelines.

In short, the Panel responsibilities include but are not limited to providing advice on the various operations of the Scheme. The Panel reviews all claims, the interim assessments prepared by the ATFRS Unit and can either endorse or reject these for payment. The Panel

has full discretion to review all the facts in each case using all available evidence, including oral evidence.

The general principles and factors relevant to making a determination on an application considered by the Panel are:

- (a) the length of time that has elapsed and the difficulty claimants may have in substantiating their application as a result;
- (b) any deficiencies in the official written record relating to the application or similar applications;
- (c) the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people;
- (d) the purpose of the Scheme, which is to restore money held in trust for Aboriginal people;
- (e) any available evidence that money payable to a direct claimant was paid into the Trust Funds and the reliability of that evidence;
- (f) any available evidence that money was paid out of the Trust Funds to a claimant and the reliability of that evidence; and
- (g) any other matter which the Director-General of the Premier's Department, the Panel or the Minister considers relevant.

An important role for the Panel is that it can review decisions of the ATFRS Unit at the request of claimants. The Panel receives from the ATFRS Unit the following material for each of its meetings;

- (a) the claimants application;
- (b) the ATFRS Unit's interim assessment;
- (c) the documents forwarded to the claimant/s;
- (d) any response received from the claimant/s; and
- (e) where appropriate, the ATFRS Unit's recommendation to the Panel.

After consideration of this material the Panel may request further information or investigation by the ATFRS Unit, ask for more information from a claimant, or recommend to the Minister that an ex gratia payment be made or not to the claimant in accordance with Part 8 the ATFRS Guidelines.

The Panel can seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application. For example, in the case of a very complicated descendants' claim the Panel can, if it wishes, seek advice from the Public Trustee or legal advice from the Crown Solicitor's Office.

The Panel may for reasons of language difficulty, distance, or any other reason, conduct an interview with the claimant in person or by telephone and with any person who may have information relevant to the determination of the application. The Panel may request that the ATFRS Director conduct any further investigations including, but not limited to, further searches of records, interviews, or any further investigation or research it feels is necessary.

In the case of a descendant claim, descendants may request that the Panel recommend that any repayment under the Scheme be distributed in line with an optional “written family agreement” on how the descendants would like the payment distributed.

To make a recommendation to the Minister that an ex gratia payment be made, the ATFRS Guidelines require the Panel to be satisfied that:

1. there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of a claimant at any time was paid into the Trust Funds between 1900 and 1969; and
2. there is no evidence, or no reliable evidence, that the full amount of the money was paid.

Under the ATFRS guidelines the Panel will contribute to a review of the operations of the ATFR Scheme after 3 years including a report to the NSW Government on any issues it believes require further action.

### **Work of the NSW ATFRS Panel to date**

The Panel, as at 18 September 2006, has met thirteen times. At its initial meeting the Panel and a number of senior government officers discussed in detail its work and the ATFRS Guidelines. Officers attending this meeting were from the Privacy Commission, State Records NSW, the Ombudsman’s Office, the Office of the NSW Public Trustee, Crown Solicitor’s Office and the Department of Aboriginal Affairs.

### **Challenges facing the ATFRS Panel**

In the course of its deliberations, the Panel has identified a number of matters on which it wishes to gather further information or undertake additional research on.

Currently a proportion of claims are returning from the record search with no records found. However, these claims have been processed based on currently available and indexed records, and will be held for re-assessment once the indexation of the records is completed.

The continuing indexation of records has two components. First, the Department of Aboriginal Affairs has been allocated additional funding for two years to finalise the indexation of the Aborigines Protection Board and Aborigines Welfare Board files, of which it is the custodian.

Second, an audit is being conducted by State Records and the ATFRS Unit in Premier’s Department to identify, copy and index 138 boxes of previously unknown records from the old Chief Secretary’s Department, which were found by State Records early in 2006. These boxes comprise a previously unknown sequence of records relating to the Aborigines Protection and Welfare Boards for the period 1938 to 1949. It is estimated that there are approximately 100,000 pages of material to archive, and approximately 75% of the material relates to the administration of the Aborigines Welfare Board. The indexation project will take approximately six months to finalise.

It is the Panel’s view that a number of claims coming before it show similar patterns in Aboriginal people’s experiences. These include similar treatment of Aboriginal people living on particular reserves and missions and similar treatment by the Boards in relation to use of individuals’ Trust Funds.

The Panel has identified a range of academics with expertise in Aboriginal people's experiences in New South Wales and/or in the operations of the Boards and will be seeking advice and possible further research on these matters.

It is the Panel's view that this research is required in order to better understand the operations of the Aborigines Protection Board and Aborigines Welfare Board and the social and economic environments experienced by Aboriginal people whose affairs and lives were governed by the Aborigines Protection Act 1909, the Aborigines Protection Amending Act 1915, the Aborigines Protection (Amendment) Act 1915 or the Aborigines Protection (Amendment) Act 1940.

Other issues the Panel has identified to date as possible areas for further research and consideration are:

- The role of Church organisations and agencies in relation to Aboriginal people under their care in the period 1900 to 1969.
- Identification and location of any other records relating to Aboriginal people in NSW for the period in question outside of the State Records collections.
- Additional Information on other records held at the Department of Aboriginal Affairs and State Records NSW, that is, records held by NSW agencies such as by the Crown Solicitor's Office that might relate to monies owed to Aboriginal people.
- An analysis of the activities of APB or AWB staff and/or other persons in relation to the operation of individual's Trust Funds.
- Research on the Board's practices that might assist in reviewing the records documentation, including information on the Boards' accountancy practises.
- In a number of claims it appears that managers of missions and reserves sent young people out to work but there is often no evidence of wages being paid or Trust Funds being established for these individuals. The Panel is keen to gather further information on this issue.

The Panel expects that further issues may emerge for consideration and research.

## **Conclusion**

The ATFRS Panel would be happy to discuss with the Inquiry any additional aspects of the work it has undertaken that the Inquiry believes may be of assistance in looking at the issue of "Stolen Wages".