

SUBMISSION

FROM

**LINK-UP (NSW) ABORIGINAL
CORPORATION**

TO

**THE ABORIGINAL TRUST FUND
REPARATION SCHEME PANEL**

6 AUGUST 2004

Contact:
Ms Glendra Stubbs
Co-ordinator
Link-Up (NSW) Aboriginal Corp

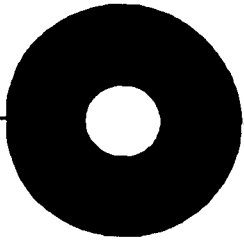
5 Wallis Street
Lawson NSW 2783
Phone 47591911
Fax 47592607

**SUBMISSION FROM LINK-UP (NSW) ABORIGINAL
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CONTENTS

- 1. INTRODUCTION**
- 2. OUR REASONS FOR MAKING THIS SUBMISSION**
- 3. OUR COMMENTS ON THE ATFRS PROCESS SO FAR**
 - (i) General**
 - (ii) Specifics**
 - Time Frame
 - Context
 - Approach
- 4. OUR SUGGESTIONS FOR THE WAY FORWARD**
 - (i) The Scope of an ATFRS**
 - Name and Objectives
 - Range of Claimants
 - Pain and Suffering
 - Principles
 - Support for Claimants and Potential Claimants
 - (ii) The Auspice for an ATFRS**
 - (iii) Time Frame**
 - (iv) Interim Process**
- 5. CONCLUSION**

**Attachment A: Detailed Advice on Support for Claimants and
Potential Claimants**



LINK-UP (NSW) ABORIGINAL CORPORATION

*If a people should lose something,
And turn back, and look carefully for it —
They will find it. — Tatanka Yotanka*

ABN 99 731 805 429

5 WALLIS STREET
LAWSON NSW 2783

All Correspondence to —
P.O. Box 93, LAWSON NSW 2783
(02) 4759 1911 Fax: (02) 4759 2607
Email: linkup@nsw.link-up.org.au

Link-Up (NSW) Aboriginal Corporation
5 Wallis Street
LAWSON NSW 2783

ph47591911
fax47592607

6 August 2004

Aboriginal Trust Fund Reparation Scheme
Locked Bag 28
ASHFIELD NSW 1800

Dear Mr Gilligan

SUBMISSION TO THE ABORIGINAL TRUST FUND REPARATION SCHEME PANEL

1. INTRODUCTION

This submission covers three issues:

- our reasons for making this submission
- our comments on the ATFRS process so far
- Our suggestions for the improvements needed to it.

The third point above is the one that needs your most urgent attention as, in summary; we believe that unless significant changes are made:

- the Government will be unable to help Aboriginal people achieve justice in this area
- It will add to the pain and suffering still being experienced by Aboriginal people as a result of past practices.

The main changes required to avoid this are:

- the establishment of a representative Aboriginal body to oversee the process from here on
- an extended time frame for the development of an ATFRS
- An amended process which will allow, at the very least, a second round of consultations to "road test" draft options for the ATFRS.

We believe that there is still time to make these changes. If the Government is able to do so, it will be able to right wrongs in ways that previous governments, state and federal, have been unable to achieve.

2. OUR REASONS FOR MAKING THIS SUBMISSION

Link-Up (NSW) is an Aboriginal organisation founded in 1980 and based in New South Wales. Linkup works with Aboriginal people who were separated from their families as children. They may be raised have been raised in State or sectarian institutions specifically for aboriginal children or in non Aboriginal institutions, foster homes or adoptive homes. Link up has developed extensive knowledge of family and tribal groups there is unambiguous link between Link-up client and client that will be accessing the ATFRS service a large number have an ongoing extensive relationship with our service already. We are a unique service our philosophy underlining our service is our counselling practice and the respect that we have in the community. This respect is not granted to organisations lightly.

As a result of its experience in this area, Link-Up (NSW) is in a good position to comment

3. OUR COMMENTS ON THE ATFRS PROCESS SO FAR

(i) General

Link-Up (NSW) has attended three hearings of the panel and also received feedback from clients who have attended hearings.

Our overall comment is that:

- for Aboriginal people, the process is as important as the outcome
- A culturally inappropriate process is unlikely to produce good results for either Aboriginal people or the Government.

Unfortunately, from what we have seen so far, the processes used for engaging with Aboriginal people have been far from culturally appropriate.

(ii) Specifics

Our specific comments relate to the time frame, context, and approach of the community engagement processes. These are all inter-related so their effects are cumulative – and severe.

Time Frame

The time frame for the consultations on the development of an ATFRS is too short, for two reasons.

The first reason is that providing advice to the panel on the issues it has raised needs answers to big questions that cannot be answered on the spot. For example, responding to the request for advice on who is entitled to claim often means people have to go away and talk to family and community members before they can get back to the panel. The panel's time frame does not allow for this to occur in the sensitive, respectful way that is needed, given the painful issues this sort of discussion is bound to raise.

The end result is that people are confused about the Government's intentions and about how they can possibly respond in a way that does justice to their or their families', interests.

The second reason that the time frame for development of the scheme is too short is that, as far as we can tell, it does not allow the opportunity for the panel to go back to communities with draft options for an ATFRS.

Good communication and relationships are extremely important in Aboriginal culture. The process involved in developing good relationships will determine the quality of the outcome. Proper, respectful consultation and negotiation is the process that will bring about favourable outcomes for Aboriginal people and the Government.

Unless an appropriate length of time is given to "road testing" proposed options, it is unlikely that either Aboriginal people or the Government will be satisfied with the outcomes from the ATFRS.

Context

For many, possibly most, of the potential claimants on the Scheme, trust accounts are inextricably linked to their or their parents' or siblings', forcible separation from their families - **stolen wages are linked directly to stolen children**. For many Aboriginal people, these issues are still too painful to talk about at all, even within the family, let alone outside it. The design, establishment and implementation of the community forums have shown little recognition of this factor.

To put it bluntly, the processes adopted required Aboriginal people to share facts connected to deep emotion with a group of strangers coming into their community. This requires great trust – and considerable work needs to be done with individuals and communities beforehand to develop this trust. It also requires support for people who are trying to deal with the painful issues associated with the practices to which they or their families were subjected.

Neither trust-building nor emotional support has been a feature of the development of the ATFRS so far.

Approach

Two of the key approaches adopted for engagement with Aboriginal people and communities have been:

- a web site with information on the scheme
- The community forums.

We have already commented on some of the aspects of the community forums that we believe are culturally inappropriate, including the inadequate time frame.

However, the web site also presents problems. We assume it had two purposes:

- to reach people unable to attend community forums and allow them other options for providing feedback
- To give advance notice of the issues the forums would be rising.

If this is so, it is unlikely to have achieved these purposes, as most Aboriginal people and communities have only limited internet access. Even if people try to help others out by printing material from the web site for them, the problem remains, as sometimes the material refers readers back to the web site for further information.

An additional problem is the lack of supporting material to help people answer the questions the panel needs to answer. We know that there is a fine balance between setting up a prescriptive set of questions and giving guidance, but we believe more guidance is needed than is set out in the material on the website or in the forum handouts. Some people do not know where to start, while others simply cannot remember enough detail from, say, sixty (60) years ago. The comment this week from one Aboriginal man illustrates this point: "We didn't know we had wages."

4. OUR SUGGESTIONS FOR THE WAY FORWARD

Our comments in this area refer to:

- the scope of an ATFRS
- its auspice
- the time frame for its development
- An interim process that will balance the needs of priority claimants with the requirements for a better scheme.

Once again, these issues are linked in terms of their impacts on the people whose rights the scheme is intended to advance.

(i) The Scope of an ATFRS

Name and Objectives

We believe that the name of the scheme is misleading.

We acknowledge that the objective of the scheme as set up by the NSW Government is limited to paying back monies held in trust but not paid out – in other words, paying people's own money back to them at a rate that recognises its current value.

To us this is restitution, not reparation.

Reparation is a more complicated matter which involves recognition of the opportunities lost because people could not access their money to pursue them. It also requires an understanding of the ways those lost opportunities continue to affect present generations.

Claimants

From our own knowledge, and from recent research undertaken by the Indigenous Law Centre (ILC) at the University of NSW, we are aware that the range of potential claimants maybe wider than anticipated, as the categories of monies which might be involved includes:

- the wages of child apprentices
- adult wages
- child endowment
- pensions
- other welfare payments
- Lump sums.

The ILC's forthcoming Fact Sheet on the law, policy and administration associated with Aboriginal Trust Funds will provide more information in these areas. It will also indicate that Aboriginal Trust Funds research is a big area, in which a lot more work needs to be done.

(Despite this we have still sometimes used the term "stolen wages" in this submission as this is the term that is commonly used as shorthand to include all the sorts of monies held in trust for Aboriginal people.)

Pain and Suffering

Any process that is being used to help develop an ATFRS must recognise that the stolen wages are connected to deep pain and suffering for individual Aboriginal people, for their families and for their communities. At the very least, the Trust Funds were associated with regimes that denied citizenship and the right to control their own affairs to Aboriginal people. At worst, they were part of the system under which Aboriginal people were forcibly separated from their land, their culture and – most

painful of all – their children. For some, the cruellest aspect was having their children removed when money which would have provided for them was being held in trust.

The safest way to ensure that ATFRS processes, including any second stage consultations, do not cause unnecessary additional pain and suffering is to entrust the leadership, design, establishment and implementation of the scheme to Aboriginal people.

These are the minimum requirements, not the only ones. Appropriate emotional support for people touched by any stage of the process, from the current stage of initial consultation through to resolution of their claims and beyond, is also essential.

Our detailed proposals on that matter are set out in the separate section below on Support for Claimants and Potential Claimants.

Principles

Any ATFRS must have clear principles on which to base its approach. We are aware that the Public Interest Advocacy Centre (PIAC) is developing suggested principles for a NSW scheme, as well as sets of assumptions to cover situations where records are not available, as part of their submission to the panel.

From what we have seen of PIAC's proposal so far, these principles and assumptions will support the efforts to achieve justice for Aboriginal people in this area.

Support for Claimants and Potential Claimants

Our general point is that claimants and potential claimants need both emotional and practical support, and that it is absolutely essential for these two kinds of support to complement each other. If they can be provided skilfully and appropriately by one person, that is ideal. We know this is possible, as that is the way we work with our own clients.

Our detailed position on this matter is in Attachment A, which essentially consists of the answers we gave to DoCS recently when it asked us a range of questions related to support.

(We were not told why DoCS was asking us these questions, so we do not know whether they were hoping to involve us in support for claimants later on, or wanted information to help them undertake that role themselves. Attachment A makes it clear why we believe that we are better placed to undertake it.)

(ii) The Auspice for an ATFRS

Before we comment on an appropriate auspice for the scheme, we want to make it clear that we value the goodwill of DoCS staff that understand and respect the sorts of issues we have raised above.

Despite all this, the fact remains that DoCS - along with some other agencies - is the successor of the institutions that inflicted the pain and suffering which is still close to the surface for many Aboriginal people.

To be culturally appropriate the auspice for the scheme needs, at the very least, to be at arm's length from the institutions associated with the negative aspects of the past. As one Aboriginal woman said recently: "If they've taken your kids, why would you go to them for anything else?"

This is another issue which needs a great deal more discussion with Aboriginal people – and one which could be raised as a specific issue during a second stage consultation process.

(iii) Time Frame

We appreciate that the Government wants to right the wrongs associated with Aboriginal Trust Funds as quickly as it can, and we acknowledge that a balance is needed between enough consultation on the one hand and, on the other hand, a process that can benefit priority claimants as quickly as possible.

However, all that we have said so far reinforces the need for time to get it right – time to approach people in a culturally appropriate way and time for them to come to grips with the emotional and practical aspects of the issues involved. This is as important in the development of the scheme as it is in accessing it. In fact, it may well determine whether or not people do even try to access it after it is developed.

(iv) Interim Process

We believe that there is a way forward that finds the necessary balance. It would involve:

- **slowing down the development process** to allow at least a second round of consultations during which draft options for how the scheme could operate could be shared, and issues such as an appropriate auspice for the scheme could be resolved
- **Establishing** an interim process for priority claimants which would allow them to lodge their claims immediately.

This will only be feasible if the Government makes it clear that:

- interim claimants can have their claims re-evaluated on a priority basis when a final scheme is negotiated with Aboriginal people
- if the amount owed under the final scheme is higher than under the old one, the difference will be paid out to the claimant
- If it is lower than the old one, the claimant will not be required to pay back the difference.

We know that an interim scheme that could lead to some “overpayments” is open to criticism. However, we believe that a small number of “overpayments” would be a small price to pay to achieve a good balance among all the relevant interests. In this area, given its history, efficiency needs to be given a lower priority than justice.

5. CONCLUSION

In summary, our position is:

- We appreciate that the Government wants to right the wrongs associated with stolen wages (and other monies held in trust for Aboriginal people).
- We believe that the Government's good intentions will not be enough.
- This is because stolen wages and stolen generations are so closely and directly linked to each other.
- Changes are needed if the scheme is to restore Aboriginal people's rights in this area in a way that minimises the pain and suffering from which many still suffers.
- The changes that are needed include at least the following:
 - the Government **should entrust the leadership, design, establishment and implementation of the scheme to Aboriginal people**

- o this should include an Aboriginal Reference Group with the authority to oversee the design, establishment and implementation of an ATFRS; this Group could support the panel in what is a very difficult and complex task
- o the auspice for the scheme needs, at the very least, to be at arm's length from the institutions associated with the negative aspects of the past
- o an extended time frame is needed for the development of a culturally appropriate scheme, as outlined in Sections 3 and 4 of this submission
- o an interim process for priority claimants is needed (we have suggested one possibility for this in Section 4)
- o culturally appropriate support is needed, **from this point on**, for all claimants and potential claimants, that combines both emotional support and practical assistance with records

Also, we believe Link-Up (NSW) is well placed to provide support of the kind referred to in the last dot point above (see Attachment A). For this reason, and because the wealth of knowledge and experience Link-Up (NSW) has gained over the years in areas critical to the scheme's success, we believe we should be included in the Aboriginal Reference Group we have requested for the scheme.

Finally even if it takes more recourse to development a scheme of the sort that we have proposed it is worth remembering that millions of dollars have been spent and thousand of people have been employed to take children away it is time to devote equal resources to healing the damage the separation has caused. We have had enough silence, enough denial, enough ignorance and enough advice. If self determination .We have had enough silence enough denial enough ignorance enough advice. If self determination is to have any meaning we must be the ones to map the journey forward

These words are from taken from the link submission to the HEROC inquiry in they are -as true of stolen children as they are of stolen wages

Yours faithfully

Marie Melito
Chairperson
Link-Up (NSW) Aboriginal Corporation

Per

Glendra Stubbs
Co-ordinator