



**THE CABINET OFFICE  
NEW SOUTH WALES**

Senator Trish Crossin  
Chair  
Senate Legal and Constitutional Committee  
Department of the Senate  
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Canberra ACT 2600  
Australia

Dear Senator Crossin

I am writing in response to your email on 21 June 2006 inviting submissions to the Senate Legal and Constitutional Committee's Inquiry into Stolen Wages.

Please find enclosed the NSW Government submission which has been prepared to inform the Committee about the NSW Aboriginal Trust Fund Repayment Scheme.

Yours sincerely

J.L. Schmidt  
Acting Director-General

# **NSW Government Submission to the Senate Legal and Constitutional Committee Inquiry into “Stolen Wages”.**

## **Introduction**

This NSW Government submission is intended to inform the *Inquiry into Indigenous Workers Whose Paid Labour Was Controlled by Government [Stolen Wages]* of the work being undertaken by the NSW Aboriginal Trust Fund Repayment Scheme (ATFRS). The purpose of the NSW Scheme is to identify and pay back monies that may have been placed in Trust Fund accounts and never repaid in the period 1900 to 1969.

Experience with the operations of the NSW Scheme suggests that the term “stolen wages” is understood in a number of different ways by both the Aboriginal community and the broader community. It is also the case that Aboriginal people in different states experienced different levels of control by the various agencies set up by State governments to manage their affairs. For this reason, there may be appropriate differences in the approach taken by States and Territories to repay or compensate Aboriginal people.

## **Background**

From 1900 to 1969, many NSW Aboriginal people had their wages, pensions, family endowments, inheritances and lump sum compensation payments paid into a Trust Fund which was administered by the Aborigines Welfare Board. The Board was formerly called the Aborigines Protection Board and operated from 1883 to 1969, when it was abolished following the passing of the 1967 referendum on Aboriginal rights.

In March 2004, the then NSW Premier, the Honourable Robert Carr, formally apologised to the Aboriginal people in NSW for what he stated was another legacy of misguided paternalism in relation to the management of monies which were paid into the Aboriginal Trust Funds.

In May 2004, the NSW Government established the ATFRS Panel to talk to the Aboriginal community and report back 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 ATFRS Panel held 15 consultations with Aboriginal communities in NSW about how a payment scheme should work. In addition, 13 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’s report was delivered to the NSW Government in October 2004. On 15 December 2004 the then Minister for Community Services, the Honourable Carmel Tebbutt, announced that the NSW Government had accepted the report and all its recommendations, and would establish the Aboriginal Trust Fund Repayment Scheme to repay wages or other money placed in Trust between 1900 and 1969 and never repaid.

## **Overview of the NSW Aboriginal Trust Fund Repayment Scheme.**

Any individual who can establish that money is owed will have it returned. The NSW Aboriginal Trust Fund Repayment Scheme is an evidence based repayment scheme, whereby repayments are ex-gratia payments by the NSW Government, indexed to their current value. For example, using the Office of the Protective Commissioner conversion rate, a claim of \$100 owed in 1969 converted to \$3,521 in 2005. Importantly, the NSW Scheme does not place a cap on the amount of repayment. To date, repayments have varied between almost \$1000 to over \$24,000.

The NSW Scheme is administered by the Aboriginal Trust Fund Repayment Scheme Unit ("ATFRS Unit"), which is located within the NSW Premier's Department, the Aboriginal Trust Fund Repayment Scheme Panel ("the Panel"), and the Minister for Finance ("the Minister"). The current panel, appointed in May 2005, is comprised of Mr Aden Ridgeway (Chair), Mr Sam Jeffries and Ms Robynne Quiggin. The Scheme is intended to operate for a period of up to five years, with a review of its operation to be conducted after three years.

### ***Claims and Review Process***

Claims under the NSW Scheme can be made by individuals who had their money placed into trust funds, by their authorised representative or, where the direct claimant is deceased, by their descendants. The NSW Government recognises that for some Aboriginal people making a claim is difficult and may rekindle painful memories. To support claimants' access to the ATFRS, the NSW Government has funded a position in Link-Up NSW to provide practical assistance to claimants in obtaining access to other Aboriginal support organisations, such as Community Justice Centre mediators.

The ATFRS Unit is responsible for receiving and investigating applications made pursuant to the Scheme, compiling all relevant information, and preparing an interim assessment for that claim. The interim assessment is sent to the claimant seeking their views as to whether they agree or disagree with the interim assessment. If claimants disagree, they are afforded an opportunity to provide additional evidence to the Panel.

Once an interim assessment is agreed to, claims are referred to the ATFRS Panel, which reviews each case and any evidence provided by claimants either via Statutory Declaration or through the provision of oral evidence. A recommendation is made to the Minister as to whether a repayment should be made.

The Panel can advise on all aspects of the operation of the Scheme. The scheme does not require claimants to sign away their legal rights, and claimants may request the Panel to review any findings by the ATFRS Unit.

Guidelines have been developed for the NSW Scheme (attached). Importantly, the guidelines retain some flexibility, and are not binding on the Director-General of Premier's Department, the Panel or the Minister where they are satisfied that strict adherence to the guidelines would not be in the interests of equity for claimants or potential claimants.

## ***Finding Evidence***

There is a strong evidentiary threshold for making claims. Claims will be paid where there is reliable evidence of money being paid into Trust Funds and where there is no evidence, or no reliable evidence, that money was paid out.

Various forms of evidence can be used to substantiate claims. These include:

- Aborigines Protection Board records;
- Aborigines Welfare Board records;
- Other Government and independent written records (eg individual financial transaction details contained in Correspondence files); and
- Oral evidence.

The greatest reliance is placed on the records of the two Government Boards, most of which are held in NSW State archives. However, supplementary forms of evidence are allowed, as some of the Aborigines Protection and Welfare Boards' records relating to the Trust Funds and Aboriginal people in NSW have not survived that period.

Two research services have been established to assist the NSW Scheme.

- The Department of Aboriginal Affairs employs 3 indexing officers, a senior indexing officer and the Manager of the ATFRS and Family Records Unit. The Department is also responsible for ongoing indexing of the Aborigines Welfare Board records and for maintaining various databases and searching these databases for each Trust Fund claim.
- State Records contribute a research service staffed by Aboriginal people to provide evidence from archival records in their collection to support claims made under the NSW Scheme.

Earlier in 2006, State Records NSW discovered a previously unknown collection of records primarily relating to the Aborigines Welfare Board for the period 1938 to 1949. State Records and the ATFRS Unit have commenced a joint project to identify, copy and index these records. Once this project and other indexation work is complete, claims made to the Scheme which have been unsuccessful due to incomplete or inconsistent records will be reprocessed.

The NSW Government has confidence in the integrity of this overall process, and in efforts to assist individuals to establish evidence where past records are incomplete. The control of financial records by an alternative body to State Records, as suggested in the Inquiry's terms of reference, is therefore not considered warranted.

## ***Privacy Issues***

The NSW Scheme is subject to the *NSW Privacy and Personal Information Protection Act 1998* (PPIP Act). However, in order to ensure that the scheme could work effectively, in March 2006 the Government introduced the *Privacy and Personal Information Protection Amendment (Aboriginal Trust Funds Exemption) Regulation 2006* to provide for agencies involved in the scheme to undertake certain activities pursuant to the scheme:

1. to collect personal information that is not directly related to their normal operations;
2. to hold, use or disclose personal information; and

3. to allow personal information of people who have been deceased for less than thirty years to be obtained for the purposes of *Descendant Claims*, which account for approximately 69 percent of total claims.

The Regulation permits other agencies to disclose personal information to an ATFRS agency for the purposes of the Scheme.

### **Centrelink Payments**

Following negotiations between the ATFRS and the Federal Government on the impact of repayments to individuals' Centrelink status, the Commonwealth Department of Families, Community Services and Indigenous Affairs made a determination under paragraph 8(11)(d) of the *Social Security Act 1991* to exempt the one-off ATFRS repayment from being regarded as income under the *Social Security Act 1991*. Therefore, a repayment made under the Scheme will be exempt from the income test for claimants who also receive social security payments from Centrelink. This determination, the *Social Security Exempt Lump Sum (New South Wales Aboriginal Trust Fund Repayment Scheme) (FACS) Determination 2005*, commenced on 30 June 2005.

These exemptions cover three departments in respect of their responsibilities for administering different types of social security payments:

- the Department of Families, Community Services and Indigenous Affairs;
- the Department of Education, Science and Training; and
- Employment and Workplace Relations.

### **Taxation**

The NSW Government has worked with the Australian Tax Office to ensure that one-off lump sum repayments under the ATFRS are exempt from income tax.

### **Conclusion:**

The NSW Scheme is generally well regarded in its efforts to repay to Aboriginal people money that successive Governments had placed into Trust Funds and never repaid. The NSW Scheme is designed to be as supportive to claimants as possible, and is regularly reviewed and refined as critical issues emerge.

### **ATTACHMENTS:**

- Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme.