



11 November 2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

**Review of Government Compensation Payments
Response to Question on Notice by Senator Siewert**

1. Women's Legal Services NSW (**WLS NSW**) welcomes the opportunity to respond to the question by Senator Siewert that was taken on notice by Carolyn Jones and Edwina MacDonald on 2 November 2010 at the hearing of the Senate Legal and Constitutional Affairs Committee (**the Committee**) on its inquiry into the review of government compensation payments. Senator Siewert invited us to address the issues we have experienced in relation to stolen wages claims in NSW, with particular reference to systemic issues (see Hansard pp 43-44).
2. WLS NSW has operated a state-wide Indigenous Women's Program since 1998. Through this program we:
 - provide legal advice to and representation for Indigenous women in NSW, and
 - undertake community legal education, community development and law reform initiatives to improve access to justice for Indigenous women in NSW.Since the inception of the Aboriginal Trust Fund Repayment (**ATFR**) Scheme in NSW in 2004 NSW, WLS NSW has represented Indigenous women in direct and descendant claims under the ATFR Scheme.
3. We note the submission of the Public Interest Advocacy Centre Ltd (NSW) to the Committee dated 9 June 2010 (**PIAC Submission**). The PIAC Submission provides a comprehensive review of the ATFR Scheme, including issues pertaining to public accountability, administrative justice, evidentiary challenges, trust funds outside the ATFR Scheme and legal representation and support.
4. WLS NSW endorses the PIAC Submission and we comment below on specific issues that are informed by our clients' experiences and our work with Indigenous communities, particularly in rural and remote areas of NSW.



Reparations for the Stolen Generations

5. It is imperative for the Australian Government to initiate a national Tribunal to provide reparations to Aboriginal and Torres Strait Islander people and their families who have been affected by being forcibly removed from their families. The impact on these people and their families has invariably been a lifetime of trauma that is trans-generational. The failure of the Australian Government to endorse reparations is a significant and continual failure to implement the *Bringing them home* report.

ATFR Scheme

Inadequate communication, processes and information

6. Changes to the ATFR Scheme in 2009 (**New Guidelines**) were not adequately communicated to the Aboriginal and Torres Strait Islander community. A deadline was also set to file direct and descendant claims under the new Guidelines.
7. The NSW Government and ATFR Scheme relied on services such as PIAC, Legal Aid, the Public Interest Clearing House and WLS NSW, together with Link-Up¹ to locate and inform Aboriginal communities about the ATFR Scheme, the New Guidelines and the deadline. Legal services like WLS NSW were not specifically funded for this work. Further, Link-Up was overwhelmed by the task and, as Aboriginal people started to talk about stolen wages, significant trauma was brought up for them and their families about what had happened to them and their descendants.
8. Many of the Aboriginal people who could apply to the ATFR Scheme were very elderly and lived in remote, isolated areas. Further, many of these people were illiterate. Whilst advertisements were placed in the Koori Mail, this was not a comprehensive method of informing and explaining to the community what they needed to do and how to do it.
9. As a result of the inadequate process of informing Aboriginal people about the ATFR Scheme and their rights, combined with the Government's emphasis on speed, procedural fairness for potential claimants was lacking and many people did not apply in time.
10. WLS NSW acted for claimants who had already filed a claim prior to the new Guidelines commencing as described in the PIAC Submission (pp 7-8). We were astonished that our clients were not provided with sufficient information to assess whether they should elect to proceed under the old Guidelines or the new Guidelines, the restrictive time frame and disregard for the particular disadvantages faced by our clients and the difficulty in obtaining instructions. Further, it appeared that our clients were expected to forgo the right to proper legal advice by the refusal of the ATFR Scheme to provide legal representatives (or clients) with the documents and information that would help them to appropriately advise their clients about what election to make.

Evidentiary challenges

11. WLS NSW experienced the same evidentiary challenges that are identified in the PIAC Submission, subject to the following clarification of our experience since the date of the PIAC Submission.

¹ Link-Up in NSW was established in about 1980 to assist all Aboriginal people who have been fostered, adopted or raised in institutions to find their way home. It has undertaken a significant role in supporting the Stolen Generations and their families to reconnect and work through the emotional issues arising from reconnection with family, communities and their land.

12. Since the date of the PIAC Submission WLS NSW has successfully argued on behalf of clients in their direct claims with the ATFR Scheme, that a trust fund did or should have existed, even where there are no historical Government records of this fund. The ATFR Scheme has accepted client evidence (through statutory declarations) and other circumstantial evidence and taken into account that trust records from the requisite period were incomplete or missing. We commend the ATFS Panel for this approach. However, we have not yet received any final decisions in descendant claims and the evidentiary issues are generally more challenging in these claims.

Continuing procedural difficulties

13. Despite what appears to be greater flexibility in the evidentiary approach of the ATFR Scheme, we continue to experience procedural difficulties that disadvantage clients. In particular, when the client receives a determination that no payment will be made due to lack of records establishing a trust fund, they are invited to apply for a review and supply statutory declarations or other evidence, including submissions. However, they are only given 6 weeks to provide this information. This time frame is inadequate given the disadvantages faced by many clients, particularly the elderly and those living in remote areas, with limited or no access to telephones.

14. There continues to be an emphasis by the Government on speed and finishing the ATFR Scheme within a specified time period (ie, by 31 December 2010) which is not possible as the initial notifications from the ATFR Scheme in descendant claims have not been received yet and clients have 6 weeks from receipt to file evidence. Until that notification, clients are not provided with any historical documents or correspondence from the ATFR Scheme about the progress of their claim.

15. In the absence of any historical records being provided from the ATFR Scheme until it notifies whether the client will receive the \$11,000 or not, clients need to make their own searches for records (eg, through the Department of Aboriginal Affairs). This is an insurmountable hurdle for most unrepresented claimants. Additionally, the need to provide statutory declarations and legal submissions about evidentiary issues emphasises the importance of legal representation for claimants.

16. If you have any questions about these issues, please contact Donna Hensen or Dianne Hamey on

Yours faithfully,

WOMEN'S LEGAL SERVICES NSW

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