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**NATIONAL TERTIARY EDUCATION UNION  
SUBMISSION ON SENATE LEGAL AND  
CONSTITUTIONAL COMMITTEE INQUIRY  
INTO STOLEN WAGES**

**AUGUST 2006**

The National Tertiary Education Union (NTEU) represents the industrial and professional interests of 27,000 academic and general staff employed in Australian higher education institutions, including many Indigenous staff.

NTEU, primarily through its Indigenous Tertiary Education Policy Committee, is committed to ensuring social justice for Indigenous Australians. NTEU National Office welcomes the opportunity to make this submission to the Senate Legal and Constitutional Committee's Inquiry into Stolen Wages, and commends the Senate for undertaking an inquiry on this important matter. This submission will address the Senate Inquiry's following terms of reference.

- *Commitments by State and Territory Government's 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.*
- *Whether there is a need to 'set the record straight' through a national forum to publicly air the complexity and consequences of mandatory controls over Indigenous labour and finances during most of the 20<sup>th</sup> century.*

The Union will not seek to duplicate all the work that has been done by other organisations and individuals on the stolen wages issue. NTEU does not have the expertise to quantify the exact dimensions of the lack of payment, underpayment, fraud and misappropriation of Indigenous wages and entitlements. We would also point out that even given the extension announced by the Committee, the inquiry's timeframe does not make such an investigation possible even for those organisations that do have the expertise, an issue we will return to later in this submission.

The starting point of our submission is that the labour of Indigenous people has been a significant contributor to the economic development of Australia, particularly in regional areas. Although the national dimensions of the problem have yet to be revealed, it is an undisputable fact that in the late 19<sup>th</sup> Century and for much of the 20<sup>th</sup> Century, many Indigenous workers were either underpaid or received no wages at all, in a grossly unjust situation that persisted in some parts of the country until at least the late sixties. There is also evidence that social security payments such as pensions and maternity allowances were diverted by some state and territory governments from the lawful recipients and into their consolidated revenue.

NTEU wishes to emphasise at the outset that we believe there is a need to 'set the record straight' in terms of revealing the full extent and consequences of government controls over Indigenous labour and finances. This is not only important in terms of recognising that the affluence currently enjoyed by much of Australia is partly the legacy of unpaid Indigenous labour, but it could greatly assist in tackling the intergenerational pattern of disadvantage and exclusion from the mainstream economy faced by many Indigenous people. We would stress that there is some urgency in undertaking this process, given the advanced age of many of the Indigenous people who suffered as a result of stolen wages and entitlements and the importance of them being able to tell their stories.

NTEU believes that this process of 'setting the record straight' should be conducted at a national level, in cooperation with state and territory governments, and include provisions both for revealing the extent of the problem and making financial amends to those who have suffered as a result of it. Such a process should be guided by the experiences of state and territory governments that have already undertaken processes in relation to the repayment of stolen wages.

## 1. The Experience in NSW and Queensland

Queensland and NSW are so far the only states to undertake processes in relation to the repayment of stolen wages.

According to the Griffith University-based historian, Dr Rosalind Kidd, "*Rural and remote Queensland could not have developed without Aboriginal labour*"<sup>1</sup>, much of it unpaid.

Under the 1897 Protection Act, the Queensland Government could declare any Indigenous person a ward of the state and control every aspect of their lives. From 1904, this included all employment, wages and savings which were controlled by the Government under compulsory labour contracts. All workers' wages went directly to police protectors, apart from the 'pocket money' retained by employers for distribution during the working week.

In 1943, the Government set up the Aboriginal Welfare Fund to receive wages, levies and profits from reserve enterprises. Forced confinement on reserves and forced control over wages and savings did not cease until the early seventies, although people had to request to be free from financial management.

As a result of persistent legal and political campaigning efforts on the part of Indigenous claimants and their supporters, in May 2002 the Queensland Government offered partial reparation of \$55.4 million for stolen wages.

A person wishing to make a claim needed to fill out the official claim form and provide proof of their date of birth. For people making claims on behalf of a deceased person it was necessary to also include proof of the deceased person's date of death. The Department of Aboriginal and Torres Strait Islander Policy sent to the claimant a letter acknowledging receipt of the claim. The Department would then look for a record(s) of the claimant's wages or savings, as controlled under the Protection Act, and assess whether the claim is eligible or ineligible. Claims will be assessed for priority with elderly and seriously ill claimants being ranked first in priority.

Eligible claimants were sent notification of their eligibility with an electronic funds transfer (EFT) form. The notification also outlined when a meeting would be held in their area so that they could get independent legal advice. This opportunity was given because if a claimant decided to accept payment they were required to sign a Deed of Agreement indicating that they will never go to the courts about the same claim. It was only after signing this Deed that payment was made.

If the claimant proceeded and signed the Deed of Agreement, a letter of apology from the Minister was sent to the person who signed the Deed. Payment would be made to the claimant either directly into their bank account or by cheque.

It is important to give credit to the Beattie administration for being the first government to recognise and act on the issue of stolen wages, and for being prepared to make a written apology to every living person who had their wages (and savings) controlled.

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<sup>1</sup> Dr Rosalind Kidd *The biggest broker of them all: the state of Queensland and Aboriginal labour*, July 13, 2006

At the same time, Indigenous people and Non-Indigenous support groups have severely criticised the amount made available, with some critics estimating that the gross Government debt could be in excess of \$500 million.<sup>2</sup> They have also pointed out a number of significant issues with the process established to oversee claims, including:

- The assumption that claimants have a record (or records) that they were controlled under the Protection Act are eligible for payments.
- The decision to cap individual payments at \$2000 for people aged between 45-49, \$4000 for people aged 50 and over.
- The decision not to allow descendents of workers who died before May 2002 and who suffered financial loss to make claims.
- Making payment conditional on people ceding their legal rights.
- The fact that church workers and wards on organisations and mission communities who had their wages stolen were not eligible for compensation as they were not directly employed by the State.

In addition to a general lack of transparency in terms of processing claims, allegations were also made about the lack of cooperation on the part of the Government in giving people access to personal records about their wages and banking.

The closing date for the Queensland scheme was December 2005. According to information from the Department, a total of 8763 claims were received, of which 5539 were assessed as eligible. According to the media, a total of \$17.2 million was given to claimants and there were reports that thousands of Indigenous people refused to accept the offer saying that they should be paid the full amount owed to them.<sup>3</sup>

For much of the 20<sup>th</sup> Century, NSW law allowed the government to divert wages, social security and other entitlements into Government coffers. These accounts, under the name of Indigenous people, were controlled by the Aborigines Protection Board, which was given powers to supervise all matters affecting the interest and welfare of Indigenous people, including powers over the earnings, savings and entitlements of many Indigenous people.

These accounts were closed in 1969 and the remaining funds were transferred to the Department of Youth and Community Services. While this money was to be held in trust and ultimately returned to its Indigenous owners, in many cases this has not happened.

In response to pressure from Indigenous groups, in March 2001 the NSW Government established an Aboriginal Trust Fund Reparation Scheme (ATFRS) Panel to consult with the Aboriginal community in NSW as to how a repayment scheme could function. Its report was submitted to Cabinet in October 2004 and in December 2004, the NSW Government accepted all of its recommendations. This scheme included the establishment of the ATFRS Unit and the ATFRS Panel. The Unit was made up of people responsible for investigating applications and to make recommendations to the Panel. The Panel consisted of three Indigenous people and

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<sup>2</sup> Dr Rosalind Kidd *Stolen Wages: A national Issue*, August 9, 2004

<sup>3</sup> Fighter of Stolen Wages laid to death *The Australian*, January 31, 2006

considered the recommendations of the Unit. It also had the power to undertake further investigations on its own accord.

The process for Indigenous Australians in NSW to have stolen wages repaid, set out in the Guidelines for the Administration of the *NSW Aboriginal Trust Fund Repayment Scheme*, were as follows:

- A person made a claim to the ATFRS Unit, which then is responsible for investigating and reviewing the application.
- Investigations were conducted in conjunction with the NSW Department of Aboriginal Affairs, and included searches of the records kept by the Aborigines Protection Board and the Aborigines Welfare Board.
- If the ATFRS Unit was satisfied with the investigations, it made a determination as to whether ex gratia payments would be made, and how much should be paid. Only those directly affected or direct descendants (in cases where the original person affected has died) could make applications under the Scheme.
- The information prepared by the ATFRS Unit was then sent to the claimant (or descendant) for a response which could have included whether the person agrees with the initial assessment, and any other information that may be considered relevant to the application.
- Once a response had been received, the Unit forwarded the application, its interim assessment, documents forwarded to the claimant (or descendant), the response from the claimant (or descendant) and a recommendation to the Panel.
- The Panel, made up of Indigenous Australians appointed by the Minister, considers the materials from the ATFRS Unit. The Panel had the power to conduct further investigations on its own behalf.
- The Panel, when satisfied that the application had been properly reviewed, prepared a summary of the information considered, a recommendation as to whether or not a payment should be made and to whom the payment should be made; and the Panel's reasoning for the recommendation.
- The documentation prepared by the Panel was sent to the Minister for Finance for consideration. Based on the recommendation from the Panel, the Minister determined whether or not to make an ex gratia payment. If the Minister determined that a payment was to be made, the Minister also decided the amount to be paid and to whom the payment was to be made. The Minister had discretionary powers regarding payments, and the amounts for payments, and in the event a payment was made it was not an admission of liability by the Government.
- Under the Scheme, repayments were to be in current dollar values indexed using the conversion rate to recognise the value of those funds in today's real terms.

The Department has indicated that a total of 1169 claims were lodged with the scheme, although it has not publicly released information about the number of claims

processed or how much in total was payed under the scheme, which closed earlier this year.

While the NSW scheme has been criticised for the amount of bureaucratic red tape it entailed, it had a number of clear advantages over the Queensland scheme:

- It did not require applicants to prove their Indigenous status prior to making a claim. It is expected that 'aboriginality' is determined through the investigations conducted by the Unit and the Panel.
- Assistance was provided to claimants to prove their cases merited payment and counselling was provided to all claimants in recognition of the traumatic memories that may arise when making a claim.
- Not only those directly affected could make a claim but their direct descendents could in cases where the original person affected had died.

While NTEU is not aware of any in-depth work that has been undertaken to ascertain the full dimensions of the problem in Victoria, South Australia and Tasmania, there appears to be some evidence that wages were unpaid to Indigenous workers in all these states, including children apprenticed to work for missions and homes, and that entitlements such as child endowment and pensions were diverted into consolidated revenue. Certainly Indigenous groups in Victoria have been calling for an inquiry for some time.

Preliminary investigations have revealed that the Victorian Government, through over eighty pieces of legislation and the establishment of the Aborigines Protection Board, heavily regulated the employment of Aboriginal people and the payment of their wages between 1860's to 1960's<sup>4</sup>.

Evidence of this can be found in the operation of the *Aborigines Protection Act Regulations 1890*, which introduced a mechanism by which *"one half of the wages of every half-caste child licensed to service and of every apprentice shall be paid quarterly viz on the first of January, April, July, and October and sent by the employer to the general Inspector of the Board who shall have such money placed to such child's credit in a savings bank and paid to such child at the end of his service or apprenticeship, and the other half shall be paid to the child at the end of each quarter's service or apprenticeship"*.<sup>5</sup>

Later, as a result of the *Aborigines Regulations 1931* (Vic), the Board could modify a employment contract to direct that monies payable to the Aboriginal person could be paid to the Secretary of the Board, and paid into a trust fund set up in the name of the Aboriginal person involved. This could be *"applied and expended as may be directed by the Board for his benefit or for the benefit of his dependents"*. It also introduced a system whereby monies received from the sale of marketable goods produced on reserves was paid into a trust fund kept in the Treasury termed the Aborigines Board Produce Fund<sup>6</sup>. Further research on this evidence is pending.

Indigenous labour was vital to the development of the Northern Territory and Western Australia. There is evidence that wages were not paid to Indigenous

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<sup>4</sup> Aborigines Protection Act (1869) was the first piece of legislation adopted that regulated the employment and payment of wages of Indigenous peoples in Victoria.

<sup>5</sup> Aborigines Protection Act Regulations (1890), R17

<sup>6</sup> Aborigines Regulation (1931), s6, s7, s9 and s12

workers, particularly in the pastoral industry, and that wages of young wards of the State went into trust accounts from which they were not recovered.

The development of the Northern Territory appears to have been underpinned to a significant degree on unpaid Indigenous labour. The wages of much of the Indigenous workforce, particularly in the pastoral industry, were not paid or paid in rations, with the money going into trust accounts. There is also some evidence of Government authorities and bureaucrats diverting money from Commonwealth child endowment and social security payments to capital works such as schools, dormitories and hospital clinics and running costs for missions.

## **2. Stolen wages as a national issue**

As stated earlier, NTEU agrees there is an urgent need to 'set the record straight' and reveal the full extent and consequences of government controls over Indigenous labour and finances. We believe the Commonwealth Government has a responsibility to play a lead role in resolving this issue, including accounting for and repaying stolen wages and entitlements.

Put simply, as legal guardians the Commonwealth, State and Territory Governments had a duty of care for safeguarding the conditions and wages of many Indigenous workers, including wards of the state, a duty of care that by any measurement they did not meet. As Dr Rosalind Kidd has put it: *"In cancelling the rights of hundreds of thousands of people, governments around Australia invoked a legal duty of care, a duty which we know they massively failed to honour. Quantifying the failure is difficult .... What can be quantified to some extent is the financial penalty."*<sup>7</sup>

As highlighted by the evidence, in Queensland and elsewhere, that state governments diverted child endowment, pensions and other social security entitlements into their consolidated revenue for departmental responsibilities, the Commonwealth had a direct duty of care which it failed to see carried out. As the Prime Minister stated recently, *"...we must remember that real economic and social progress in Indigenous communities – as is the case in any community – can only be built on a foundation of law and order."*<sup>8</sup> What could be more apt in this context than paying back Indigenous people money that they are rightfully owed?

NTEU would point out that there are also parallels between the role that the Commonwealth could take in this area and their actions to protect workers' lawful entitlements, such as in the case of ANSETT employees owed money after the collapse of their company.

NTEU believes that recognising the past injustices associated with this issue and seeking to repay these monies is not a matter of stirring up guilt from the past. It is about restoring some measure of financial power to Indigenous people as part of the process of making inroads into reversing intergenerational poverty. This is particularly relevant given the Commonwealth Government's stated determination to reverse the economic marginalisation suffered by so many Indigenous people in contemporary society by shifting the focus from welfare to increased access to housing, land, education, health and their own businesses.

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<sup>7</sup> Address to Australian Council of Trade Unions Indigenous Conference, Dr Rosalind Kidd, September 2004.

<sup>8</sup> Prime Minister John Howard, Transcript of address to Reconciliation Australia, Melbourne, July 25 2006

As the Prime Minister pointed out in an address to a National Reconciliation Planning Workshop in Canberra in May 2005: *“If I can speak very bluntly, I think that part of the problem with some of the earlier approaches to reconciliation was that it let 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 gestures 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>9</sup>

The Prime Minister’s response to Indigenous socio-economic disadvantage today based on Shared Responsibility Agreements and Mutual Obligation, which serves only to blame Indigenous people for their own plight. This is in the face of what is now emerging as a national disgrace and requires a Commonwealth response in recognition of stolen wages not only in the context of the economic debt owed Indigenous people but also in the context that without the Aboriginal peoples’ labours, (albeit being exploited on the whole) Australia would not be the nation it is today.

By committing to undertake processes that would lead to a full reconciliation of Indigenous monies stolen and diverted from their rightful owners and the repayment of those funds in full, the Commonwealth would in fact be laying the basis for greater financial independence for Indigenous Australia and a pathway to National Reconciliation.

NTEU believes that while organising a one-off national forum on the issue of wages and entitlements stolen or misappropriated from Indigenous people would be a good initiative, it is preferable that this is part of a broader national inquiry into the issue, possibly modelled on the Stolen Generations inquiry. This could clarify the full scope of the issue and formulate proposals for how best to repay stolen wages, including revenue raising options if they are deemed necessary.

The need for such a process is particularly evident given the short time allotted to the current inquiry being undertaken by the Senate, which does not allow time for the preparation of detailed submissions and for consideration of all the matters arising. A national inquiry could examine the feasibility of consolidating current databases, records and resources applied to the issue of stolen wages and entitlements. This should include NSW and Queensland, where the process for repaying stolen wages and entitlements is viewed by many as incomplete. This body would be responsible for codifying and making this information publicly available. The body’s work could include:

- Determining all financial arrangements regarding stolen wages, including amounts withheld under government control and instances of fraud by police and other protectors.
- The nature and extent of any State, Territory and Commonwealth liabilities and identification of the range of people who might be entitled to repayment of wages and other entitlements.
- What trust funds were established from Indigenous earnings, entitlements and enterprises.

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<sup>9</sup> Prime Minister John Howard, Address at the National Reconciliation Planning Workshop, Canberra, May 30 2005

- All controls, disbursements and security of federal benefits, including maternity allowances, child endowment, pensions, and entitlements such as worker's compensation.

As part of this, consideration could be given to the establishment of a national, neutral body to collect, secure and provide equity in access to all data associated with this issue.

NTEU would stress that there is some urgency in seeing these processes undertaken, given that many of the possible claimants are already well beyond the average age of Indigenous Australians. In addition to wanting to ensure natural justice for those surviving claimants, the lack of clear and detailed records makes their personal stories of vital importance to establishing what occurred. Enabling claimants and their immediate heirs to be able to tell their personal stories is also an important part in the process of restitution.

While NTEU does not want to prefigure the outcomes of any national inquiry held on the stolen wages issue, some of the principles that should underpin the investigation and repayment process have already been highlighted by groups involved in the stolen wages issue in Queensland and NSW<sup>10</sup>. These include:

1. Arrangements should involve consultation and ongoing liaison with Indigenous communities. This consultation must be culturally and socio-economically appropriate, bearing in mind the advanced age of many of the claimants.
2. Given the traumatic process associated with making a claim, Indigenous people should not be put through a time consuming and complicated process of litigation to recover entitlements. Any scheme must be able to ensure entitlements are paid relatively swiftly and easily, with priority given to a fast-track scheme for surviving claimants.
3. There should be a clear and explicit "whole of government" approach, in which all relevant departments and agencies are required to facilitate information flow, the location of records, and the provision of advice to potential claimants.
4. Monies withheld by government and its agents are the rightful property of those individuals affected; they are debts, not benefits and language and process should reflect this.
5. Payments should be made at fair value, and calculated according to modern equivalents with due allowance for inflation and interest. There should be no arbitrary cap on total amount of payments to be made.
6. Payments should be tax-free and should not compromise the ability of successful claimants to receive other, unconnected present-day entitlements.
7. Onus of proof should be on the government to disprove claims. Given the lack of accurate documentation that exists in some areas, and the fact that some governments of the day withheld monies and disposed of records with little or no accountability and right of access by claimants, the onus of proof

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<sup>10</sup> Australians for Native Title and Reconciliation NSW Submission to Aboriginal Trust Funds Reparation Scheme panel

should not be on claimants, beyond the need to establish identity and their prima facie eligibility to wages and benefits at the time.

8. Any process must be adequately resourced, and make provision for any independent legal and financial advice and counselling for claimants.
9. Provision should be made for family and personal counselling for claimants, given the traumatic memories associated with the stolen wages issue, including the fact that it is closely entwined with the forced removal of children, separation of families, and abuses arising from official forced and indentured labour schemes.
10. In order to avoid conflicts of interest, there should be a separation of the initial investigative role (location of records, initial advice to potential claimants, liaison with the Aboriginal communities), from the actual assessment and determination process.

### **3. Recommendations**

On the basis of this submission, NTEU makes the following recommendations to the Senate Legal and Constitutional Committee.

#### **Recommendation 1**

**That there is an urgent need to ‘set the record straight’ through a national forum to publicly air the complexity and consequences of mandatory controls over Indigenous labour and finances during most of the 20<sup>th</sup> century.**

#### **Recommendation 2**

**That in addition to a one-off forum, a broader national inquiry into stolen wages is established and that such an inquiry is modelled on the Stolen Generations inquiry. This inquiry should seek to clarify the full scope of the issue and recommend proposals for how best to repay stolen wages and entitlements.**

**That such an inquiry also examine the feasibility of establishing an external body to consolidate the extent of current databases and resources applied to the issue of stolen wages and entitlements at a national, state and territory level, including NSW and Queensland, where processes have been undertaken in relation to stolen wages but not completed. This body would be responsible for codifying and making this information publicly available. The body’s work could include:**

- **Determining all financial arrangements regarding stolen wages, including amounts withheld under government control and instances of fraud by police and other protectors.**
- **The nature and extent of any State, Territory and Commonwealth liabilities and identification of the range of people who might be entitled to repayment of wages and other entitlements.**
- **Identifying trust funds that were established from Indigenous earnings, entitlements and enterprises.**
- **All controls, disbursements and security of federal benefits, including maternity allowances, child endowment, pensions and entitlements such as workers compensation.**