



WOMEN'S LEGAL SERVICES NSW

Indigenous Women's Program

SUBMISSION OF

INDIGENOUS WOMEN'S PROGRAM
WOMEN'S LEGAL SERVICES NSW

TO

THE SENATE LEGAL & CONSTITUTIONAL
REFERENCES COMMITTEE

INQUIRY INTO STOLEN WAGES

A. INTRODUCTION

1. Women's Legal Services NSW ('WLSNSW') is a Community Legal Centre, specialising in women and children's legal issues. The Service provides specialist legal advice for Aboriginal women in NSW through the Indigenous Women's Program ('IWP') and auspices the Walgett Family Violence Prevention Legal Service and Bourke/Brewarrina Family Violence Prevention Legal Service.
2. IWP welcomes this inquiry by the Senate Legal & Constitutional References Committee ('the Committee'). The issue of Stolen Wages in Australia is complex. Some State Governments have or are attempting to try and resolve these issues by creating Repayment Schemes. The underpayment, withholding and misappropriation of wages and endowments to Aboriginal and Torres Strait Islander peoples were a miscarriage of justice. A second miscarriage of justice will occur if entitlements go unrecognized or are inadequately compensated.

B. SCOPE OF THIS SUBMISSION

3. IWP is currently assisting women with applications to the NSW Aboriginal Trust Fund Repayment Scheme ('NSW ATFRS'). The NSW scheme has been operational since December 2004. IWP provided two submissions to the NSW ATFRS in relation to concerns of our clients (13 August 2004 & 7 April 2005 - see appendices 'A' & 'B').
4. Specifically we wish to comment on item *G* and *I* of the Committee's *Terms of Reference* and the commitment shown by the NSW Government in redressing this gross injustice. We submit that a timely discussion on a federal level to '*set the record straight*' is necessary and welcome a national forum to publicly air this topical issue.
5. We submit the following issues as significant concerns that IWP would like the Commission to take under consideration:
 - The difficulties of next of kin applications under the NSW Scheme
 - Evidence gathering
 - Difficulties of claimants seeking remedy under the NSW Scheme

C. DESCENDANT CLAIMS

“What happened to their ancestors matters to people; recalling the injustices done to their family or community can cause distress. A history of injustices can be demoralizing, destructive of esteem, or the cause of depression.”¹

6. To date the NSW Scheme has proven to be a challenge for people wanting to make a descendant claim. The NSW ATFRS has already identified prioritising direct claimants over descendant claimants². Information is readily available on the NSW ATFRS website for descendants³. However whilst a descendant interest can be registered with the NSW Scheme, as of the date of this submission, the NSW Scheme has yet to finalise and distribute descendant application forms or give any guidance as to the amount of monies potentially to be repaid or how long the process will take once an application is lodged by a descendant.
7. We submit that the claim process needs to be as straightforward and expeditious as possible.⁴ An accessible, streamlined process is required to minimize disruption and emotional upheaval to claimants.

D. EVIDENCE GATHERING

8. Anecdotal evidence suggests that the evidence gathering processes adopted by some State Governments Schemes has had unintended impact on claimants that has been distressing and traumatic.
9. Under the NSW Scheme the claimant gives the ATFRS the authority to investigate and gather evidence in relation to their application. It appears that there have been situations where the Schemes have uncovered information previously unknown to the Claimant

¹ “Taking responsibility for the past: Reparation and Historical Injustice” by Janna Thompson. November 2002, Polity Press at p.106.

² Section 5.1 Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme, February 2006.

³<http://www.premiers.nsw.gov.au/AboutUs/OurStructure/AboriginalTrustFundRepaymentScheme/PublicationsLinks/default.htm>

⁴ We refer to Annexure B – IWP Submissions to the NSW ATFRS dated 7 April 2005.

resulting in distress and trauma⁵. There is a plethora of information about the consequences of the ‘Stolen Generation’ on individuals and communities and the psycho/social impact that experience has had on generations of Indigenous Australians.

10. We submit that the Committee needs to consider the evidence gathering procedures adopted by the State Government Schemes and the wider ramifications of the evidence that is discovered. It is important to acknowledge that the potential information uncovered by these Schemes may have an adverse psycho/social impact on claimants.

E. DIFFICULTIES IN SEEKING REMEDIES UNDER THE NSW SCHEME

“Injustice can cast a long shadow. It harms not only its immediate victims. Descendants of these victims are likely to lack resources or opportunities that they would have had if the injustice had not been done, or to have been adversely affected in other ways by the suffering of their parents and grandparents, or by other more indirect social ramifications of the wrong.”⁶

11. The fact that the focus of the State Schemes are on debts owed to individual claimants and as such has been properly characterized as a ‘repayment’ Scheme, would not preclude or make it inappropriate to provide additional reparation/compensation for the long term negative effect on indigenous families and their communities over generations as a result of the fact that monies were not paid at the time they became due.
12. It is submitted that the Committee ought to consider that State Governments should also have an additional compensation component in respect to each claimant to account for issues such as noted above, trauma associated with the evidence gathering. The additional compensation component could account for counseling, both on an individual basis and potentially for family or community groups.
13. The systematic non-payment to indigenous Australians of monies held in trust can properly be characterised as systematic discrimination on the basis of race. Under human rights law

⁵ The IWP received a report of a woman making an application to a scheme of another state who always believed her parents had died when she was a child. Through her application the Scheme uncovered that her parents had not died when she was a child but later on when she was an adult. Obviously this information was distressing to the claimant.

⁶ “Taking responsibility for the past: Reparation and Historical Injustice” by Janna Thompson. November 2002, Polity Press at p.104.

principles this gives rise to a right to reparations on the part of claimants and their descendants for such monies.

14. An additional reparation/compensation scheme for individual and/or group counseling assistance would be a symbolic gesture from the State Governments to acknowledge the disadvantaged suffered by claimants that has been compounded and perpetuated through subsequent generations of indigenous Australians.

F. CONCLUSION

15. The issue of descendant claims under the NSW ATFRS has yet to be resolved. IWP urges the Committee to recognize in its report that if the NSW Government adopts inadequate processes that do not clarify descendant entitlements under the Scheme then a second miscarriage of justice will occur.

16. The IWP supports item I in the Committee's Terms of Reference. It is clear that this country needs to discuss these issues on a National level to 'set the record straight' and to inform the public of the gross violation of human rights that occurred in Australia during the 20th century.

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