

**Parliament of Australia:  
Senate Legal and Constitutional References Committee  
Inquiry into Stolen Wages**

**Response to Terms of Reference  
by  
Members of NSW Stolen Wages Working Group**

**This submission is from the undersigned members of the NSW Stolen Wages Working Group:**

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**3 October 2006**

**The NSW Stolen Wages Working Group is a loose coalition of individuals and organisations active on this issue since 2004.**

**This submission reflects the views of the above named members of the Working Group. It should not necessarily be regarded as reflecting the views of other Working Group members, whether individuals or organisations, who are not named above.**

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**CONTENTS**

- 1.0 Introduction**
- 2.0 General Comments on the Terms of Reference**
  - 2.1 The Systems of Control of Aboriginal Labour and Finances**
    - Legal and Administrative Framework of the NSW System
    - Scope of the NSW System
    - Variability of Control Systems across Australia and Over Time
    - State/Territory/Commonwealth Interactions relating to Control Systems
    - Cross-Border Issues relating to Control Systems
  - 2.2 The Records of the NSW System**
  - 2.3 The Research relating to the NSW System**
  - 2.4 The Practices of the NSW System**
- 3.0 Specific Comments on the Terms of Reference**
  - 3.1 The Preamble to the Terms of Reference**
  - 3.2 Terms of Reference a.-i.**
  
- Attachment A Terms of Reference for Senate Inquiry into Stolen Wages (Parliament of Australia)**
  
- Attachment B Recommendations from Members of NSW Stolen Wages Working Group to Senate Inquiry into Stolen Wages (Parliament of Australia)**

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*We want the governments to be honest and to sit down and look at it all and understand why our people are struggling. To own up to what is owed to us.*

*It's ours.*

*It would make a better understanding of our struggle to get on with our lives and a step in moving forward together. We're tired of handouts.*

*Seeing our organizations losing their funding so that even today our people are struggling to be paid for the work they are doing for our communities. It breaks your heart.*

Aunty Marjorie Woodrow (pers comm)

### 1.0 Introduction

This submission is made by a small group of members of the NSW Stolen Wages Working Group (hereafter referred to as the Group).

The members of the Group congratulate the Senate on establishing an Inquiry into Indigenous stolen wages and welcome the opportunity to make a submission on this matter, with which they have been involved in NSW for some time.

Given this involvement, the Group has focussed its response to the Terms of Reference (ToRs) largely, although not exclusively, on the history of this issue in NSW and on the lessons learned from current responses to resolving this issue there. However, the response also highlights:

- matters which need to be taken into account in any attempt to address this issue nationally
- the implications of the issue for public policy nationally.

The material in the submission is structured as follows:

- some general comments on matters that relate to most of the Terms of Reference (ToRs) (copy of ToRs is at Attachment A)
- specific comments on:
  - the Preamble to the ToRs
  - each subsequent ToR.

Some of the points made under these headings will be similar to those made by Australians for Native Title and Reconciliation (ANTaR) in its submission to this Inquiry. The Group fully supports the ANTaR submission and its recommendations and, to minimise repetition, has from time to time provided only a condensed statement of the issues it raises and then referred the Inquiry to the relevant part of the ANTaR submission for further information.

However, the Group would like to point out that on some issues, it adds to the ANTaR recommendations. Where this is the case, it is indicated within the text, and also repeated in the consolidated version of the Group's recommendations at Attachment B.

## 2.0 General Comments on the Terms of Reference

The Group would like to make several general comments, which apply to most of the ToRs. These comments relate to aspects of:

- the system
- the records
- the research
- the practices.

## 2.1 The Systems of Control of Aboriginal Labour and Finances

### Legal and Administrative Framework of the NSW System

In NSW, Aboriginal people have experienced external interventions in their lives - from governments, their agents and individuals - from the time of European invasion.

The key legislation was the Aborigines Protection Act (1909) and its regulations, which governed the activities of the Aborigines Protection Board (1883-1939) and the Aborigines Welfare Board (1940-1969).

The administrative basis on which controls were exercised in NSW prior to 1909, as well as detailed information on the operation of this and other relevant legislation - NSW and Commonwealth - is detailed in the research report *'Eventually they get it all': Government Management of Aboriginal Trust Money in New South Wales* prepared by the Indigenous Law Centre (ILC) of the University of NSW. The Group understands that the ILC will be submitting this report directly to the Committee.

The NSW government itself acknowledges the extent of government control in the following statement:

The Aborigines Welfare Board (AWB) was the main NSW State Government agency responsible for implementing and administering legislation and policy affecting Aboriginal people throughout the State from 1883 to 1969.

As the main NSW Government agency affecting Aboriginal people, the policies of the Board influenced every aspect of Aboriginal people's lives, from the removal of children, to the health, education, employment and housing of Aboriginal people on stations and reserves.

During these years, the Board was responsible for the removal of more than five thousand Aboriginal children from their families. Often they were placed directly into indentured service as domestic or farm labourers or they were placed in children's homes, such as Bomaderry, Cootamundra and Kinchela.

Until it was abolished in 1969, the Board kept detailed records on children that were removed, including correspondence, school reports, education and health information. Not all these records, however, have survived.

In 1969, the board was abolished and replaced by the Aborigines Welfare Directorate, Department of Child Welfare and Social Welfare (later the Aborigines Services Branch, Youth and Community Services).

(From [http://www.daa.nsw.gov.au/publications/FamRecords\\_FSHEET%201.pdf](http://www.daa.nsw.gov.au/publications/FamRecords_FSHEET%201.pdf) viewed 6 August 2006.)

In relation to labour and finance controls, the NSW Government further states:

Prior to 1969, successive NSW Governments deducted money from some Aboriginal people's pensions, family endowment payments, apprentice wages, inheritances and lump sum compensation payments. Sometimes this happened without peoples' consent or knowledge.

This money was paid into Trust Funds operated first by the Aborigines Protection Board and then the Aborigines Welfare Board.

(From <http://www.premiers.nsw.gov.au/AboutUs/OurStructure/AboriginalTrustFundRepaymentScheme/Background/default.htm> viewed 6 August 2006.)

The meaning of this system of control of Aboriginal people's lives is well expressed by Dr Susan Greer on page 1 of Submission No 42 to this Inquiry:

the Boards constructed stereotypes of Aboriginal incapacities and then attempted to produce an improved population that transcended those perceived incapacities. In particular, ..... accounting techniques were integral to the ability of the Boards to both imagine the Aboriginal peoples as a population for government, and to constitute programmes for the management and control of the Indigenous population.

Despite this, as Goodall (1995: 80, 85) indicates, a large proportion of the Aboriginal population in NSW managed to live their lives independently of formal Board control, although the proportion of Aboriginal people under Board control increased over time. In referring to the 1890s-1920s Goodall writes:

There were never more than 15 per cent of the Aboriginal population under Board managerial control over these years (p 80).

In writing about the Depression and the 1930s she states:

Increasing numbers of Aboriginal people were forced onto the Protection Board's resources. By 1935, over 30 percent of the known Aboriginal population was under the direct and dictatorial control of Protection managers and many more were on reserves under the surveillance of the police (p 85).

#### Scope of the NSW System

As even the NSW Government's own material indicates, these "programmes for the management and control of the Indigenous population" (see quote from Dr Greer above) extended well beyond labour and finances. They formed part of a system which controlled all aspects of Aboriginal people's lives - in actuality, or because they lived in fear of coming within its legal or geographic reach.

This system controlled where and how Aboriginal people could live, attempted to prevent the transmission of language and culture, and included the widespread practice of forcible separation of Aboriginal children from their families.

In NSW, where in general separated children were eventually 'apprenticed' as agricultural labourers or domestic servants, the issue of "stolen wages" is inextricably linked with "stolen children".

The combined impacts of this system, of which control over labour and finances was only one part, continue to be expressed in the high levels of Aboriginal socio-economic disadvantage, that is in the gap between Aboriginal people and the vast majority of non-Aboriginal people on indicators of wellbeing, health, housing and

safety, and in relation to encounters with the state as reflected in child protection, juvenile justice and adult imprisonment rates.

#### Variability of Control Systems across Australia and Over Time

There was variability **across Australia, and within the States and Territories**, in relation to:

- whether government control was exerted over both child labour and adult labour, or over child labour only
- the various control measures.

For example, in Queensland adult labour was controlled, but in NSW the controls extended to child labour only. There **was** a period in NSW (1936-1963) when the Boards had legal power to control adult wages, but it appears that this power was never exercised.

(For further information on this matter, see the ILC research report referred to above.)

There was also variability in the various controls **over time**. This is another area where, for NSW and the Commonwealth, the ILC report referred to above provides considerable detail.

#### State/Territory/Commonwealth Interactions relating to Control Systems

In relation to federal pensions, benefits and other monies to which Aboriginal people were entitled, two points need to be emphasised:

- there was often State legislation in these areas that pre-dated Commonwealth legislation and was eventually superseded by it
- the controls exercised by State/Territory governments over both the State and Commonwealth pensions, benefits and other entitlements occurred **whether or not the Aboriginal person's labour was controlled by government at that time**.

(In relation to NSW, an analysis of the relevant State and Commonwealth legislation and their interactions can be found in the ILC report referred to above.)

It should also be noted that in some cases these controls were exercised through third parties, such as missions. Davenport, Johnson and Yuwali (2005: 162-163), for example, comment on the implications of this in the Western Desert, WA, particularly after 1960, when the major pensions became available to Indigenous people:

To receive any reliable benefit from their payments, in the form of rations or pocket money, the older [Martu] people had to stay on the mission [eg Jigalong].

This physical 'containment' was a metaphor for the missions' effective role in government policy, particularly in relation to Indigenous adults...

The strategy of separation [as the primary medium of 'advancement'] was often enhanced by the fact that the children's parents were required to be away, working as station hands or domestic help on pastoral stations, often for months at a time. This meant that, for much of the time, the Camp [Jigalong] was largely populated by children and older people. The missionaries sought to keep the older people at the mission because they, along with the children, formed the primary source for the missions' recurrent funding. By 1960, child endowment and age and invalid pensions dwarfed the state funding, and were paid direct into the mission coffers.

### Cross-Border Issues relating to Control Systems

Aboriginal people's lives could be governed by more than one governmental system, as some Aboriginal people were moved across State or Territory borders.

Greer (pers comm) has summarised the NSW provisions as follows:

Act No. 32, 1936 Section 8C(i) made it an offence to remove an Aboriginal person without Board permission...it also had provision for the Board to impose a surety on those requesting to remove an Aboriginal person.

Dr Ros Kidd (pers comm) has indicated that:

work by Cameron Raynes in SA has identified that children were sent from Koonibba mission as servants to Lutheran families in NSW & Victoria into the 1940s. Tony Austin says children were sent from Alice Springs to work SA, especially Adelaide. A few from Qld travelled interstate as servants in the early days but this was rare & not govt policy.

## **2.2 The Records**

There are significant issues associated with:

- finding relevant information
- accessing the information
- interpreting the information
- dealing with the disclosures in the records.

To give some examples from NSW:

- there are gaps in the records (eg the accounting records substantially do not exist post 1934, after the Accountant, Chief Secretary's office took over the accounting role from the Secretary of the Aborigines Protection Board; and the correspondence files relate substantially to the Aborigines Welfare Board, and contain only a limited number of pieces of correspondence that predate 1949 (Greer, pers comm))
- new material is constantly becoming available, so no data base is likely to be definitive, and it is thus necessary to check regularly on whether additional material has come to light since the data base was last revised (whether in paper or electronic form)
- records were not necessarily collated in a way that facilitates the sorts of investigations that are now being made by Aboriginal people and those conducting inquiries
- the written records do not always correspond to Aboriginal people's accounts of what happened in relation to their wages and other monies (eg from pensions, benefits, and other entitlements and enterprise) or the conditions under which they worked and lived
- this applies not just to trust funds, but also to the 'pocket money' books, in which a portion of Aboriginal wards' wages was intended to be deposited.

To these difficulties associated with the records themselves must be added the impact on Aboriginal people's social and emotional wellbeing when confronted by the records. The records can be confronting because they are associated with discrimination against Aboriginal people in general, or because of specific associations with the lives of the individual people accessing them, or because they reveal previously unknown information, or because they contain offensive or unwarranted value judgements.

This places a responsibility on those involved in stolen wages claims processes to advise clients and their families, or those they are assisting in relation to the

processes, of the risks involved in accessing the records and on what to do if those risks eventuate.

It also places a responsibility on governments to ensure that sufficient support of an appropriate kind is available to respond to these risks.

### 2.3 The Research

Considerable research has been undertaken on various aspects of the systems which controlled Aboriginal people's lives, and some of this research deals with controls on Aboriginal labour. However, in relation to NSW, none of this research was conducted with a specific focus on all the issues associated with "stolen wages" or the broader issue of Aboriginal trust funds. While the research may overlap these issues, they were not its focus.

This is an important issue to bear in mind when considering the research, as what researchers are looking for affects what they notice and what they regard as salient.

A further point is that identifying relevant sources of information, and interpreting them, require a combination of experience and skills that is rarely found at a specialist level in one individual. This point has been built into the recommendation in the response to ToR i., which deals with the need to *'set the record straight'*.

### 2.4 The Practices

Any attempt to understand what actually happened in relation to controls on Aboriginal labour and finances needs to take into account the differences between policy as written and policy as practised.

The written sources for identifying or inferring the policy include the relevant acts and regulations, and the guidelines and manuals, as well as the administrative decisions and records of stations, missions, reserves, the Police and others. These written sources need to be evaluated against the lived experiences of the Aboriginal people involved. (More detailed comments on this point are found in the ANTaR submission, pp 8-10.)

The only complete record among all these sources is the body of acts and regulations. For all other sources, the records are incomplete for reasons ranging from:

- loss (see p 2 of Family Records Unit: Fact Sheet *About The Service* at [http://www.daa.nsw.gov.au/publications/FamRecords\\_FSheet%201.pdf](http://www.daa.nsw.gov.au/publications/FamRecords_FSheet%201.pdf) viewed 4 August 2006)
- deliberate destruction
- failure to collect the relevant information.

As regards NSW, the assertion in relation to deliberate destruction is supported by both the NSW Government's Fact Sheet referred to above and by information from Mr Les Ridgeway in Submission No 45 to this Inquiry. In a personal communication of 2 May 2006 to Sally Fitzpatrick, Mr Ridgeway also indicates:

As a former Manager of Aboriginal Reserves back in the days of the Aborigines Welfare Board (AWB) we former managers kept files and documentation on all Child Endowment persons living on those reserves up until the AWB was disbanded in June 1969.

Unfortunately these and other reserve kept documents were destroyed when an instruction was issued by the Department of Child Welfare (currently known as DOCS), who took control of Aborigines in NSW from July 1969.



I was based at Moree as a Senior Welfare Officer from January 1970 to May 1974 when the direction was sent to all District Officers of Department [of] Child Welfare to gather all reserve documents and burn them.

This Inquiry could assist in filling in more of the gaps about what actually happened - in NSW and nationally - by providing a hearings system and environment which will encourage Indigenous people to speak directly to the Committee about their experiences. A number of Aboriginal people known to this Group agree that a hearings system would be one way to proceed; however, the additional pain such hearings might bring to claimants is also recognised:

I cannot see the point of going back into the past when it is our money in the first place. Why can't they just give it to us.  
(NSW Claimant, pers comm)

The Group therefore concurs with the recommendation of ANTaR on this matter, which is:

**ANTaR therefore recommends that the Committee:**

- **develop a hearings system and environment that will allow and encourage Indigenous people to speak directly to it of their experiences on matters that relate to the Inquiry**
- **consult Indigenous people on what is required to create a hearings system and environment that will meet this purpose.**

The Group also recommends that:

**As much as possible such a hearings system avoid adding to the already considerable pain endured by survivors of the abovementioned practices.**

Further the Group recommends that:

**The hearings be augmented by a thorough search of existing records and testimonies of the conditions under regimes where labour control was exerted, including testimonies on the public record concerning the Stolen Generations, as well as biographical and autobiographical material already produced.**

### **3.0 Specific Comments on the Terms of Reference**

#### **3.1 The Preamble to the Terms of Reference**

**With regard to Indigenous workers whose paid labour was controlled by Government:**

This Preamble appears to limit the way the Committee can address many of the ToRs.

For example, ToR c. refers to *trust funds ... established from Indigenous earnings, entitlements and enterprise*. Taken in conjunction with the Preamble, this could be interpreted as excluding Indigenous adults in NSW as:

- even when their child labour was controlled, their adult labour was not
- under some circumstances, Indigenous adults in NSW were able to avoid child labour, and therefore government control over their labour, yet as adults they had trust funds established for social welfare and/or social security benefits.

Similar difficulties potentially arise in relation to **ToRs d.-i.**

Most of the potential difficulty disappears if:

- ***Indigenous workers whose paid labour was controlled by Government*** is interpreted as “Indigenous workers whose labour, monies or entitlements were at **any stage** controlled by Government”
- the Inquiry acknowledges that work for rations was the equivalent of “paid labour ... controlled by Government”.

This, however, will still not cover the situation of Aboriginal people who neither worked for money as children nor for rations as adults, but had money held in trust from sources other than paid labour (eg bequests), nor does it cover the issue of Aboriginal people’s labour as investment in the development of housing stock and in creating improvements on reserves, from which they were subsequently denied any benefit.

There is also the issue of Aboriginal people being denied entitlements where that does not involve trust funds. This is the case in relation to repatriation benefits, where barriers delayed access to the benefit, if the benefit occurred at all. As Jack Horner comments, it took until 1972 for full repatriation benefits to Torres Strait Islander World War II veterans in compulsory military service to be approved (2004: 94); and there is considerable anecdotal evidence that Indigenous ex-soldiers did not receive the land grants that their non-Indigenous counterparts received, and that even today there are war widows of Indigenous veterans who have still not been able to access benefits.

The Group therefore generally concurs with the recommendations of ANTaR on this matter, which are:

**To avoid inadvertently excluding a very large number of Aboriginal people from the Senate Committee’s considerations, ANTaR recommends that the Committee allow consideration of control of Federal payments to Indigenous people, unconstrained by the Preamble to the Terms of Reference, which refers to “Indigenous workers whose paid labour was controlled by government.”**

**Should the Committee consider that financial arrangements other than paid labour are not within its Terms of Reference, ANTaR urges it to recommend the issue of other payments be investigated by a broader national inquiry, perhaps to be conducted by the Human Rights and Equal Opportunity Commission.**

However the Group believes that, if the Committee is to be able to address the complexity of the controls on Indigenous finances and labour, it needs to be able to inquire into the circumstances of any Aboriginal people whose labour and/or finances were controlled, regardless of the nature of the labour, or the source of the finances, or by whom the control was exerted.

The Group therefore additionally recommends that:

**The Committee extend its considerations to any Aboriginal people whose labour and/or finances were controlled by government or by any third party, regardless of the nature of the labour, the type of the control or the source of the finances.**

Should the Committee consider that these considerations are not within its Terms of Reference, the Group urges it to recommend that the issue of government or other control of Indigenous labour and/or finances, regardless of the nature of the labour, the type of the control or the source of the finances, be investigated by a broader national inquiry, perhaps to be conducted by the Human Rights and Equal Opportunity Commission.

The Group further recommends that:

The Committee consult with Aboriginal people to identify the range of circumstances that would come within the definition of “Aboriginal people whose labour and/or finances were controlled by government or by any third party, regardless of the nature of the labour, the type of the control or the source of the finances”.

### 3.2 Terms of Reference a.-i.

a. the approximate number of Indigenous workers in each state and territory whose paid labour was controlled by government; what measures were taken to safeguard them from physical, sexual and employment abuses and in response to reported abuses;

In relation to *numbers* in NSW, while various researchers have shed light on this matter, there is no definitive record of this information.

In relation to *Indigenous workers*, in NSW these were children and young people. The inherent vulnerability of children and young people, and society’s responsibility to protect them from abuse, must be taken into account in any assessment of the adequacy of measures taken to safeguard them.

In relation to *measures ... taken*, there has been considerable variability over time, as:

- legislation, policy, and central administration changed over time
- local implementation occurred via the Police in relation to reserves and the Aborigines Protection and Welfare Boards in relation to stations; there were also, around Australia, missions which were administered by church organisations
- local implementation practice is unlikely to have been uniform within either the Police or the Boards or the church organizations.

In relation to *reported abuses*, considerations need to include whether Indigenous workers were informed of their rights to protection from abuse of any kind, or given practical information on how to report abuses, support while reporting them, and advice on what to do if the abuse continued.

See also the general comments made in Section 2.0 of this submission.

b. all financial arrangements regarding their wages, including amounts withheld under government control, access by workers to their savings and evidence provided to workers of transactions on their accounts; evidence of fraud or negligence on Indigenous monies and measures implemented to secure them; imposition of levies and taxes in addition to federal income tax;

In relation to *financial arrangements*, and *evidence of fraud*, the comments on variability in NSW (within institutions and across time - as outlined in relation to ToR a.) apply here as well.

In relation to *levies and taxes in addition to federal income tax*, the taxation regimes that applied in the States and Territories before 1942 would be relevant. (1942 is the year in which the States handed their income taxing powers over to the Commonwealth in exchange for a system of grants to the States - see <http://www.aph.gov.au/LIBRARY/intguide/law/taxlaw.htm> viewed 3 August 2006.)

See also the general comments made in Section 2.0 of this submission.

**c. what trust funds were established from Indigenous earnings, entitlements and enterprise; government transactions on these funds and how were they secured from fraud, negligence or misappropriation;**

In relation to *trust funds, government transactions on them*, and their security from *fraud, negligence or misappropriation*, the comments on variability in NSW (within institutions and across time - as outlined in relation to ToR a.) apply here as well.

One issue which could be addressed under this ToR is the role of the banks. The Committee could investigate and shed light on the practices of banks in terms of the cashing of cheques, record keeping and archiving. Issues include the burden of proof in relation to whether a cheque was issued, and what guarantees of security the APB/AWB established between the trustee and the beneficiary regarding the cashing of cheques.

See also the general comments made in Section 2.0 of this submission.

**d. all controls, disbursement and security of federal benefits including maternity allowances, child endowment and pensions, and entitlements such as workers compensation and inheritances;**

In relation to Aboriginal people in NSW (who include some who were 'transferred' to NSW from other States or Territories), the application of this ToR is limited by the Preamble which refers to *Indigenous workers whose paid labour was controlled by Government*.

As noted earlier, in NSW it was only child labour that was controlled. Although a 1936 amendment to the NSW Aborigines Protection Act did give the Board power over adult wages (which power was revoked in 1963), as the Group understands it, there is no evidence to indicate that this power was used. (However this should not be taken as definitive given both the incomplete nature of the records, and the fact that there is some evidence of people working for rations on the reserves, which could be regarded as the equivalent of government control of adult Indigenous labour.)

The Group recommends that:

**To avoid inadvertently excluding a very large number of Aboriginal people in New South Wales from the Senate Committee's considerations, the Committee allow consideration of this issue in its own right, unconstrained by the Preamble to the ToRs.**

**e. previous investigations by states and territories into official management of Indigenous monies;**

Previous NSW investigations include:

- the NSW Parliamentary Inquiry of 1937-38, which was never completed, but for which Minutes of Evidence exist
- the subsequent 1938 Inquiry by the NSW Public Service Board (published in 1940).

The NSW Government's more recent investigations include the 1998 submission which initiated a stolen wages project within the Department of Community Services, the research which underpinned the subsequent Cabinet Minutes, and the report of the Panel which was appointed to investigate an Aboriginal Trust Fund Reparation Scheme. Following Cabinet's adoption of this report in December 2004, the NSW Government established its Aboriginal Trust Fund Repayment Scheme, which is administered by the Premier's Department.

(More detail on the recent history of NSW Government responses can be found on pp 14-15 of the ANTaR submission. Documents relating to the operation of the ATFRS are available from <http://www.premiers.nsw.gov.au/AboutUs/OurStructure/AboriginalTrustFundRepaymentScheme/>.)

As the research undertaken during the NSW Government's recent investigations will presumably contribute to the body of knowledge on this issue, the Group supports ANTaR's recommendation which is:

**ANTaR recommends that the Committee requests the NSW Government to make available the detailed research which informed the development of all Cabinet Minutes prepared on the issue of Aboriginal Trust Funds since 1998.**

(Please Note: Recommendations in relation to bodies which could provide community feedback on the operation of the NSW ATFRS are contained in the response to **ToR 9**.)

ANTaR NSW also notes that, in addition to material potentially available from *previous investigations by states and territories*, there is a considerable body of evidence in historical records of twentieth century Aboriginal campaigners and organisations such as the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) and its predecessors. An example is Shirley Andrews' and Ingrid Meade's research on wage injustice compiled in 1962 (Horner, 2004: 85-86). There are also numerous other sources which this Inquiry could access through a comprehensive literature review.

**f. current measures to disclose evidence of historical financial controls to affected Indigenous families; the extent of current databases and resources applied to make this information publicly available; whether all financial records should be controlled by a qualified neutral body to ensure security of the data and equity of access;**

In relation to *current measures*, in NSW these include:

- access, through the NSW Department of Aboriginal Affairs (DAA) and under appropriate conditions, to individual records
- additional resources, as part of the NSW ATFRS:
  - for support to claimants (through a funding grant to Link-Up (NSW))
  - for specialist archivist staff and record indexer positions in both the Department of Aboriginal Affairs and State Records NSW (see

<http://www.premiers.nsw.gov.au/AboutUs/OurStructure/AboriginalTrustFundRepaymentScheme/AboutUs/default.htm> viewed 4 August 2006).

Better indexing of records will bring a double benefit:

- it will benefit those seeking documentation to support their claims for the return of monies owed to them
- it will benefit all Aboriginal people seeking information about their families, whether or not they are claimants.

In relation to *extent of current databases* in NSW, State Records NSW publishes *A Guide to New South Wales State Archives relating to Aboriginal People* which is available at

<http://www.records.nsw.gov.au/publications/aboriginalguide/aboriginalguidetoc.htm>.

Its website also has pages relating to *Resources for Indigenous People*, which commence at

[http://www.records.nsw.gov.au/archives/resources\\_for\\_indigenous\\_people\\_1471.asp](http://www.records.nsw.gov.au/archives/resources_for_indigenous_people_1471.asp)

The material associated with its forthcoming exhibition *In Living Memory: an exhibition of surviving photographs from the records of the NSW Aborigines Welfare Board, from 1919 to 1966* also provides useful information. This information is available at

[http://www.records.nsw.gov.au/archives/whats\\_on\\_at\\_the\\_state\\_records\\_gallery\\_8327.asp](http://www.records.nsw.gov.au/archives/whats_on_at_the_state_records_gallery_8327.asp).

The NSW Department of Aboriginal Affairs has also recently established a Family Records Unit (see <http://www.daa.nsw.gov.au/familyhistory/index.html> viewed 4 August 2006). This is relevant to the Senate Inquiry as in NSW “stolen wages” issues are intertwined with “stolen generations” issues.

(As noted in Section 2.2 of this submission, new material is constantly becoming available, so no data base is likely to be definitive, and it is thus necessary to check regularly on whether additional material has come to light since the data base was last revised (whether in paper or electronic form).)

In relation to adequacy of *resources applied*, making a judgement requires both:

- specialist advice on the amount of material still to be located and indexed
- the political will to provide the resources required to locate, obtain and index the material.

The Group supports ANTaR’s recommendation in relation to resources, which is that:

**Given the age of many of the people affected, ANTaR recommends that the Committee request all States/Territories and the Commonwealth to provide sufficient funding and staff resources to ensure that the indexing of their current Aboriginal records can be completed within three years of the Committee’s report to the Australian Parliament.**

However, as new records still become available from time to time, indicating that not all extant records have yet been located, the Group also recommends that:

**Ongoing capital and staff resources be made available beyond the three year mark to ensure that new material can continue to be located, obtained and promptly indexed.**

In relation to control of financial records by a *qualified neutral body*, the Group supports ANTaR's recommendation that:

**ANTaR urges the Committee to recommend the creation of a qualified, community controlled, independent, culturally competent, and adequately resourced body or bodies to administer access to the records of Indigenous people held by State, Territory and Federal governments.**

However, the Group cautions that it is the views of Aboriginal people which will be most informative here, as they have long experience in issues relating to security of their data and equity of access.

This highlights the need referred to in Section 2.4 of this submission for a hearings system and environment that will engage Aboriginal people in all aspects of both the Inquiry and the foreshadowed national forum.

**g. commitments by state and territory governments 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;**

In NSW, the Government's current commitments are contained in the ATFRS referred to in the response to **ToR e.** These commitments include a number of matters that the Group regards as essential to any scheme aiming to address the issue of unpaid, underpaid or missing wages, pensions benefits or other entitlements. These are contained in the recommendations of the *Report of the Aboriginal Trust Fund Repayment Scheme Panel* of October 2004, which the Group understands were adopted *in toto* by the NSW Cabinet in December 2004.

The over-riding issue is whether these recommendations are sufficient - in their own right, or as interpreted by the guidelines later developed to implement them - *to repay or compensate those who suffered physically or financially under 'protection' regimes* (to use the words of **ToR g.**).

The ATFRS is due to be reviewed after three years, which would be approximately December 2007 (depending on what is regarded as the starting date of the Scheme), and the Group hopes that there will be an opportunity for this issue to be raised again then. However, it would be useful if the Committee had access to as much current information as possible about existing schemes attempting to address this issue, as a guide to the development and operation of any future schemes.

Both the NSW Government and others familiar with the development and operation of the current NSW scheme would be able to provide relevant information to the Committee now. This information would assist the Committee both to respond to this **ToR** (ie **ToR g.**) and to collect information relevant to the possible national forum (see **ToR i.**) on *the complexity and the consequences of mandatory controls over Indigenous labour and finances*.

The Group supports ANTaR's recommendation in relation to resources, which is that:

**ANTaR recommends that the Committee invite representatives from the NSW ATFRS, Link-Up (NSW) and advocacy groups such as PIAC and relevant Community Legal Centres to report on progress in the implementation of the NSW scheme.**

However, to enable the Committee to obtain community feedback on the broader issues associated with repayment and/or reparations schemes, the Group recommends that:

**The Committee also invite the advocacy groups to comment on:**

- **the adequacy of the NSW Government's commitments in its ATFRS**
- **what additional characteristics are required for a just and equitable (i) repayment scheme and (ii) reparations scheme.**

(For the difference between repayment and reparations (compensation), please see pp 16-17 of the ANTaR submission.)

The Group is also willing to appear before the Committee on this matter.

(Please Note: The Group's recommendations in relation to seeking the direct views of Aboriginal people affected by mandatory controls over their labour or finances are contained in its recommendations relating to: Hearings of the Inquiry, the Preamble to the Terms of Reference, and Term of Reference i..)

In relation to *the responsibility of governments to repay or compensate those who suffered physically or financially under 'protection' regimes*, the Group believes that:

- governments **do** have a responsibility in these areas
- any approaches which aim to take responsibility for them need to address the complexity of the issues and factors involved and the ways they interact with each other.

Intersecting factors and issues include:

- the different types of monies, 'payments' and labour involved
- the discriminatory regimes involved
- the impact of both the above on Indigenous opportunities then and now
- the coexisting impacts of other unresolved rights and justice issues in relation to land, law and culture
- the need to address these core issues now and within a human rights and social justice framework
- the need for recognition of a "cross-government" approach to the issues
- the need to resolve these issues through negotiation, not just consultation, with Aboriginal people.

The Group's more detailed comments on these matters have been incorporated into the ANTaR submission (see pp 15-16).

In addition the Group commends the Tasmanian State Government for advances it is making in the area of compensation for the Stolen Generations.

The Group would also like to comment on a number of specific issues associated with this part of the ToRs:

- repayment, including current value of claims
- compensation (also referred to as reparations)
- physical abuse
- cultural and social abuse
- evidence.

The Group's comments on the first four of these matters have been incorporated into the ANTaR submission (see pp 16-18).



In relation to the fifth matter, as outlined in several places in this submission, evidence itself is a problematic issue in efforts to determine:

- the operation of the 'protection' system as a whole
- what happened to individual Aboriginal people, including the impact on their labour and finances.

The Group's more detailed comments on this matter have been incorporated into the ANTaR submission (see p 10).

One of these comments relates to oral evidence - either in the absence of a written record, or where it conflicts with the written record. The Group recommends that:

**The Committee investigate whether there are any North American models which could assist in developing an appropriate Australian system for assessing oral evidence.**

**h. what mechanisms have been implemented in other jurisdictions with similar histories of Indigenous protection strategies to redress injustices suffered by wards; and**

Both Canada and the United States of America have similar *histories of Indigenous protection strategies*. While the 'protection' systems that operated were not identical to those in Australia, they do share significant similarities with Australia's, and research into approaches they have taken to redressing the damage of 'protection' regimes could be useful.

The Group recommends that:

**The Committee investigate whether North American approaches to redressing the damage of 'protection' regimes could assist in developing an appropriate Australian approach to this issue.**

**i. whether there is a need to 'set the record straight' through a national forum to publicly air the complexity and the consequences of mandatory controls over Indigenous labour and finances during most of the 20th century.**

The Group believes that there is a need to both:

- *'set the record straight' on the complexity and the consequences of mandatory controls over Indigenous labour and finances during most of the 20th century (and earlier)*
- take steps to address these consequences.

Its general position on how this could be done, and the conditions required for a fair and just outcome from this process, are outlined in the previous ToRs.

However, while a national forum could be useful to help to 'set the record straight', it is even more important to commence a process of addressing the damage caused by 'protection' and associated regimes.

The Group therefore supports ANTaR's recommendation on this matter which is:

**ANTaR urges the Committee to recommend that:**

- **the issues of repayment of monies owed, and of compensation for the impacts of 'protection' regimes, be referred to the Human Rights and**

**Equal Opportunity Commission (HREOC) to assess the impacts and make appropriate recommendations on how to address them**

- **HREOC be charged to give priority to obtaining Aboriginal perspectives on these matters**
- **HREOC be adequately resourced to enable it to access a sufficient amount of the wide range of skills required (whether in the form of employees, contractors or consultants) to undertake all these activities.**

Finally, in terms of setting the record straight, the Group would like to point out that:

- the establishment of 'protection' regimes was not the doing of Aboriginal peoples
- however:
  - Aboriginal peoples are the ones who have had to endure the impacts of these regimes, at the time and as they continue to affect the present
  - Aboriginal peoples - then and now - are blamed for the consequences of regimes they had no say in establishing.

The Group believes it is a moral imperative for the nation to redress - as soon as possible - the damage caused by these regimes.

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**Parliament of Australia: Senate Inquiry into Stolen Wages**

**Terms of reference**

With regard to Indigenous workers whose paid labour was controlled by Government:

- a. the approximate number of Indigenous workers in each state and territory whose paid labour was controlled by government; what measures were taken to safeguard them from physical, sexual and employment abuses and in response to reported abuses;
- b. all financial arrangements regarding their wages, including amounts withheld under government control, access by workers to their savings and evidence provided to workers of transactions on their accounts; evidence of fraud or negligence on Indigenous monies and measures implemented to secure them; imposition of levies and taxes in addition to federal income tax;
- c. what trust funds were established from Indigenous earnings, entitlements and enterprise; government transactions on these funds and how were they secured from fraud, negligence or misappropriation;
- d. all controls, disbursement and security of federal benefits including maternity allowances, child endowment and pensions, and entitlements such as workers compensation and inheritances;
- e. previous investigations by states and territories into official management of Indigenous monies;
- f. current measures to disclose evidence of historical financial controls to affected Indigenous families; the extent of current databases and resources applied to make this information publicly available; whether all financial records should be controlled by a qualified neutral body to ensure security of the data and equity of access;
- g. commitments by state and territory governments 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;
- h. what mechanisms have been implemented in other jurisdictions with similar histories of Indigenous protection strategies to redress injustices suffered by wards; and
- i. whether there is a need to 'set the record straight' through a national forum to publicly air the complexity and the consequences of mandatory controls over Indigenous labour and finances during most of the 20th century.

(Source: [http://www.aph.gov.au/senate/committee/legcon\\_ctte/stolen\\_wages/tor.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_wages/tor.htm), accessed 6 July 2006)

**Parliament of Australia: Senate Inquiry into Stolen Wages**

**Recommendations from certain members of the NSW Stolen Wages Working Group  
(as identified on the cover sheet to this submission)**

**1. Re Hearings of the Inquiry:**

The Group therefore concurs with the recommendation of ANTaR on this matter, which is (p 11 of ANTaR submission):

**ANTaR therefore recommends that the Committee:**

- **develop a hearings system and environment that will allow and encourage Indigenous people to speak directly to it of their experiences on matters that relate to the Inquiry**
- **consult Indigenous people on what is required to create a hearings system and environment that will meet this purpose.**

The Group also recommends that:

**As much as possible such a hearings system avoid adding to the already considerable pain endured by survivors of the abovementioned practices.**

Further the Group recommends that:

**The hearings be augmented by a thorough search of existing records and testimonies of the conditions under regimes where labour control was exerted, including testimonies on the public record concerning the Stolen Generations, as well as biographical and autobiographical material already produced.**

**2. Re the Preamble to the Terms of Reference:**

The Group generally concurs with the recommendations of ANTaR on this matter, which are (pp 7-8 of ANTaR submission):

**To avoid inadvertently excluding a very large number of Aboriginal people from the Senate Committee's considerations, ANTaR recommends that the Committee allow consideration of control of Federal payments to Indigenous people, unconstrained by the Preamble to the Terms of Reference, which refers to "Indigenous workers whose paid labour was controlled by government."**

**Should the Committee consider that financial arrangements other than paid labour are not within its Terms of Reference, ANTaR urges it to recommend the issue of other payments be investigated by a broader national inquiry, perhaps to be conducted by the Human Rights and Equal Opportunity Commission.**

However the Group additionally recommends that:

**The Committee extend its considerations to any Aboriginal people whose labour and/or finances were controlled by government or by any third party, regardless of the nature of the labour, the type of the control or the source of the finances.**

**Should the Committee consider that these considerations are not within its Terms of Reference, the Group urges it to recommend that the issue of government or other control of Indigenous labour and/or finances, regardless of the nature of the labour, the type of the control or the source of the finances, be investigated by a broader national inquiry, perhaps to be conducted by the Human Rights and Equal Opportunity Commission.**

The Group further recommends that:

**The Committee consult with Aboriginal people to identify the range of circumstances that would come within the definition of "Aboriginal people whose labour and/or finances were controlled by government or by any third party, regardless of the nature of the labour, the type of the control or the source of the finances".**

### **3. Re Term of Reference d.:**

The Group recommends that:

**To avoid inadvertently excluding a very large number of Aboriginal people in New South Wales from the Senate Committee's considerations, the Committee allow consideration of this issue in its own right, unconstrained by the Preamble to the ToRs.**

### **4. Re Term of Reference e.:**

The Group supports the ANTaR recommendation on this ToR, which is (p 15 of ANTaR submission):

**ANTaR recommends that the Committee requests the NSW Government to make available the detailed research which informed the development of all Cabinet Minutes prepared on the issue of Aboriginal Trust Funds since 1998.**

### **5. Re Term of Reference f.:**

The Group supports ANTaR's recommendation in relation to resources, which is (pp 10 of ANTaR submission):

**Given the age of many of the people affected, ANTaR recommends that the Committee request all States/Territories and the Commonwealth to provide sufficient funding and staff resources to ensure that the indexing of their current Aboriginal records can be completed within three years of the Committee's report to the Australian Parliament.**

The Group also recommends that:

**Ongoing capital and staff resources be made available beyond the three year mark to ensure that new material can continue to be located, obtained and promptly indexed.**

In relation to control of financial records by a *qualified neutral body*, the Group supports ANTaR's recommendation (p 10 of ANTaR submission):

**ANTaR urges the Committee to recommend the creation of a qualified, community controlled, independent, culturally competent, and adequately resourced body or bodies to administer access to the records of Indigenous people held by State, Territory and Federal governments.**

## **6. Re Term of Reference g.:**

The Group supports ANTaR's recommendation in relation to resources, which is (p 15 of ANTaR submission):

**ANTaR recommends that the Committee invite representatives from the NSW ATFRS, Link-Up (NSW) and advocacy groups such as PIAC and relevant Community Legal Centres to report on progress in the implementation of the NSW scheme.**

The Group recommends that:

**The Committee also invite the advocacy groups to comment on:**

- **the adequacy of the NSW Government's commitments in its ATFRS**
- **what additional characteristics are required for a just and equitable (i) repayment scheme and (ii) reparations scheme.**

The Group also recommends that:

**The Committee investigate whether there are any North American models which could assist in developing an appropriate Australian system for assessing oral evidence.**

## **7. Re Term of Reference h.:**

The Group recommends that:

**The Committee investigate whether North American approaches to redressing the damage of 'protection' regimes could assist in developing an appropriate Australian approach to this issue.**

## **8. Re Term of Reference i.:**

The Group supports ANTaR's recommendation on this matter which is (pp 18-19 of ANTaR submission):

**ANTaR urges the Committee to recommend that:**

- **the issues of repayment of monies owed, and of compensation for the impacts of 'protection' regimes, be referred to the Human Rights and Equal Opportunity Commission (HREOC) to assess the impacts and make appropriate recommendations on how to address them**
- **HREOC be charged to give priority to obtaining Aboriginal perspectives on these matters**
- **HREOC be adequately resourced to enable it to access a sufficient amount of the wide range of skills required (whether in the form of employees, contractors or consultants) to undertake all these activities.**