



HERBERT
SMITH
FREEHILLS

Report

Comparative analysis of Indigenous trust fund repayment schemes in Australia

Wampan Wages

14 January 2013



Overview

Context In September 2009, the Victorian government released preliminary investigations into unpaid Indigenous trust funds in Victoria. In 2012, Wampan Wages became aware that the Victorian government is continuing to assess the feasibility of a Victorian Indigenous trust fund repayment scheme.

This report has been prepared by Herbert Smith Freehills to assist Wampan Wages in advocating for the establishment of a best practice model for reparations for the stolen wages community in Victoria.

Scope This report provides a comparative analysis of the establishment, operation and scope of the following Indigenous trust fund repayment schemes:

- the Aboriginal Trust Fund Repayment Scheme in New South Wales;
- the Indigenous Wages and Savings Reparations Scheme in Queensland and the related Underpayment of Award Wages Process; and
- the Stolen Wages Reparation Scheme WA in Western Australia.

In addition, where there have been significant changes to these schemes, this report identifies:

- the reasons behind the changes; and
- the implications for claimants.

Key conclusions Section 2 of this report sets out our key conclusions.

Primary contacts	Graeme Johnson	Fergus Smith
	Partner +61 2 9225 5405 graeme.johnson@hsf.com	Senior Associate +61 7 3258 6451 fergus.smith@hsf.com

Detailed report

1 Introduction

This report has been prepared on the basis of our review of the guidelines and public commentary in relation to the following Indigenous trust fund repayment schemes:

- the Aboriginal Trust Fund Repayment Scheme in New South Wales;
- the Indigenous Wages and Savings Reparations Scheme in Queensland and the related Underpayment of Award Wages Process; and
- the Stolen Wages Reparation Scheme WA in Western Australia.

We have also provided commentary informed by Herbert Smith Freehills' experience in representing claimants before the Aboriginal Trust Fund Repayment Scheme in New South Wales.

This report consists of the following sections:

- Section 2 – Key conclusions;
- Section 3 – Nature and guiding philosophy of the scheme;
- Section 4 – Claimant eligibility;
- Section 5 – Procedural rules;
- Section 6 – Claim amount calculation mechanism; and
- Section 7 – Scheme statistics.

In addition, this report includes the following annexures:

- Annexure 1 – Glossary of defined terms;
- Annexure 2 – Key characteristics matrix;
- Annexure 3 – Guidelines in relation to the Aboriginal Trust Fund Repayment Scheme in New South Wales;
- Annexure 4 – Guidelines in relation to the Indigenous Wages and Savings Reparations Scheme in Queensland; and
- Annexure 5 – Guidelines in relation to the Stolen Wages Reparation Scheme WA in Western Australia.

2 Key conclusions

2.1 Nature and guiding philosophy of the scheme

KC1.	Guiding philosophy	A trust fund repayment scheme can either seek to identify and repay actual unpaid trust funds or, alternatively, make notional payments as "an expression of regret" or in the "spirit of reconciliation". The guiding philosophy has important practical consequences for claimants including with respect to the amount of payments, the eligibility of descendant claimants and the timeframes and complexity of the claims process.
KC2.	Community consultation	The guiding philosophy of a trust fund repayment scheme and the related implications may have significant consequences for the effectiveness of a scheme and its acceptance by the relevant Indigenous communities. Extensive consultation should be conducted with the relevant Indigenous communities as part of the development of a trust fund repayment scheme.
KC3.	Formal guidelines	A trust fund repayment scheme should be established under formal publicly available guidelines which set out clearly, in simple English, the application and decision making process and the rights of applicants in relation to that process.

2.2 Claimant eligibility

KC4.	State specific eligibility criteria	The governmental regulation of Indigenous people was within the responsibility of the state governments of Australia (as opposed to the Federal government) for a significant period of Australian history and, as a consequence, the historical experience of governmental control of Indigenous wages differs from state to state. Therefore, the appropriate eligibility criteria for a trust fund repayment scheme should be carefully tailored to the specific circumstances and experience of the Indigenous people of that state.
KC5.	Focus of eligibility criteria	The eligibility criteria of a trust fund repayment scheme can either be focussed toward whether a claimant was subject to governmental <i>control of income</i> , or alternatively toward the identification of <i>specific funds</i> held in a trust account which remain unpaid. However, to understand the practical implications of the eligibility criteria, the administrative approach to assessing claimants against the eligibility criteria and, in particular, the evidential requirements must also be considered.
KC6.	Descendant claims	Permitting descendants to claim unpaid trust funds on behalf of deceased relatives will increase the pool of eligible claimants. However, to avoid extensive delays in processing claims, consideration should be given to restricting eligibility to descendants who have in fact registered a claim.
KC7.	Authorised representatives	Eligible claimants should be permitted to make claims via an authorised representative.
KC8.	Priority of multiple descendant claimants	A trust fund repayment scheme should provide for clear priority rules as between multiple descendant claimants. This should include: <ul style="list-style-type: none"> ▪ deference to any valid will of the deceased person;

		<ul style="list-style-type: none"> ▪ an opportunity for the descendant claimants to develop a family agreement within a set period of time; and ▪ if a family agreement is not able to be agreed, an express distribution priority order by relationship with the deceased person (e.g. spouse, children, grandchildren).
KC9.	Types of trust funds	A broad approach should be taken with respect to the types of unpaid funds in trust fund accounts – including wages, child endowment, pensions and maternity allowances.
KC10.	Under-award wages	As in QLD, in addition to repayment of funds actually held in trust, consideration should be given as to whether the payment of Indigenous people at under-award wages should also be factored into payment entitlements.

2.3 Procedural rules

KC11.	Application process	The application process for a trust fund repayment scheme should be simple and allow claimants to submit their own evidence including documentary evidence and statutory declarations.
KC12.	Application period	To ensure all potential claimants have an opportunity to lodge a claim, a trust fund repayment scheme should have a sufficiently long application period (years rather than months), the decision making body should have an ability to extend the period if necessary and there should be flexibility to accept late applications if it is in the interests of justice and equity to do so.
KC13.	Community engagement	During the application period, a trust fund repayment scheme should engage extensively with the relevant Indigenous communities to communicate the availability of the scheme, identify potential claimants and assist with the completion of applications.
KC14.	Administration and resources	A trust fund repayment scheme is administratively complex and will likely require significant bureaucratic resources. To ensure an efficient process, adequate resources should be made available and the application and assessment process should be as straight forward as is possible and specify benchmark timeframes for the process to be measured and reported against. The performance of the process should be periodically reviewed.
KC15.	Formal apology	The relevant Indigenous communities should be consulted on whether it is appropriate for the scheme to be accompanied by a formal apology in relation to past injustices in connection with unpaid trust wages.
KC16.	Communication during application process	A trust fund repayment scheme should be open and accessible to claimants and ensure that claimants are able to access clear information as to the status of their claim and to submit additional information, if required, throughout the process.
KC17.	Unsuccessful claimants	The manner in which unsuccessful claimants are notified should be managed sensitively and in consultation with the relevant Indigenous communities. The reasons for the decision should be clearly explained to the unsuccessful claimant and the claimant should be linked to other relevant support services.



KC18.	Priority of processing of claims	A trust fund repayment scheme should formally prioritise the processing of claims according to the age and health of claimants. The scheme should also allow claimants transparency with respect to the processing priority of their claim and the ability to seek revision of that priority if their health circumstances change. Direct claimants should have priority to descendant claimants.
KC19.	Flexibility of permitted evidence	The poor quality of government records of Indigenous trust accounts presents significant challenges for Indigenous people in verifying claims to unpaid funds. Therefore, the nature and extent of evidence required by a trust fund repayment scheme is a fundamental question. A scheme should take a flexible approach to the type of permitted evidence and should place considerable weight on the direct evidence of the claimant (either oral or by statutory declaration). The guidelines of the scheme should expressly require the consideration of the interests of justice and equity in order to avoid unfair outcomes.
KC20.	Rigour of evidence assessment	A full assessment of the evidence of each claim is likely to be a complicated and difficult process likely to lead to extensive delays and administrative cost. An overly technical approach can be counterproductive to the aims of a scheme and can potentially compound the injustice of genuine claimants if direct personal evidence of their experience is not accepted. On the other hand, a scheme which makes no attempt to verify individual claims and pays only low fixed payments in compensation may undermine the ability of the scheme to effectively redress the injustice of unpaid wages in the relevant Indigenous communities.
KC21.	Evidence collection	An evidence based trust fund repayment scheme requires extensive research of records which are unlikely to be well maintained. To avoid lengthy administrative delays, a scheme should ensure adequate resources are made available to conduct the necessary research in a timely fashion.
KC22.	Access to records	Existing policies in relation to the access to relevant records necessary for the trust fund repayment scheme should be reviewed and amended to allow appropriate and efficient access by the decision making body, claimants and legal or other representatives on behalf of claimants.
KC23.	Right to present evidence	The guidelines of a trust fund repayment scheme should expressly provide claimants with the right to present their own evidence to the decision making body, including by way of statutory declaration or oral evidence.
KC24.	Right to respond to evidence	The guidelines of a trust fund repayment scheme should expressly provide claimants with the right to review and respond to the evidence relevant to their case and to the decision making body's assessment of that evidence.
KC25.	Involvement of legal counsel	The decision making body should proactively identify complex or difficult claims for which a claimant would benefit from the assistance of legal counsel. The decision making body should establish an interested group of law firms to act for claimants on a pro bono basis.
KC26.	Reasons for decision	It is critical that a claimant be entitled to receive detailed reasons for the decision made in relation to their claim. This should include the evidence itself as well as the decision



		making body's assessment of that evidence. This right should be an express requirement set out in the scheme guidelines.
KC27.	Appeal	A simple and transparent review process should be established to allow claimants the right to challenge the decision of the scheme. In addition, consideration should be given to permitting further recourse to an independent third party (such as an ombudsman) in the event of administrative oversights in the decision making process of the scheme. These processes should be expressly outlined as a right of the claimant in the scheme guidelines.
KC28.	Other legal rights	A successful claim under a trust fund repayment scheme should <i>not</i> require the claimant to waive, or indemnify a government against other legal rights the claimant may have with respect to their unpaid wages.

2.4 Claim amount calculation mechanism

KC29.	Claim amount	To avoid lengthy administrative delays in decision making, a trust fund repayment scheme should set a fixed payment figure in consultation with the relevant Indigenous communities and allow for increases if it is in the interests of justice and equity to do so in a particular case.
-------	---------------------	--



3 Nature and guiding philosophy of the scheme

(a) Queensland

Queensland was the first Australian state to take steps to redress the historical injustice of unpaid Indigenous wages. There have been two separate schemes established in Queensland:

- (1) the *Underpayment of Award Wages Process* – established in 1999 by the QLD government in relation to Indigenous people who had been employed by previous governments on Indigenous reserves and paid wages at under-award rates between 1975 and 1986 (the **QLD Underpayment Scheme**); and
- (2) the *Indigenous Wages and Savings Reparations Scheme* – established in 2002 and offered to Indigenous people whose wages and savings had been affected by the QLD government's Protection Acts from the 1890s to the early 1970s and remained unpaid (the **QLD Trust Fund Scheme**).

The QLD government's action followed the 1996 decision of the Human Rights and Equal Opportunity Commission in the *Palm Island Wages Case*¹ where it was found that the QLD government had contravened the Racial Discrimination Act by deliberately underpaying wages to seven Indigenous settlement workers between 1975 and 1986. The evidence in the *Palm Island Wages Case* suggested that the individual plaintiffs' loss of income was between \$8,573.66 and \$20,982.97. However, due to difficulties in accurately assessing the loss and the lack of records, each of the seven plaintiffs were awarded \$7000 in compensation. The QLD Underpayment Scheme was established in direct response to the *Palm Island Wages Case* and gave rise to \$25 million in compensation payments to thousands of Indigenous people who had similarly been paid wages at under-award rates between 1975 and 1986.

The implementation of the QLD Underpayment Scheme led to the development of the QLD Trust Fund Scheme which sought to address the related injustice of the wages and savings of Indigenous people which had been earned, but never repaid. In 2002, prior to the introduction of the QLD Trust Fund Scheme, consultation was undertaken with Indigenous communities throughout QLD by the Queensland Aboriginal and Islander Legal Services Secretariat (**QAILSS**). The results indicated that from the 5,501 responses received during the consultation process, there was an acceptance rate of approximately 94% for the proposed offer. However, concerns were raised about the consultation process and the way in which the offer was initially conveyed to the Indigenous community. It has been suggested that the 94% acceptance rate may have been due to a misinformed belief amongst potential claimants that registering a "no" on the survey would be a legally binding rejection of the offer. It has also been suggested that the result may have been further skewed as those who were not in favour of the offer would not have attended and participated in the consultation process.²

Unlike the QLD Underpayment Scheme, the QLD government indicated that the QLD Trust Fund Scheme was *not* a "compensation" scheme, but a "reparations" scheme (meaning it sought to return unpaid wages rather than simply compensate for loss). However, it was also made clear that the "reparations" were not an admission of legal liability, but were offered in the "spirit of reconciliation" to recognise historical injustices suffered by the Indigenous community. In practice, this meant that no efforts were made

¹ *Bligh & Ors v State of Queensland* [1996] HREOCA 28.

² Chapter 7: Repayment of monies by governments
http://www.aph.gov.au/Senate/Committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/report/c07.pdf, 101-3.



to identify the precise amount of unpaid wages owed to particular individuals, but instead the focus was on whether a claimant's wages had been subject to governmental control. A fixed payment was then allocated for each successful claimant. The monetary offer under the QLD Trust Fund Scheme was one component of a broader set of actions by the QLD government, which included:

- (1) a written apology from the QLD government to all living persons who had their wages and savings controlled and who were eligible to make a claim for compensation;
- (2) a statement in the QLD parliament to publicly recognise past injustices on the basis of race; and
- (3) a protocol for commencing official QLD government business with an acknowledgement of the traditional owners of the land.

The QLD Trust Fund Scheme was established by an exercise of prerogative power by the QLD government and was administered by the Department of Aboriginal and Torres Strait Islander Policy (**DATSIP**). The QLD Trust Fund Scheme operated in accordance with an internal "Procedures Manual" which guided the administrative work of officers (the **QLD Procedures Manual**). The QLD Procedures Manual is an internal administrative document, rather than a formal set of legal rules setting out the rights of claimants.

(b) New South Wales

The NSW Scheme was created in 2005 following consultation with the Indigenous community in NSW throughout 2004 and was conducted by a panel appointed by the NSW government. Similarly to the QLD Trust Fund Scheme, the guiding philosophy of the NSW Scheme was expressly *not* one of "compensation", but "reparation". However, unlike in QLD, the NSW Scheme involved a more rigorous evidence based approach to seek to identify and repay specific funds that were put into trust fund accounts on behalf of Indigenous people and never repaid. As discussed in section 6, this approach proved challenging and was later changed to provide for a fixed payment amount to each successful claimant.

The NSW Scheme was administered by the special purpose Aboriginal Trust Fund Repayment Unit (the **ATFRS Unit**) which reported to the Aboriginal Trust Fund Advisory Panel (the **ATFRS Panel**). The ATFRS Panel consisted of 3 appointees: Aden Ridgeway, Robynne Quiggin and Sam Jeffries. The ATFRS Panel in turn made recommendations to the ultimate decision maker under the NSW Scheme, the NSW Minister for Aboriginal Affairs (**NSW Minister**). The NSW Scheme was established under "The Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme" which were first issued in February 2006 (the **Original NSW Guidelines**) and then revised and reissued in June 2009 (the **Revised NSW Guidelines**). Unlike the QLD Procedures Manual, the NSW Guidelines were a formal public statement of the rules and procedures to be followed by the NSW Scheme.

(c) Western Australia

Western Australia was the third state to seek redress in relation to unpaid Indigenous trust funds. The WA Scheme was announced in March 2012 following the 2008 report *Reconciling the Past Government control of Aboriginal monies in Western Australia, 1905-1972* of the WA Stolen Wages Taskforce. The WA Scheme is administered by the WA Department of Indigenous Affairs (**WADIA**) and a nominated Project Director is responsible for final approval of all applications. The WA Scheme was established under the "Guidelines – Stolen Wages Reparation Scheme WA" (the **WA Guidelines**) which became effective in March 2012 and have not been amended as at the date of this report. Similarly to the NSW Guidelines, the WA Guidelines are a formal public statement of the rules and procedures to be followed by the WA Scheme. Taking a similar approach to the QLD Trust Fund Scheme, the WA Scheme is stated to be "an expression of regret" and it is openly acknowledged that payments are expressly *not* intended to "represent full



reparation" of funds held in trust. The WA government explained its approach as being driven by the need to "balance the claims of those affected and its reparation payment against the contemporary needs of Aboriginal Western Australians". Contrasting with the NSW Scheme, this approach has resulted in a system with no need for evidence in relation to the actual funds held in trust for individual claimants.

(d) General comments

The experience of the QLD Schemes, the NSW Scheme and the WA Scheme is that the guiding philosophy of a trust fund repayment scheme has important practical implications for claimants. Each of the QLD and WA governments made clear that their respective schemes did not attempt to identify and calculate the actual amount of unpaid trust funds, but rather to acknowledge the injustice that had occurred by making a notional fixed payment.

As will be discussed by this report, this approach had important consequences for the design on those schemes, including for example, a comparatively low fixed payment compared with the NSW Scheme (as discussed in section 6) and a limited ability for descendants to make claims on behalf of deceased relatives (as discussed in section 4.2). By contrast, the NSW government, at least initially, sought to identify and repay actual unpaid trust funds which lead in some circumstances to more generous payments and also a more generous system for descendant claimants. However, as discussed in section 5.5, the NSW Scheme's focus on evidence gathering also lead to extensive delays and complexity in processing applications. These practical implications must be considered carefully as they will likely have significant consequences for the effectiveness of a trust fund repayment scheme and its acceptance by the Indigenous community.

Key conclusions

KC1.	Guiding philosophy	A trust fund repayment scheme can either seek to identify and repay actual unpaid trust funds or, alternatively, make notional payments as "an expression of regret" or in the "spirit of reconciliation". The guiding philosophy has important practical consequences for claimants including with respect to the amount of payments, the eligibility of descendant claimants and the timeframes and complexity of the claims process.
KC2.	Community consultation	The guiding philosophy of a trust fund repayment scheme and the related implications may have significant consequences for the effectiveness of the scheme and its acceptance by the relevant Indigenous communities. Extensive consultation should be conducted with the relevant Indigenous communities as part of the development of a trust fund repayment scheme.
KC3.	Formal guidelines	A trust fund repayment scheme should be established under formal publicly available guidelines which set out clearly, in simple English, the application and decision making process and the rights of applicants in relation to that process.

4 Claimant eligibility

4.1 Criteria for a successful claim

The governmental regulation of Indigenous people was within the responsibility of the state governments of Australia (as opposed to the Federal government) for a significant period of Australian history and, as a consequence, the historical experience of



governmental control of Indigenous wages differs from state to state. Therefore, the appropriate eligibility criteria for a trust fund repayment scheme also differs from state to state and should be tailored to the specific circumstances and experience of the Indigenous people of that state.

(a) Queensland

The QLD Trust Fund Scheme required the following criteria to be satisfied – the claimant must have:

- (1) been alive on 9 May 2002 (which was the date on which the QLD government made the offer);
- (2) been born either:
 - (A) on or before 31 December 1951; or
 - (B) on or between 1 January 1952 and 31 December 1956; and
- (3) had his/her wages or savings *controlled* under a 'Protection Act' under operation in Queensland between 1897 and 1984.

(b) New South Wales

The NSW Scheme took a different approach, seeking to identify not whether wages had been "controlled" as the QLD Trust Fund Scheme did, but whether a particular claimant was entitled to specific funds held in trust and not distributed. The NSW Scheme required the following criteria to be satisfied – that the ATFRS Panel must be satisfied that:

- "(1) *there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of the direct claimant at any time was paid into a Trust Fund Account between 1900 and 1969; and*
- (2) *there is no evidence, or no reliable evidence, that the full amount of the money was either:*
 - (a) *paid out to the direct claimant;*
 - (b) *expended on behalf of the direct claimant; or*
 - (c) *paid out to an authorised representative of the direct claimant."*

The NSW Scheme defined "Trust Fund Accounts" as "*the accounts established by the Aboriginal Protection Board/Aboriginal Welfare Board between 1900 and 1969 into which they deposited money held on behalf of Aboriginal people.*"

(c) Western Australia

The WA Scheme required the following criteria to be satisfied – the claimant must be a living person who:

- (1) was born prior to 1958;
 - (2) from the age of 14 years or older were resident at a Government Native Welfare Settlement in WA;
 - (3) while resident at one or more of the Government Native Welfare Settlements in WA experienced direct WA government control over their income and all or part of their income was withheld from them; and
 - (4) was never repaid the outstanding monies owed by the WA government.
- (d) General comments

On its face, the approach of the WA Scheme borrowed elements from both the QLD Trust Fund Scheme and the NSW Scheme. As for the QLD Trust Fund Scheme, the WA Scheme focussed on whether a claimant was subject to governmental *control* of income



rather than whether there were in fact *specific funds* held in a trust account (as in NSW). The WA Scheme also included the additional criteria that outstanding monies had never in fact been repaid (which suggests an intention to seek evidence of specific funds as in NSW). However, the WA Scheme takes a very different approach to the NSW Scheme in verifying the existence of outstanding monies. No documentary evidence is required by the WA Scheme, instead, reliance is placed on the claimant's declaration that such monies were never repaid.

This suggests that in order to understand the practical implications of the eligibility criteria, the administrative approach to assessing claimants against the eligibility criteria and, in particular, the evidential requirements must also be considered. The evidential requirements of each scheme and the practical consequences for the operation of each scheme are discussed in section 5.4.

Key conclusions

KC4.	State specific eligibility criteria	The governmental regulation of Indigenous people was within the responsibility of the state governments of Australia (as opposed to the Federal government) for a significant period of Australian history and, as a consequence, the historical experience of governmental control of Indigenous wages differs from state to state. Therefore, the appropriate eligibility criteria for a trust fund repayment scheme should be carefully tailored to the specific circumstances and experience of the Indigenous people of that state.
KC5.	Focus of eligibility criteria	The eligibility criteria of a trust fund repayment scheme can either be focussed toward whether a claimant was subject to governmental <i>control of income</i> , or alternatively toward the identification of <i>specific funds</i> held in a trust account which remain unpaid. However, to understand the practical implications of the eligibility criteria, the administrative approach to assessing claimants against the eligibility criteria and, in particular, the evidential requirements must also be considered.

4.2 Eligible claimants

(a) New South Wales

The NSW Scheme provides for a wide range of potential claimants, including:

- a direct claimant – an Aboriginal person whose wages or other money was paid into the trust fund accounts between 1900 and 1969;
- an authorised representative of a direct claimant – including an attorney, guardian and agent; and
- where a direct claimant is deceased – a descendant.

Under the Original NSW Guidelines a "descendant" was very broadly defined to include a spouse, de facto spouse, child, grandchild, parent, brother, sister, aunt and uncle. However, under the Revised NSW Guidelines this was narrowed to exclude parents, brothers, sisters, aunts and uncles.

In addition, the Original NSW Guidelines provided that descendants were entitled to share in the proceeds of a successful claim regardless of whether the descendant had in fact registered a claim. It was the responsibility of the ATFRS Unit to publish details of each successful descendant claim in appropriate community publications and then to conduct investigations on a "best endeavours" basis to identify descendants entitled to share in the claim via a Births, Deaths and Marriages check. This approach led to the ATFRS Unit experiencing significant difficulties in processing descendant claims. The old



records of the Aborigines Welfare Board/Aborigines Protection Board lacked sufficient information, or in many cases were non-existent, and this created difficulties for claimants, especially those who were removed from their families and placed in institutions. The processing of descendant claims proved to be extremely complex and time-consuming due to the large number of possible descendants that needed to be identified and located. This was exacerbated by the requirement under the Original NSW Guidelines that claims could not be finalised until all the descendants had been located and contacted – this proved to be insurmountable and resulted in extensive delays in repaying proven unpaid trust funds.

The Revised NSW Guidelines changed the approach providing that only descendants that had *registered their claim* were eligible to share in the proceeds of a claim. This allowed the ATFRS Unit to achieve certainty as to the identity of the eligible claimants and removed the need for the ATFRS Unit to itself identify other eligible descendant claimants. In practice, this change enabled the ATFRS Unit to proceed to confirm and pay outstanding descendant claims.

(b) Queensland

The QLD Trust Fund Scheme took a different approach, restricting claims to claimants who had been alive on 9 May 2002 (being the date on which the QLD government made the offer). Claimants who had died before this date were expressly excluded. However, a relative of a claimant who had died after 9 May 2002 could make an application on behalf of that deceased claimant and any successful payments were made in accordance with the Succession Act 1981 (Qld) (including as outlined in the claimant's last valid will if in existence). The QLD government gave the following reasons for not opening the reparations offer to descendant claimants:

"The Government was aware from its experience in the [QLD Underpayment Scheme] that the majority of Aboriginal and Torres Strait Islander people die intestate and that attempts to distribute estates in accordance with succession requirements are administratively complex and likely to result in outcomes that are considered inequitable by some or all of the parties concerned. These difficulties would have been magnified if descendants of long deceased persons were entitled to claim on behalf of these persons. Having considered these matters, a decision was taken to focus on those persons who were alive at the time of the offer."³

(c) Western Australia

The WA Scheme also limited claims to living direct claimants. No claims are permitted by the descendants or the estate of any person. However, if a direct claimant dies after an application has been made but before payment, the payment will continue to be paid into the account nominated in the relevant application.

(d) General comments

Given the likelihood that many Indigenous people who are owed unpaid trust funds have either passed away or may soon pass away, limiting the eligible claimants of a trust fund repayment scheme to living people may significantly reduce the capacity of a scheme to deliver justice to the Indigenous community as a whole. However, based on the experience of the NSW Scheme, permitting descendant claims needs to be carefully structured so as to ensure the scheme is able to make decisions in a timely fashion. Taking a too broad or imprecise approach to descendant claims could have a negative effect on the outcomes of a scheme for all claimants.

³ Queensland Government, Submission 116, Attachment 7, *Indigenous Wages and Savings (1890s-1980s) Reparation Process Information Sheet*, September 2003, p.5.



Key conclusions

KC6.	Descendant claims	Permitting descendants to claim unpaid trust funds on behalf of deceased relatives will increase the pool of eligible claimants. However, to avoid extensive delays in processing claims, consideration should be given to restricting eligibility to descendants who have in fact registered a claim.
KC7.	Authorised representatives	Eligible claimants should be permitted to make claims via an authorised representative.

4.3 Priority rules of multiple descendant claimants

(a) New South Wales

The NSW Scheme contained detailed provisions in relation to the priority of multiple descendant claimants. The Revised NSW Guidelines provided that the order of priority of distribution was established as follows:

- (1) *firstly*, in accordance with a valid will of the direct claimant if applicable;
- (2) *secondly*, if there is no will, the descendants that had registered a claim are given 6 weeks to agree a family agreement in relation to the distribution; and
- (3) *thirdly*, if no family agreement is reached, then payment will be made in accordance with detailed provisions set out in Annexure A of the Revised NSW Guidelines allocating priority between the spouse, defacto spouse, children and grandchildren.

As discussed in section 4.2, the Original NSW Guidelines provided that *non-registered* descendants were also entitled to be included in the order of priority. This created administrative difficulties and the Revised NSW Guidelines reversed this position and provided that only registered descendant claimants were entitled to be considered in the order of priority. The Original NSW Guidelines also provided that 95% of eligible descendant claimants could conclude a binding family agreement (rather than all *registered* descendant claimants as per the Revised NSW Guidelines).

(b) Queensland

Under the QLD Trust Repayment Scheme successful payments in respect of any eligible deceased claimants were made in accordance with the Succession Act 1981 (Qld).

(c) Western Australia

The WA Scheme limits claims to living direct claimants and therefore required no rules with respect to the priority of multiple descendant claimants.

Key conclusions

KC8.	Priority of multiple descendant claimants	<p>A trust fund repayment scheme should provide for clear priority rules as between multiple descendant claimants. This should include:</p> <ul style="list-style-type: none"> ▪ deference to any valid will of the deceased person; ▪ an opportunity for the descendant claimants to develop a family agreement within a set period of time; and ▪ if a family agreement is not able to be agreed, an express distribution priority order by relationship with the deceased person (e.g. spouse, children, grandchildren).
------	--	--



4.4 Nature of trust funds recoverable

(a) New South Wales

The NSW Scheme extended to any funds held in a trust fund account, including wages and child endowment. In the case of child endowment payments they were treated as though they were held on behalf of the parent of the child in respect of whom the child endowment payment was made, rather than the child itself.

(b) Queensland

Similarly, the QLD Trust Fund Scheme extended to any funds held in a trust fund account including wages, child endowment, pensions and maternity allowances. The QLD Underpayment Scheme took a different approach, focussing on the wages that *should have been paid* to Indigenous people for work performed at under-award rates.

(c) Western Australia

Under the WA Scheme, the focus was less on the nature of the trust funds that were held and more on whether the claimant resided at a Native Welfare Settlement identified as holding/managing wages for Indigenous workers.

Key conclusions

KC9.	Types of trust funds	A broad approach should be taken with respect to the types of unpaid funds in trust fund accounts – including wages, child endowment, pensions and maternity allowances.
KC10.	Under-award wages	As in QLD, in addition to repayment of funds actually held in trust, consideration should be given as to whether the payment of Indigenous people at under-award wages should also be factored into payment entitlements.

5 Procedural rules

5.1 Application process and acceptance period

(a) New South Wales

The NSW Scheme opened for applications in February 2006 and initially did not specify a closing date. The Revised NSW Guidelines of June 2009 specified that no further applications were to be accepted by the scheme after 31 May 2009. However, the Revised NSW Guidelines also included an additional provision to make clear that the ATFRS Unit could accept a late application if it was satisfied that it was in the interests of justice and equity to do so. The application process involved:

- (1) the completion of an application form which required the claimant to provide detailed information in relation to their background and experiences. The applicant was also permitted to submit additional documentary evidence together with the application form; and
- (2) proof of identification by providing any two of the following forms of identification: Birth Certificate, Driving Licence, Pensioner Concession Card, Medicare Card or Health Care Card.



(b) Queensland

The QLD Trust Fund Scheme application period commenced on 9 May 2002 and initially closed on 31 January 2006. The QLD government subsequently agreed to extend the date for accepting applications to 31 January 2009. The application process involved:

- (1) the completion of an application form and, if possible, claimants were asked to supply evidence that they worked under one of the relevant "Protection Acts" (e.g. a savings bank ledger or a wages card); and
- (2) proof of identification by providing any two of the following forms of identification: Birth Certificate, Driving Licence, Pensioner Concession Card, Medicare Card or Health Care Card.

(c) Western Australia

The WA Scheme application period commenced on 7 March 2012 and was initially scheduled to close on 6 September 2012, although this date was then extended to 30 November 2012. This period is very short compared with the NSW Scheme and QLD Trust Fund Scheme. Particularly in NSW, significant efforts were required within the Indigenous community to communicate the availability of the scheme, to identify potential claimants and to complete applications. Ensuring all potential claimants have an opportunity to lodge a claim favours a generous application period, an ability to extend the period if necessary and the flexibility to accept late applications if it is in the interests of justice and equity to do so.

The application process of the WA Scheme involves:

- (1) the completion of an application form which required the completion of details about the applicant's history of residency at a "Native Welfare Settlement" as well as a declaration that the applicant experienced direct control of his/her income by the WA government and that the applicant had never received the outstanding monies owed; and
- (2) proof of identification by providing certified copies of at least two forms of identification: Birth Certificate; Birth Extract; Current Driver's License; Passport; Medicare Card; Centrelink Card; Credit Card or Bank Account Card, Utilities Bills or two Statutory Declarations from two different referees.

Key conclusions

KC11.	Application process	The application process for a trust fund repayment scheme should be simple and allow claimants to submit their own evidence including documentary evidence and statutory declarations.
KC12.	Application period	To ensure all potential claimants have an opportunity to lodge a claim, a trust fund repayment scheme should have a sufficiently long application period (years rather than months), the decision making body should have an ability to extend the period if necessary and there should be flexibility to accept late applications if it is in the interests of justice and equity to do so.
KC13.	Community engagement	During the application period, a trust fund repayment scheme should engage extensively with the relevant Indigenous communities to communicate the availability of the scheme, identify potential claimants and assist with the completion of applications.



5.2 Decision making process and timing

(a) Queensland

A high level overview of the process for the QLD Trust Fund Scheme is as follows:

- (1) the claimant completes a claim form and provides proof of their date of birth and, if the claim is being made on behalf of a deceased person, proof of the date of death of the deceased person;
- (2) DATSIP registers details of the claim form and sends a letter to the claimant confirming receipt of the application;
- (3) DATSIP allocates a priority to the claim (based on age and health – see 5.3);
- (4) DATSIP then conducts a search for *1 piece of documentary evidence* showing control of wages or savings by the Government under a "Protection Act" (no attempt was made to reconstruct individual work, wages, or savings histories);
- (5) DATSIP assesses a claim as either 'eligible' or 'ineligible';
- (6) if a claim is 'ineligible':
 - (A) DATSIP sends an assessment letter to the 'ineligible' claimant explaining why their claim was 'ineligible';
 - (B) claimants were given a free call phone number to enable them to speak to someone about why their claim was 'ineligible'; and
 - (C) if 'ineligible' claimants were able to provide more information, the claim could be assessed again;
- (7) if a claim is "eligible":
 - (A) DATSIP sends an assessment letter to the "eligible" claimant advising them of the date and time for a meeting held in their area so that the claimant could obtain independent legal advice with respect to the Qld Trust Fund scheme;
 - (B) DATSIP pays for a lawyer to give independent legal advice to the eligible claimant;
 - (C) the eligible claimant has a 24hr cooling off period before they have to decide whether to accept or reject the offer;
 - (D) if the claimant accepts the offer they are required to sign a deed of agreement waiving rights to future claims (as discussed in section 5.8);
 - (E) DATSIP provides an electronic funds transfer form and if the claimant decides to accept the payment offer after receiving legal advice, the claimant returns the completed electronic funds transfer form (with their bank details) to DATSIP;
 - (F) once the deed of agreement has been signed and electronic funds transfer form provided, the claimant receives the payment (typically within 6 weeks) after signing the deed; and
 - (G) in addition to the payment, the claimant receives a letter of apology from the Minister.

We understand that the QLD Trust Fund Scheme typically processed first round applications within 1 year, depending on the priority of the claim and the difficulty associated with the claim (i.e. availability of evidence). On average, the QLD Underpayment Scheme typically processed claims in 6 months to 12 months. However,



there were significant variations in the range of times taken – from a few days for urgent matters to up to three years for non-urgent or more complex matters.

(b) New South Wales

The NSW Scheme involved a lengthy and bureaucratic process with a number of levels of administration and review. A high level overview of the process is as follows:

- (1) the AFTRS Unit receives and registers the application, allocates a priority status and confirms that the application is complete (if the application is incomplete the claimant may be asked to provide further information);
- (2) the AFTRS Unit forwards the application to NSW Department of Aboriginal Affairs to undertake necessary searches;
- (3) the AFTRS Unit may seek expert assistance if necessary;
- (4) the AFTRS Unit may seek to conduct an interview with the claimant if necessary;
- (5) the AFTRS Unit prepares:
 - (A) a summary of information;
 - (B) a recommendation as to whether or not payment should be made and to whom payment should be made; and
 - (C) its reasons for making the recommendation;
- (6) the AFTRS Unit may, in its absolute discretion, choose to share the above information and recommendation with the claimant. The Original NSW Guidelines provided that in relation to descendant claims, the information uncovered by and the recommendation of the AFTRS Unit was required to be sent to eligible descendants and such descendants were entitled 6 weeks to respond. The Revised NSW Guidelines removed this requirement and made clear that providing information and interim recommendations to a claimant is at the discretion of the AFTRS Unit;
- (7) if the claimant is provided with information from the AFTRS Unit, the claimant may then provide a response to the recommendation;
- (8) the AFTRS Unit will then submit the recommendation to the AFTRS Panel;
- (9) the AFTRS Panel assesses the recommendation and may seek further evidence, consult experts and conduct interviews in its discretion;
- (10) the AFTRS Panel prepares:
 - (A) a summary of information;
 - (B) a recommendation as to whether or not payment should be made and to whom payment should be made; and
 - (C) its reasons for making the recommendation,
 - (D) (In practice, it was common for the AFTRS Panel to issue an interim assessment to the claimant and allow a period for a response submission to be prepared);
- (11) the AFTRS Director Program Delivery may seek clarifications from the AFTRS Panel and may also provide his/her own alternative recommendation together with reasons (this additional step was introduced by the Revised NSW Guidelines); and



- (12) the Minister makes a decision or may refer the matter back to the ATFRS Panel for further information and investigation. In relation to a descendant claim, the Original NSW Guidelines provided that the Minister's final decision was subject to mandatory public notification and a 28 day waiting period during which other eligible descendants were able to register an interest in the claim – this step was removed by the Revised NSW Guidelines.

The process of the NSW Scheme lead to extensive delays in the processing of claims. From Herbert Smith Freehills' experience, it was not uncommon for decisions to take up to 5 years to process. For straightforward applications where the documentary evidence was clear, decisions could be made more quickly. However, for many claimants, due to the poor record keeping of the authorities, the documentary evidence was not clear and analysing the veracity of applications through the various levels of the decision making process was a very lengthy process. From Herbert Smith Freehills' experience, the extended delays in decision making by the NSW Scheme was a central complaint and caused significant distress for many claimants. The distress caused by the delay was exacerbated by the fact that claimants were often very elderly or had material health concerns which created the real possibility that claimants could pass away before having their claims resolved.

(c) Western Australia

The WA Scheme application process is significantly simpler, reflecting the fact that no testing of evidence is required. A high level overview of the process is as follows:

- (1) an assessor receives the application and confirms whether the application is complete;
- (2) if the application is incomplete:
 - (A) the assessor will telephone, write or email the claimant to advising on the information or documentation that is required to complete the application;
 - (B) the claimant will be given thirty (30) days to reply, and, if no response is received within 30 days, the application will be considered to have ceased; and
 - (C) if a complete application is received within thirty (30) days the application will be assessed;
- (3) if the application is complete, the assessor will:
 - (A) write to the claimant acknowledging receipt of the application and advising that an assessor will assess the application;
 - (B) assess the application and make an intermediate determination as to whether the application should be approved or not approved; and
 - (C) forward the application to the Project Director who will then consider whether to approve the application; and
- (4) The claimant is then notified whether the application has been successful.

As the WA scheme is in its early stages, the timeframes for processing applications is not yet clear. The process is, however, expected to be much quicker that the NSW Scheme and the QLD Schemes.



Key conclusions

KC14.	Administration and resources	A trust fund repayment scheme is administratively complex and will likely require significant bureaucratic resources. To ensure an efficient process, adequate resources should be made available and the application and assessment process should be as straight forward as is possible and specify benchmark timeframes for the process to be measured and reported against. The performance of the process should be periodically reviewed.
KC15.	Formal apology	The relevant Indigenous communities should be consulted on whether it is appropriate for the scheme to be accompanied by a formal apology in relation to past injustices in connection with unpaid trust wages.
KC16.	Communication during application process	A trust fund repayment scheme should be open and accessible to claimants and ensure that claimants are able to access clear information as to the status of their claim and to submit additional information, if required, throughout the process.
KC17.	Unsuccessful claimants	The manner in which unsuccessful claimants are notified should be managed sensitively and in consultation with the relevant Indigenous communities. The reasons for the decision should be clearly explained to the unsuccessful claimant and the claimant should be linked to other support services that are on offer.

5.3 Priority of processing of claims

(a) New South Wales

The NSW Scheme provided for the allocation of a priority rating for each application received which dictated the order in which claims were processed. Generally, direct claimants were prioritised over descendant claims. In addition, the ATFRS Panel took into account evidence of hardship and/or a life-threatening medical condition as well as any other factors considered relevant. The NSW Scheme also allowed claimants the ability to request a review of the priority rating assigned to their claim. Given the extended delays in the processing of claims under the NSW Scheme, the priority allocation of a particular claim was an important factor. However, given that the majority of claimants are old aged, a significant proportion could be expected to have health concerns. Therefore, assessing the comparative entitlement to priority consideration is a difficult task.

(b) Queensland

The QLD Trust Fund Scheme also provided for a formal priority order for the assessment of applications, being:

- (1) *first*, claimants aged 76 years or older and claimants who had a serious illness (regardless of age);
- (2) *second*, claimants aged 66 – 75 years;
- (3) *third*, claimants aged 57 – 65 years;
- (4) *fourth*, claimants aged 52 – 56 years; and
- (5) *fifth*, applications in relation to deceased claimants (i.e. those that had died after 9 May 2002).

(c) Western Australia



There is no formal priority allocation system in relation to the WA Scheme. This likely reflects the fact that most claims are expected to be processed comparatively quickly.

(d) General comments

Herbert Smith Freehills' experience acting for claimants under the NSW Scheme was that significant distress was caused by the long delays in processing claims and this distress was heightened where the claimant feared that they could pass away without having received justice for their experiences. This experience reinforced to Herbert Smith Freehills the merit of a clear system which sought to prioritise the processing of claims according to the age and health of claimants.

Key conclusions

KC18.	Priority of processing of claims	A trust fund repayment scheme should formally prioritise the processing of claims according to the age and health of claimants. The scheme should also allow claimants transparency with respect to the processing priority of their claim and the ability to seek revision of that priority if their health circumstances change. Direct claimants should have priority to descendant claimants.
-------	---	---

5.4 Rules of evidence

It is well documented that the poor quality of government records in relation to Indigenous trust accounts has presented significant challenges for Indigenous people in verifying their claims.

(a) New South Wales

In the NSW context, in May 2004, Premier Bob Carr said that records of how the authorities administered Indigenous trust funds have 'vanished over the years' and his Minister for Community Services called the documentary record 'patchy' and 'incomplete'. Many written records of the authority's financial administration were destroyed, lost and damaged, or deliberately removed.⁴ The Indigenous Law Centre at the University of NSW has noted:

"The records relating to Aboriginal trust funds that survive in government and non-government agencies today will only reveal part of a complex picture – what remains to be told can only come to light through the oral evidence of Aboriginal people who themselves, or whose family members, experienced the system in operation".⁵

Therefore, appropriate and tailored rules of evidence are a key requirement for an Indigenous trust fund repayment scheme.

The NSW Scheme expressly provides that formal rules of evidence (as would apply in a court) were not applicable. Instead, the scheme set out a tailored set out of rules for the purposes of the scheme. Generally speaking, evidence is considered by the NSW Scheme if the relevant officer of the ATFRS Unit or the ATFRS Panel is satisfied that the evidence is *reliable* and *relevant* to a recommendation. The evidentiary standard required for a successful application under the NSW Scheme was:

- (1) **certainty, strong evidence or strong circumstantial evidence** that an amount of money payable to or held on behalf of the direct claimant at any time was paid into a Trust Fund Account between 1900 and 1969; and

⁴ Sean Brennan, Zoe Craven, 'Eventually they get it all... Government Management of Aboriginal Trust Money in New South Wales' (Research Report, Indigenous Law Centre, University of New South Wales, 2006) 61.

⁵ Zoe Craven, 'Stolen Apprenticeship wages' and Entitlements Aboriginal Trust Funds in New South Wales (Fact Sheet, Indigenous Law centre, University of New South Wales, 2004) [48] available from www.ilc.unsw.edu.au.



- (2) **no evidence, or no reliable evidence**, that the full amount of the money was either:
- (A) paid out to the direct claimant;
 - (B) expended on behalf of the direct claimant; or
 - (C) paid out to an authorised representative of the direct claimant.

In considering the evidence against the above standard, the NSW Scheme expressly required the following factors to be taken into account:

- (1) the length of time that has elapsed and the difficulty claimants may have in substantiating their application as a result;
- (2) any deficiencies in the official written record relating to the application or similar applications;
- (3) the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people;
- (4) the purpose of the scheme, which is to restore money which was held in trust for Aboriginal people and not repaid;
- (5) any available evidence that money payable to the direct claimant or the deceased trust fund account holder was paid into the trust fund account and the reliability of that evidence;
- (6) any available evidence that money was paid out of the trust fund account and the reliability of that evidence; and
- (7) any other matter which the ATFRS Unit, the Panel, the Director Program Delivery, the Director-General or the Minister considers relevant.

In addition, the NSW Guidelines were expressly stated to be "not binding" and could be departed from if the ATFRS Panel was "satisfied that it is in the interests of justice and equity to do so". Where such a departure occurred, the reasons for the departure were required to be recorded for purposes of transparency.

(b) Queensland

The QLD Trust Fund Scheme also dis-applied formal rules of evidence and adopted a much narrower approach to evidence collection and assessment. The focus of the QLD Trust Fund Scheme was to identify whether the claimant had his/her wages or savings *controlled* under a 'Protection Act' under operation in QLD between 1897 and 1984. For a claim to be successful the assessors had to find 1 piece of documentary evidence confirming control of wages or savings. Although oral evidence could be provided to support a claim, oral evidence in itself was not enough. According to the QLD Procedures Manual, documentary evidence could include the following:

- (1) savings bank ledger cards;
- (2) a memorandum of agreement (between employer and employee, witnessed by a Government official);
- (3) pocket money records;
- (4) wage earnings records;
- (5) child endowment cards;
- (6) termination of management of property;
- (7) continuation or determination of a management of property;
- (8) audit report reference to the claimant's savings account from the heritage database; and

- (9) any other record that demonstrates government control of the claimant's wages or savings e.g. departmental letter to employer naming the claimant as the employee.

The QLD approach, although seemingly simpler (only 1 document required), is potentially more rigid as compared with the NSW approach and could lead to unjust outcomes in particular cases. Based on Herbert Smith Freehills' experience in NSW, because the documentary records kept by governmental authorities were often in a very poor state or missing entirely, it was critical that the assessment of claims considered a broad range of evidence, including importantly, the oral evidence of the claimant themselves (including by way of statutory declaration). Strict adherence to the QLD approach leaves success or failure of a claim beyond the control of the claimant and dependent on the whim or competence of government bureaucrats at the relevant period of history. Pure chance would dictate whether there might be documentation in existence for one or both of two claimants who had suffered the same injustice.

The potential for injustice was acknowledged by the QLD Trust Fund Scheme in that for certain 'inside workers' for whom no control evidence could be located, ministerial approval was later provided (3 November 2003) for a special procedure to be followed. According to that procedure, a claim could be successful if:

- (1) the other criteria was met (i.e. other than the 1 piece of documentary evidence confirming control of wages or savings); and
- (2) the assessor had located evidence that the claimant was resident on a Government Settlement or Church Mission beyond schooled age.

The QLD Government stated that "[b]ecause the government was aware that the relevant records may be incomplete for particular time periods and locations, it acknowledged that, for a small proportion of people who were subject to the controls over wages and savings, records may not be available. Consequently, provision was made for use of affidavit evidence."⁶

Although more flexible, the detailed approach adopted by the NSW Guidelines, in effect, contributed to extensive delays in the processing of applications. The piecing together of evidence was a complex and difficult process which did not always produce clear conclusions. In practice, the ATFRS Unit was willing to accept detailed submissions from legal counsel on behalf of the claimants and was also proactive in identifying complex claims which would benefit from the detailed review of legal counsel on behalf of a claimant. This proved to be very important for many claimants and, in the experience of HSF, often the evidence uncovered by the ATFRS Panel was incomplete or the analysis in relation to the evidence uncovered was incorrect or unfair and a thorough analysis by legal counsel on behalf of a claimant was sufficient to overturn an initial negative recommendation of the ATFRS Panel leading to a successful claim. Despite a positive outcome in some cases, the process itself proved difficult to claimants. Some claimants would take offence to a negative interim assessment issued for the reason of a lack of evidence (but contrary to the oral evidence of the claimant) and the need for detailed legal analysis and legal submissions to overturn decisions led to extended periods of uncertainty and disappointment.

- (c) Western Australia

The WA Scheme, similarly, dis-applied the formal rules of evidence. However, the guiding philosophy of the scheme – being "an expression of regret" and payments made are expressly **not** intended to "represent full reparation" of funds held in trust – means that a relatively relaxed approach is to be taken to scrutinising applications. Generally, claimants under the WA Scheme are not required to prove that either trust funds were in

⁶ Queensland Government Submission to the Senate's 'Stolen Wages Inquiry' page 6



fact held in trust for them, or that that they never received a distribution of such funds. Instead, the WA Scheme accepts the existence of these elements on the basis of the claimant's declaration to that effect (which form part of the application form). Our discussions with the WA Scheme confirmed that the only evidentiary confirmation performed with respect to the WA Scheme are to confirm that the claimant was a resident of a Native Welfare Settlement during the relevant period. This represents a very low burden of proof as compared with the NSW Scheme and the QLD Trust Fund Scheme.

(d) General comments

We would expect that the process adopted by the WA Scheme is likely to lead to significant cost savings in relation to the administration of the scheme as well as a much quicker decision making process as compared with the NSW Scheme and the QLD Schemes. From a claimant's perspective, an administratively simple and therefore quicker decision making process is of significant value, however, in the case of the WA Scheme this lack of focus on the merit of individual cases is accompanied by an express intention that payments do **not** "represent full reparation" of unpaid trust funds. This approach may be at risk of undermining the ability of the scheme to effectively redress the injustice of unpaid wages of Indigenous people in WA.

Key conclusions

KC19.	Flexibility of permitted evidence	The poor quality of government records of Indigenous trust accounts presents significant challenges for Indigenous people in verifying claims to unpaid funds. Therefore, the nature and extent of evidence required by a trust fund repayment scheme is a fundamental question. A scheme should take a flexible approach to the type of permitted evidence and should place considerable weight on the direct evidence of the claimant (either oral or by statutory declaration). The guidelines of the scheme should expressly require the consideration of the interests of justice and equity in order to avoid unfair outcomes.
KC20.	Rigour of evidence assessment	A full assessment of the evidence of each claim is likely to be a complicated and difficult process likely to lead to extensive delays and administrative cost. An overly technical approach can be counterproductive to the aims of a scheme and can potentially compound the injustice of genuine claimants if direct personal evidence of their experience is not accepted. On the other hand, a scheme which makes no attempt to verify individual claims and pays only low fixed payments in compensation may undermine the ability of the scheme to effectively redress the injustice of unpaid wages in the relevant Indigenous communities.

5.5 Evidence collection

The evidence based approach of the NSW Scheme and the QLD Schemes required more extensive arrangements for the collection of evidence in relation to claimants than the WA Scheme.

The ATFRS Unit (NSW) was specifically tasked with conducting the research necessary to assess the veracity of each claim. In practice, this meant submitting research requests to the NSW Department of Aboriginal Affairs and NSW State Records. Initially under the Original NSW Guidelines, the ATFRS Unit was required to use its "best endeavours" to collect records and information in relation to each claim. The Revised NSW Guidelines narrowed this requirement, specifying that the ATFRS Unit need only make "reasonable attempts" to collect records and information in relation to each claim. Herbert Smith Freehills' experience with the NSW Scheme was that the NSW Department of Aboriginal



Affairs' resources were stretched in conducting the necessary searches for claimants which led to extensive delays in the processing of applications.

(a) New South Wales

Initially, in accessing records on behalf of claimants, the NSW Scheme sought to work within the existing policy of the NSW Department of Aboriginal Affairs which restricted access to the actual person the subject of the information request or a direct descendant of that person. This prevented the ATFRS Unit from accessing records on behalf of other eligible descendant claimants which were not "direct descendants" (e.g. spouses). This gave rise to logistical difficulties for the ATFRS Unit which were addressed by the Revised NSW Guidelines – which reflected a special dispensation granted to the ATFRS Unit to request information on the authority of a spouse of a person.

(b) Queensland

For the QLD Schemes, a Work and Savings Histories branch was established within DATSIP. The Community and Personal Histories branch of DATSIP assisted with research and archivist work. In addition, the Aboriginal and Torres Strait Islander Services (ATSIS) also became involved in the process as they hold extensive records relating to past administration of Aboriginal and Torres Strait Islander affairs.

(c) Western Australia

By contrast, the WA Scheme does not require the detailed assessment of documentary or oral evidence of unpaid trust funds. The WA Scheme is focussed on confirming the "identity" of claimants and the fact of the claimant's "prior residence" at a state controlled "Native Welfare Settlement". Once these facts had been verified, an application was considered successful without further investigation.

Key conclusions

KC21.	Evidence collection	An evidence based trust fund repayment scheme requires extensive research of records which are unlikely to be well maintained. To avoid lengthy administrative delays, a scheme should ensure adequate resources are made available to conduct the necessary research in a timely fashion.
KC22.	Access to records	Existing policies in relation to the access to relevant records necessary for the trust fund repayment scheme should be reviewed and amended to allow appropriate and efficient access by the decision making body, claimants and legal or other representatives on behalf of claimants.

5.6 Right to make submissions and give oral evidence

(a) New South Wales

The NSW Scheme was able to accept both written and oral evidence from claimants and the Revised NSW Guidelines included additional language confirming the scheme's ability to accept statutory declarations as evidence. The NSW Guidelines also acknowledged "the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people". However, the NSW Scheme did not allow a claimant a *specific right* to an oral hearing or any right to otherwise provide oral evidence. The Revised NSW Guidelines introduced the additional language "in its absolute discretion" to reinforce the fact that the ATFRS Unit was not obligated to seek oral evidence from claimants.

In addition, there were only limited circumstances in which a claimant had a right to make written submissions under the NSW Guidelines. Firstly, a claimant under the NSW Scheme was able to submit relevant information or documentary evidence together with



their initial application to the ATFRS Unit. Following the application, the NSW Guidelines then provide that if the ATFRS Unit *exercised its discretion* to provide an interim recommendation to the claimant, then the claimant had an opportunity to respond to that assessment and provide any other information that they considered relevant to the claim. In this circumstance, the NSW Guidelines permitted a period of 6 weeks for the claimants to prepare a response. However, the ATFRS Unit was *not* obligated by the NSW Guidelines to provide its interim recommendation to the claimant (this is further discussed at section 5.7) and therefore a claimant's right to make a submission was contingent upon the ATFRS Unit exercising that discretion.

In practice, it was Herbert Smith Freehills' experience in representing claimants in relation to the NSW Scheme that the ATFRS Unit was willing to take a more flexible approach than was expressly set out in the NSW Guidelines. The ATFRS Unit was willing to accept a detailed submission from legal counsel on behalf of the claimants and was also proactive in identifying complex claims which would benefit from a detailed review of legal counsel on behalf of a claimant. This proved to be very important for many claimants and, in the experience of Herbert Smith Freehills, often the evidence uncovered by the ATFRS Panel was incomplete or the analysis in relation to the evidence uncovered was incorrect or unfair. A thorough analysis by legal counsel on behalf of a claimant was sufficient to overturn an initial negative recommendation of the ATFRS Panel leading to a successful claim. Helpfully, the NSW Guidelines also encouraged the ATFRS Unit to refer claimants to organisations such as Link-Up, if it became aware that claimants had difficulty in providing responses to the ATFRS Unit in relation to a claim.

(b) Queensland

The QLD Trust Fund Scheme also permitted claimants to submit both written and oral evidence. Although the preference was for documentary evidence, where the documentary evidence was ambiguous or unclear following the scheme's initial investigation of a claim, the claimant was able to present additional evidence which could take the form of an affidavit or oral evidence recounting their recollections of any dealings in relation to their trust fund accounts and/or the management of their wages and entitlements by government agencies.⁷ The QLD Government stated that "[b]ecause the government was aware that the relevant records may be incomplete for particular time periods and locations, it acknowledged that, for a small proportion of people who were subject to the controls over wages and savings, records may not be available. Consequently, provision was made for use of affidavit evidence."⁸ However, as the QLD Procedures Manual is an internal administrative document, rather than a formal set of legal rules setting out the rights of claimants, the status of a claimant's right to give oral evidence or make submissions is not clear.

(c) Western Australia

The WA Scheme was specifically designed to avoid oral hearings or similar procedures. Claimants are welcome to provide additional evidence with their application and if an assessor considers that further information is required, the assessor may seek that information by telephone. The detailed analysis of evidence does not appear to be required in relation to the WA Scheme given the nature of the scheme. The WA Scheme has informally advised Herbert Smith Freehills that provided an application identifies the relevant individual once lived in a Native Welfare Settlement, the application would be considered successful and a payment would be made.

(d) General comments

Herbert Smith Freehills' experience with the NSW Scheme indicated that for many claimants, separate to the actual return of unpaid wages, the acknowledgement and

⁷ PIAC Bulletin: Journal of the Public Interest Advisory Centre, 31 May 2010: p1

⁸ Queensland Government Submission to the Senate's 'Stolen Wages Inquiry' page 6



validation of their experiences with respect to unpaid wages was of significant importance. It is therefore important that claimants have an ability to be heard, to present their own oral evidence and to have a fair opportunity to review and respond to evidence relevant to their case and the decision making body's assessment of that evidence. These principles are fundamental to the basic requirements of natural justice.

Key conclusions

KC23.	Right to present evidence	The guidelines of a trust fund repayment scheme should expressly provide claimants with the right to present their own evidence to the decision making body, including by way of statutory declaration or oral evidence.
KC24.	Right to respond to evidence	The guidelines of a trust fund repayment scheme should expressly provide claimants with the right to review and respond to the evidence relevant to their case and to the decision making body's assessment of that evidence.
KC25.	Involvement of legal counsel	The decision making body should proactively identify complex or difficult claims for which a claimant would benefit from the assistance of legal counsel. The decision making body should establish an interested group of law firms to act for claimants on a pro bono basis.

5.7 Right to receive reasons and appeal decision

(a) New South Wales

A claimant under the NSW Scheme has no formal right under the NSW Guidelines to be provided with any information uncovered by the ATFRS Unit or to have the reasons explained to them for the decision of the ATFRS Unit or the ATFRS Panel. The NSW Guidelines leave it to the discretion of the ATFRS Unit as to whether to provide their interim recommendation to the claimant (with no requirement to include reasons for the decision). However, the NSW Guidelines specifically require reasons to be prepared for internal purposes at each stage of the decision making process.

In practice, the ATFRS Unit was often willing to take a more flexible approach than was expressly set out in the NSW Guidelines and often provided detailed guidance to claimants as to the evidence uncovered by the scheme and the analysis of the ATFRS Unit in relation to that evidence. This proved to be very important for many claimants and, in the experience of Herbert Smith Freehills, often the evidence uncovered by the ATFRS Panel was incomplete or the analysis in relation to the evidence uncovered was incorrect or unfair. A thorough analysis by legal counsel on behalf of a claimant was sufficient to overturn an initial negative recommendation of the ATFRS Panel leading to a successful claim.

Similarly, the NSW Guidelines provided no formal right to appeal the decision of the NSW Scheme although, in practice, the ATFRS Unit took a consultative approach in relation to many claimants and their legal counsel and provided them with a significant opportunity to respond to interim decisions.

(b) Queensland

Under the QLD Trust Fund Scheme, if a claim was 'ineligible' DATSIP would send an assessment letter to the 'ineligible' claimant explaining why their claim was 'ineligible'. The claimant was also provided with a free call phone number to call and discuss the reasons for their claim being 'ineligible'. The claimant could also provide more information and ask for their claim to be reassessed. Claimants who then disagreed with the reassessment result could apply for a review of the reassessment by writing to the Assistant Director General DATSIP. The Senior Project Officer would then prepare recommendations for the review based on briefing material prepared by assessors.



However, as the QLD Procedures Manual is an internal administrative document, rather than a formal set of legal rules setting out the rights of claimants, the status of the claimant's rights are not clear.

(c) Western Australia

In relation to the WA Scheme, a letter advising whether an application was successful or not was sent to the claimant, although the WA Guidelines do not require the letter to provide detailed information as to the reasons for the decision. Although the WA Guidelines contain no formal right of appeal, unlike the NSW Scheme, the WA Scheme does provide a process for claimants to make a complaint regarding the scheme itself, if the claimant considers an error of process has occurred and/or an error of fact was made in assessing their application. Such a complaint is made initially to the scheme complaints manager and, if found to have merit, the application will be remitted to a review panel. If a claimant is not satisfied after this path has been pursued, further complaints may be referred to the State Ombudsman.

Key conclusions

KC26.	Reasons for decision	It is critical that a claimant be entitled to receive detailed reasons for the decision made in relation to their claim. This should include the evidence itself as well as the decision making body's assessment of that evidence. This right should be an express requirement set out in the scheme guidelines.
KC27.	Appeal	A simple and transparent review process should be established to allow claimants the right to challenge the decision of the scheme. In addition, consideration should be given to permitting further recourse to an independent third party (such as an ombudsman) in the event of administrative oversights in the decision making process of the scheme. These processes should be expressly outlined as a right of the claimant in the scheme guidelines.

5.8 Effect on other legal rights

(a) New South Wales

Under the NSW Scheme a claimant's acceptance of funds after a successful application has no effect on the claimant's other legal rights with respect to unpaid trust funds – leaving open the possibility for a claimant to take other legal action to recover unpaid trust funds (i.e. under general law, outside of the framework of the scheme).

(b) Western Australia

As with the NSW Scheme, under the WA Scheme a claimant's acceptance of funds after a successful application has no effect on the claimant's other legal rights with respect to unpaid trust funds – leaving open the possibility for a claimant to take other legal action to recover unpaid trust funds (i.e. under general law, outside of the framework of the scheme).

(c) Queensland

The QLD Trust Fund Scheme took a different approach, requiring successful claimants, before accessing funds, to sign a deed of agreement waiving their rights to recover further compensation in relation to their claim. The deed also included an indemnity given by the claimant in favour of the QLD government against:

"all actions, suits, claims, costs and demands which the Claimant, and all other persons claiming by or through or under the Claimant may now have or could have, whether pursuant to common law or under the Protection Acts, against the State, its servants or agents."



Prior to signing the deed, claimants were required to be given independent legal advice paid for by the QLD government together with a 24hr cooling off period. The effect of signing the deed was to conclusively determine any right to compensation relating to lost or withheld wages and savings. As discussed further at section 6, Dr Ros Kidd has noted that many eligible claimants were not willing to accept the offer made to them under the QLD Trust Fund Scheme because they viewed it as insultingly low and that there was an "understandable perception that the offer was 'too little, too late'."⁹ The fact that the acceptance of the offer required the waiver of other compensation rights is likely to have contributed to some claimants refusing to accept the payment offers. There were also concerns that the legal advice provided to claimants did not fairly and objectively present their alternatives to accepting the offer.

A material driver behind the development of trust fund repayment schemes in Australia has been the reality that due to the great difficulty in evidencing claims (because of poor governmental record keeping) and the costs of bringing actions, most Indigenous Australians are very unlikely to receive justice for unpaid wages in the absence of a specific and sensitively designed trust fund repayment scheme. The approach of the QLD government was therefore a rather heavy handed approach to the low risk of any successful wide spread legal action in relation to unpaid trust funds. In QLD, the formal waiver of other legal rights was viewed negatively by claimants and may have influenced some otherwise successful claimants to reject payment offers. If the purpose of a trust fund repayment scheme is to seek to redress past injustices in the Indigenous community, the ill feeling and resentment created by the QLD government's approach seemed to cut across that purpose and devalue the scheme as a whole in the eyes of the Indigenous community in QLD.

Key conclusions

KC28.	Other legal rights	A successful claim under a trust fund repayment scheme should <i>not</i> require the claimant to waive, or indemnify a government against other legal rights the claimant may have with respect to their unpaid wages.
-------	--------------------	--

6 Claim amount calculation mechanism

(a) New South Wales

For the NSW Scheme, the Original NSW Guidelines adopted a complicated model for the calculation of claim amounts. As an evidenced based scheme, as a first step the NSW Scheme sought to identify a precise amount of unpaid wages at a precise point in time. Once that was determined, the current value of that amount was calculated in accordance with a detailed conversion rate mechanism previously established by the Office of the Protective Commissioner (OPC). The mechanism took account of both interest and inflation and, as an example, provided that 100 dollars owed in 1969 would be worth \$3,521 in 2005. Various factors and assumptions were involved in determining the conversion rate including:

- monies that were deducted are assumed to have been invested on behalf of the recipients, and earn compound interest;

⁹ See Indigenous Stolen Wages Preliminary Investigation – Stage One Report, 17; Senator Russell Trood (Senator for Queensland), Indigenous Stolen Wages Inquiry held by Senate Legal and Constitutional Affairs Committee on 9 March 2007 (organised by the Human Rights and Equal Rights Commission), speaking notes at http://www.hreoc.gov.au/legal/seminars/speeches/stolen_wages_sen_trood_mar07.html; and Chapter 7: Repayment of monies by governments http://www.aph.gov.au/Senate/Committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/report/c07.pdf, 95-96.



- the interest rate varies from year to year. In the case of the OPC rate data are available for the years 1987 to 2004. Prior to the establishment of the OPC in 1987, a 'notional' OPC rate is obtained by increasing the Commonwealth Treasury 10 year bond rate by 6%;
- all monetary entries in the table are stated in the prices at the time (for the specified year) and all interest rates are expressed in nominal terms (they incorporate the effects of inflation). This means that inflation is included in the computed results;
- the computed results represent gross returns that would be obtained before applying income tax (if it had been applied) or charging management and/or transaction fees;
- all the interest rates are annual averages of the Reserve Bank of Australia statistics and have been taken over the 12 months ending in 30 June of the specified year;
- interest is assumed to be credited to the account only once per year; and
- it is assumed that money deposited or invested earns no interest until the following year.

In practice, the precision demanded by this approach was very difficult to implement for the reason that even if there was clear evidence of unpaid monies held in trust for a particular claimant, it was often not possible to precisely confirm the exact amount of unpaid money at a precise point in time. This was largely due to the fact that the authority's records were often incomplete, missing or contradicted by other evidence. The Revised NSW Guidelines removed this complexity and provided that if any amount of trust funds were found to be held in accordance with the criteria, the claimant was entitled to a fixed *ex gratia* payment of \$11 000. However, because the Revised NSW Guidelines also contemplated that the guidelines could be dis-applied in the interests of justice and equity, arguments could be made for an increased payment amount if there was clear evidence that a claimant was owed significantly more than \$11 000. However, Herbert Smith Freehills is not aware of such an argument being successfully made to the NSW Scheme.

(b) Queensland

Each of the QLD Schemes offered a capped payment amount regardless of the actual funds involved with a particular claimant. Under the QLD Underpayment Scheme the QLD government paid a flat sum amount of \$7,000 regardless of the total amount by which a person was underpaid. Also, only the period of 1975-1986 was covered by the process, reflecting the dates during which the under payment of wages was potentially discriminatory under the Racial Discrimination Act 1975 (excluding earlier periods of employment during which people were underpaid). The QLD government provided \$24.5 million over 3 years in the 1999-2000 budget to settle with people whose grievances are legitimate.¹⁰ When this offer closed in January 2003, 5,729 people had claimed the \$7,000 as compensation for discrimination, at a final cost to the government of almost \$40 million. According to Dr Ros Kidd, Indigenous people were paid at a 40% discount for the same work.¹¹ The QLD Trust Fund Scheme had a total payout cap of \$55.4 million, and initially, claimants born before 31 December 1951 received a fixed payment of \$4,000 and claimants born between 1 January 1952 and 31 December 1956 received a fixed payment of \$2,000.

¹⁰ Queensland, Parliamentary Debates, 26 May 1999.

¹¹ Geoffrey Robertson QC foreword to 'Trustees on Trial: recovering the stolen wages' by Dr Rosalind Kidd, 2006, page vi.



By 2007 the QLD Trust Fund Scheme had paid out nearly \$20 million to 5,553 claimants. In March 2008, the QLD government decided that the remaining \$35.87 million would be used as follows:

- (1) a further \$14.64 million would be paid out to eligible claimants including a further fixed payment of \$3000 to those who had previously received \$4,000 payment and a further fixed payment of \$1500 to those who had previously received a \$2,000 payment; and
- (2) \$21.23 million would be paid into a Queensland Aboriginal and Torres Strait Islander Foundation, to provide scholarships to Aboriginal and Torres Strait Islander children and young people.

In 2006, then President of the Australian Human Rights Commission stated that it is "clear that whatever other flaws may be found in the [QLD Trust Fund Scheme], the amount offered was obviously too low – much less than the arbitrary amount available to people under the Palm Island Case process and pitifully little for what was – for some people – a lifetime's work".¹² As this suggests, the most important criticism of the offer made under the QLD Trust Fund Scheme was that the amount paid to claimants fell far short of the actual value of appropriated wages and savings¹³ and did not properly recognise "the extent and injustice of the issue".¹⁴ Many eligible applicants were not willing to accept the offer made to them because they viewed it as insultingly low and Dr Ros Kidd has noted that there was an "understandable perception that the offer was 'too little, too late.'"¹⁵

Prior to the establishment of the QLD Trust Fund Scheme, the QLD government had been preparing to face legal actions relating to stolen wages. The Queensland Aboriginal and Islander Legal Service Secretariat (**QAILSS**) had collected testimony and identified approximately 4000 individuals interested in litigating against the government for missing, unpaid and underpaid wages and savings. QAILSS had prepared and provided to the QLD government a statement of demand suggesting a scale of payments with the total proposal amounting to \$180 million. The scale ranged from \$25,000 for those who worked for five years or less, up to \$45,000 for those who worked for more than 20 years.

(c) Western Australia

The WA Scheme provides that successful applications are entitled to a fixed sum of \$2,000. The WADIA makes no attempt to identify the precise amount of any funds that were held in trust for a particular claimant. In addition, payments under the WA Scheme are exempt from the determination of an individual's total income, when determining eligibility for social security payments.

(d) General comments

The experience in NSW clearly indicates that attempting to identify and repay the precise amount of unpaid trust funds for each claimant (converted into today's value) is a very complicated and time consuming business. The more complicated a scheme becomes, the greater likelihood of severe delays in the administrative process. It was Herbert Smith Freehills' experience that a major cause of claimant dissatisfaction with the NSW Scheme was the extensive delays in the decision making process. On the other hand, the QLD experience shows that the selection of an arbitrary amount which is considered to be too

¹² John Von Doussa, Launch of 'Trustees on Trial: recovering the stolen wages' by Dr Rosalind Kidd, speech given at the Brisbane Writers' Festival on 14 September 2006: http://www.linksdisk.com/roskidd/TT_%20M_1.htm

¹³ Premier Beattie acknowledged when presenting the offer to the Queensland Parliament that historian Dr Ros Kidd has said that the estimates of the total amount owed to Indigenous Queenslanders may be up to \$500 million.

¹⁴ See Indigenous Stolen Wages Preliminary Investigation – Stage One Report, 17.

¹⁵ John Von Doussa, Launch of 'Trustees on Trial: recovering the stolen wages' by Dr Rosalind Kidd, speech given at the Brisbane Writers' Festival on 14 September 2006: http://www.linksdisk.com/roskidd/TT_%20M_1.htm



low by the Indigenous community is likely to also lead to fundamental dissatisfaction with the scheme – detracting from the scheme's ability to readdress injustice in the eyes of the Indigenous community.

Therefore, if the repayment amount for a scheme is to be fixed, it is critical for the success of the scheme that the amount is seen to be a fair and reasonable approximation of loss by the relevant Indigenous communities. This is likely to be challenging, as with the NSW scheme potential claims ranged between a few thousand dollars to a few hundred thousand dollars. Although, based on Herbert Smith Freehills' experience, the \$11,000 set award introduced by the Revised NSW Guidelines was accepted by many claimants. To balance the needs to efficiency and fairness, one approach would be to set a fixed payment figure in consultation with the relevant Indigenous communities and then allow for increases if it is in the interests of justice and equity to do so in a particular case (for example, there is clear documentary evidence that a claimant is owed significantly more than \$11,000).

Key conclusions

KC29.	Claim amount	To avoid lengthy administrative delays in decision making, a trust fund payment scheme should set a fixed payment figure in consultation with the relevant Indigenous communities and allow for increases if it is in the interests of justice and equity to do so in a particular case.
-------	---------------------	--

7 Scheme statistics

	NSW Scheme	QLD Trust Fund Scheme	QLD Underpayment Scheme	WA Scheme
Period of scheme operation	7 years	7 to 8 years	3 to 4 years (31 May 1999 – 31 January 2003)	Ongoing since March 2012
Claims received	information not publicly available	8,761	10,738	In progress
Successful claimants	information not publicly available)	5,553 (63.5%)	5,729 (53.3%)	In progress
Total funds distributed	information not publicly available	\$33,750,000	\$40,000,000	In progress

Annexure 1

Annexure 1: Glossary of defined terms

Term	Meaning
ATFRS Panel	the Aboriginal Trust Fund Advisory Panel, in relation to the NSW Scheme.
ATFRS Unit	the Aboriginal Trust Fund Repayment Unit, in relation to the NSW Scheme.
DATSIP	Department of Aboriginal and Torres Strait Islander Policy.
NSW Guidelines	each of the Original NSW Guidelines and the Revised NSW Guidelines.
NSW Minister	the Minister for Aboriginal Affairs, New South Wales.
NSW Scheme	the Aboriginal Trust Fund Repayment Scheme, in New South Wales.
Original NSW Guidelines	The Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme dated February 2006.
Revised NSW Guidelines	the Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme dated June 2009.
QAILSS	Queensland Aboriginal and Islander Legal Services Secretariat.
QLD Procedures Manual	the QLD Government Department of Communities, 'Procedures Manual' in relation to the QLD Trust Fund Scheme (we were able to obtain a version dated October 2008).
QLD Schemes	each of the QLD Trust Fund Scheme and the QLD Underpayment Scheme.
QLD Trust Fund Scheme	the Indigenous Wages and Savings Reparations Offer, in Queensland.
QLD Underpayment Scheme	the Underpayment of Award Wages Process, in Queensland.
WADIA	The WA Department of Indigenous Affairs.

Annexure 1: Glossary of defined terms

Term	Meaning
ATFRS Panel	the Aboriginal Trust Fund Advisory Panel, in relation to the NSW Scheme.
ATFRS Unit	the Aboriginal Trust Fund Repayment Unit, in relation to the NSW Scheme.
DATSIP	Department of Aboriginal and Torres Strait Islander Policy.
NSW Guidelines	each of the Original NSW Guidelines and the Revised NSW Guidelines.
NSW Minister	the Minister for Aboriginal Affairs, New South Wales.
NSW Scheme	the Aboriginal Trust Fund Repayment Scheme, in New South Wales.
Original NSW Guidelines	The Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme dated February 2006.
Revised NSW Guidelines	the Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme dated June 2009.
QAILSS	Queensland Aboriginal and Islander Legal Services Secretariat.
QLD Procedures Manual	the QLD Government Department of Communities, 'Procedures Manual' in relation to the QLD Trust Fund Scheme (we were able to obtain a version dated October 2008).
QLD Schemes	each of the QLD Trust Fund Scheme and the QLD Underpayment Scheme.
QLD Trust Fund Scheme	the Indigenous Wages and Savings Reparations Offer, in Queensland.
QLD Underpayment Scheme	the Underpayment of Award Wages Process, in Queensland.
WADIA	The WA Department of Indigenous Affairs.



Term	Meaning
WA Guidelines	the "Guidelines – Stolen Wages Reparation Scheme WA" in relation to the WA Scheme.
WA Scheme	the Stolen Wages Reparation Scheme WA, in Western Australia.

Annexure 2: Key characteristics matrix

Key criteria	NSW	WA	QLD
A	Nature of decision making body		
1. What is the decision making body?	<ul style="list-style-type: none"> • The Aboriginal Trust Fund Repayment Scheme, which consists of: <ol style="list-style-type: none"> (1) the Aboriginal Trust Fund Repayment Unit (the ATFRS Unit) – which makes recommendations to: (2) the Aboriginal Trust Fund Advisory Panel (the Panel) (3 members – Aden Ridgeway, Robynne Quiggin and Sam Jeffries) – which makes recommendations to: (3) the Minister for Aboriginal Affairs (advised by the Director General of the department). • The Minister is the ultimate decision maker. 	<ul style="list-style-type: none"> • Department of Indigenous Affairs (DIA) administers the Scheme. • The applications are assessed by Assessors within the DIA defined in the Guidelines to include Policy Officers, Senior Policy Officers, Principal Policy Officers, the Project Director and other Stolen Wages Reparation Scheme WA team members. • Project Director gives final approval to all applications. 	<ul style="list-style-type: none"> • The QLD Government has established two separate schemes in order to address the issue of indigenous stolen wages: <ul style="list-style-type: none"> ○ the first was the Underpayment of Award Wages Process, which was introduced in 1999 and closed for applications on 31 January 2003; and ○ the second was the Indigenous Wages and Savings Reparations Scheme, established in 2002 and finally closed for applications on 30 April 2009 (some applications still remain to be finalised). It is known as the Indigenous Wages and Savings Reparations Offer (IWSR). • Both schemes were administered by the Office of Aboriginal and Torres Strait Islander Partnerships (OATSIP), now known as the Department of Aboriginal and Torres Strait Islander Policy (DATSIP). (Section 2.1 of the <i>QLD Government Department of Communities, 'Procedures Manual', October 2008 (Manual)</i>)
2. Under what rules/regulations/authority is the decision making body/scheme established?	<ul style="list-style-type: none"> • The Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme (February 2006) (the Original Guidelines); and • The Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme (Revised June 2009) (the Revised Guidelines), together the Guidelines. 	<ul style="list-style-type: none"> • The Stolen Wages Reparation Scheme WA (Scheme) is established under the <i>Guidelines – Stolen Wages Reparation Scheme WA (Guidelines)</i>. 	<ul style="list-style-type: none"> • There is no enabling legislation. The scheme was established under an exercise of prerogative power by the Beattie Government in 2002. • A "Procedures Manual" was published in 2008 by the QLD Government Department of Communities to assist Office of Aboriginal and Torres Strait Islander Partnerships (OATSIP) officers administering the scheme to claimants. • This was an administrative process as opposed to a tribunal process. (<i>QLD Government Submission to the Senate's 'Stolen Wages Inquiry', October 2006 at Attachment 1</i>)
3. Does the decision making body have power to investigate and collect their own evidence?	<ul style="list-style-type: none"> • Yes. The ATFRS Unit is authorised under the Guidelines to compile written and oral evidence (s.4.1). • The ATFRS Unit is instructed to "utilise available resources to make reasonable attempts to collect records and information relevant" to a claim (s.8.1). Initially, the Original Guidelines provided that the ATFRS Unit needed to use "its best endeavours" to collect records and information in relation to a claim. This standard was narrowed in the Revised Guidelines to a "reasonable attempts" standard – a reflection of the difficulty experienced by the ATFRS Unit in identifying relevant information in the records of the Department of Aboriginal Affairs. • Initially, the Original Guidelines provided that only the relevant direct claimant or a direct descendant of a deceased person (or the ATFRS Unit on behalf of such person) was entitled to search the records of the Department of Aboriginal Affairs. This reflected the existing policy of the Department of Aboriginal Affairs. The Revised Guidelines were amended to reflect the fact that the Department of Aboriginal Affairs had later provided special dispensation to the ATFRS Unit to allow it to search government records on behalf of the spouse of a deceased person (s.6.3) in order to simplify the process for researching descendent claims. 	<ul style="list-style-type: none"> • The Guidelines (at s.13) provide that: <i>The Department may contact, discuss and obtain relevant information from other Government records relating only to the details contained in this Application. Information sought will be limited to cross-checking names, addresses, date of births, residency at Government Native Welfare Settlements in Western Australia and date of residency at Government Native Welfare Settlements in Western Australia.</i> • The Guidelines provide that the DIA will not investigate further the bank details provided by applicants if they are not correct (Guidelines at s.14(3)). • Proof of past residency at a Native Welfare Settlement is central to the application. Proof of identification therefore important for cross-checking by the DIA although suggestion was cross-checking would not be particularly rigorous. 	<ul style="list-style-type: none"> • Yes. DATSIP searches for records using the details provided on the Claimant Application Form.
4. What administrative/research support does the decision making body have?	<ul style="list-style-type: none"> • The ATFRS Unit is staffed by case workers who are responsible for researching claims. 	<ul style="list-style-type: none"> • See item 3 immediately above. 	<ul style="list-style-type: none"> • The QLD Government established a Work and Savings Histories branch within the former Department of Aboriginal and Torres Strait Islander Policy to support both the under-award wages and reparations processes. The Community and Personal Histories branch assisted with research and archivist work. (<i>QLD Government Submission to the Senate's 'Stolen Wages Inquiry, October 2006, p2</i>) • Aboriginal and Torres Strait Islander Services (ATSIS) also became involved in the process as they hold extensive records relating to past administration of Aboriginal and Torres Strait Islander affairs. Their assessors searched for 1 piece of documentary evidence of control of wages or savings by the Government under a 'Protection Act'. (<i>Office for Aboriginal and Torres Strait Islander Partnerships 'Indigenous Wages and Savings Repatriation Process'</i>)
5. Was consultation conducted in relation to the design of the scheme?	<ul style="list-style-type: none"> • Yes. In May 2004, the NSW Government appointed a panel to consult with the Aboriginal community and report back to the Government on the design of the scheme. 	<ul style="list-style-type: none"> • The Stolen Wages Taskforce (Taskforce) was established in 2007 to investigate the scope and extent of the 'stolen wages' issue, and to suggest policy options and administration issues. • The Taskforce finalised its investigation with publication of the report <i>Reconciling The Past Government control of Aboriginal monies in Western Australia, 1905-1972</i> in 2008. • The Scheme is not exactly as was recommended in the Taskforce's report. 	<ul style="list-style-type: none"> • Yes. Consultation was undertaken with the indigenous communities throughout Queensland by the Queensland Aboriginal and Islander legal Services Secretariat (QAILSS), which found an acceptance rate of approximately 94% for the offer among the 5,501 responses received by QAILSS during the consultation process. (<i>QLD Government Submission to the Senate's 'Stolen Wages Inquiry</i>) • The QAILSS response on the Government offer was returned on 9 August 2002. The outcome of this process was to support the offer proceeding. (<i>QLD Government Department of Communities 'Procedures Manual Addendum July 2008, p 5</i>) • Concerns were raised about the consultation process and the way in which the offer

Key criteria	NSW	WA	QLD
6. What is the guiding philosophy of the scheme?	<ul style="list-style-type: none"> The scheme is not a compensation scheme – it is an evidence based scheme set up to repay people who had money put into trust fund accounts for them by the Aborigines Welfare Board/Aborigines Protection Board (the Board) and who never had this money repaid. 	<ul style="list-style-type: none"> From Part 2 section 4 of the Guideline's: <i>The approval of an Ex gratia payment is an expression of regret on behalf of the Western Australian State Government towards Aboriginal and Torres Strait Islander people who fulfil the Eligibility Requirements set out in Section 5 of these Guidelines. An Ex gratia payment is not intended to represent full reparation. ... The intent of the Western Australian State Government is to avoid the expense, delay and stress that any such processes necessarily involve.</i> From the Frequently Asked Questions document we also see some further insight into the philosophy behind the Scheme in discussing why payments are up to \$2,000: <i>The Government needs to balance the claims of those affected and its reparation payment against the contemporary needs of Aboriginal Western Australians.</i> <i>The State Government invests heavily in measures intended to improve life outcomes for Aboriginal people. These investments are, to a large degree, based on a recognition that the disadvantage experienced by many Aboriginal people is a result of discriminatory legislation and policy that existed in the period 1905 to 1972.</i> 	<p>was initially conveyed to the Indigenous community. It has been suggested that the 94% acceptance rate may have been due to a misinformed belief amongst potential claimants that registering a "no" on the survey would be a legally binding rejection of the offer. It has also been suggested that the result may have been further skewed as those who were not in favour of the offer would not have attended and participated in the consultation process.</p> <ul style="list-style-type: none"> The scheme is not a compensation scheme – it is a reparations scheme, which offers money, in the spirit of reconciliation, to Indigenous workers who had their wages and savings controlled under Protection Acts during the period from the 1890s to the early 1970s (<i>Qld Government Dept of Communities – 'Indigenous Wages and Savings Reparation Scheme – Round Two Payments'</i>) The reparation offer was made, not based upon any admission of legal liability, but in the spirit of reconciliation to recognise the historical injustices suffered. The monetary offer was one component of a package of measures which included: <ul style="list-style-type: none"> \$55.4 million for payments to individuals with any unspent balance to be applied to the Aborigines Welfare Fund and a proportion allocated for Torres Strait Islanders; a written apology from the Government to all living persons who had their wages and savings controlled under an Act and who were eligible to make a claim for compensation; a statement in Parliament to publicly recognise past injustices on the basis of race; and a protocol for commencing official Government business with an acknowledgement of the traditional owners of the land. <p>(<i>QLD Government, Submission 116, Attachment 7, Indigenous Wages and Savings (1890s-1980s) Reparation Process Information Sheet, September 2003 (Submission 116) (Section 1.1 and 1.2 of the Manual p5)</i>)</p>
B Claimant criteria			
7. Who can make an application? (e.g. direct claimants, descendants, authorised representatives)	<ul style="list-style-type: none"> The Revised Guidelines provide that the following persons may make an application for an ex gratia payment under the scheme (s.6.1, 6.2): <ol style="list-style-type: none"> a direct claimant – an Aboriginal person whose wages or other money was paid into the Trust Fund Accounts between 1900 and 1969; an authorised representative of a direct claimant (including an attorney, guardian and agent); and where a direct claimant is deceased, a descendant (including a spouse, de facto spouse, child or grandchild) or authorised representative of a descendant. A child includes a biological child, adopted child, foster child, a person for whom someone has parental responsibility or a child accepted by a family as a child of the family through a kinship placement. Under the Original Guidelines, parents, brothers, sisters, aunts and uncles (including adoptive parents, brothers, sisters aunts and uncles) were also specified as eligible descendants – these were removed as eligible descendant categories by the Revised Guidelines. Trust Fund Accounts means the accounts established by the Aboriginal Protection Board/Aboriginal Welfare Board between 1900 and 1969 into which they deposited money held on behalf of Aboriginal people. The Original Guidelines provided that descendants were entitled to share in the proceeds of a successful claim regardless of whether the descendent had in fact registered a claim. The Original Guidelines provided that it was the responsibility of the ATFRS Unit to publish details of each successful descendent claim in appropriate community publications and also to conduct investigations on a "best endeavours" basis to identify descendants entitled to share in the claim via a Births, Deaths and Marriages check. The ATFRS Unit indicated that there were significant difficulties with the processing of descendant claims. It was found that the old records of the AWB or APB lacked sufficient information, or in many cases were non-existent, and this created difficulties for Aboriginal people making claims, especially those who were removed and placed in institutions by the Board. The processing of descendant claims proved to be extremely complex and time-consuming, because of the large number of possible descendants that needed to be identified and located. Under the Original Guidelines claims could not be finalised until all the descendants had been located and contacted, and this proved to be an insurmountable difficulty and resulted in extensive delays in repaying proven unpaid trust funds. The Revised Guidelines provided that only descendants that had registered their claim were eligible to share in the proceeds of a claim. The Revised Guidelines removed the need for the ATFRS Unit to conduct its own investigations to identify other eligible claimants. 	<ul style="list-style-type: none"> An Ex gratia payment under these Guidelines may not be made unless the Applicant is a living person who (Guidelines s.5): <ul style="list-style-type: none"> Were born prior to 1958; From the age of 14 years or older were resident at a Government Native Welfare Settlement in Western Australia; and While resident at one or more of the Government Native Welfare Settlements in Western Australia experienced direct Western Australian Government control over their income and all or part of their income was withheld from them; and Were never repaid the outstanding monies owed by the Western Australian Government. Descendants are not entitled to a claim under the Scheme. 	<ul style="list-style-type: none"> The Applicant must be a living person who was: <ul style="list-style-type: none"> alive on 9 May 2002 (the date of the offer); born on or before 31 December 1951 or on or between 1 January 1952 and 31 December 1956 (<i>Claimant Application Form</i>); and had his/her wages or savings controlled under a 'protection Act' under operation in Queensland between 1897 and 1984 (<i>Submission 116 p 3</i>). <p>(<i>See Unspent Indigenous Wages and Savings Reparations Funds: Frequently Asked Questions at http://www.qld.asu.net.au/4_faqs_factsheet.pdf and Chapter 7: Repayment of Monies by Governments http://www.aph.gov.au/Senate/Committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/report/c07.pdf)</i></p> <ul style="list-style-type: none"> An Applicant could not claim on behalf of a relative who was no longer living unless that relative was alive on 9 May 2002. <ul style="list-style-type: none"> all deaths had to have been registered with the registry of births, deaths and marriages; and payments in respect of eligible deceased claimants were made in accordance with the <i>Succession Act 1981</i> (Qld). The cost of the funeral was the first charge against the estate (<i>Claimant Application Form</i>). If a person was controlled ONLY under a State Children's Act they were not eligible for a reparations payment. The QLD Government's reasons for not opening the reparations offer to the families of deceased workers was that: <i>"The Government was aware from its experience in the [UAWP] that the majority of Aboriginal and Torres Strait Islander people die intestate and that attempts to distribute estates in accordance with succession requirements are administratively complex and likely to result in outcomes that are considered inequitable by some or all of the parties concerned. These difficulties would have been magnified if descendants of long deceased persons were entitled to claim on behalf of these persons. Having considered these matters, a decision was taken to focus on those persons who were alive at the time of the offer."</i> (<i>Submission 116, p. 5.</i>)

Key criteria	NSW	WA	QLD
8. How long is the application period for claimants to register a claim?	<ul style="list-style-type: none"> The application period (s.1.4, 2.1) opened in [February 2006]; and initially, the Original Guidelines specified no scheduled closing date. The Revised Guidelines specified that no further applications were to be accepted after 31 May 2009 (s.2.1). However, the Revised Guidelines also included an additional provision to make clear that the ATFRS Unit could accept a late application if it was satisfied that was in the interests of justice and equity to do so (s.6.8). 	<ul style="list-style-type: none"> The application period was announced on 7 March 2012 and was initially to close on 6 September 2012, although has now been extended to 30 November 2012. 	<ul style="list-style-type: none"> The reparations offer was made on 9 May 2002 and closed on 31 January 2006. In March 2008, the government announced a second round payment to people who applied and were assessed as eligible for the first round Reparations payments. On 12 August 2008, the QLD Government reopened the reparations process to people who did not apply in round 1 but who would have been eligible, and for claimants who submitted their application too late. Applicants assessed as eligible but who did not accept their payment were also able to reapply. (Procedures Manual Addendum July 2008, pp3-5) (QLD Government Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, 'Wages and savings claims scheme (reparations)' Available online: www.datsima.qld.gov.au/atsis/government/programs-and-initiatives/wages-and-savings-claims-scheme-reparations)
9. What is the criteria required to satisfy a claim?	<ul style="list-style-type: none"> The Panel must be satisfied that (s.15): <ul style="list-style-type: none"> (1) there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of the direct claimant at any time was paid into a Trust Fund Account between 1900 and 1969; and (2) there is no evidence, or no reliable evidence, that the full amount of the money was either: <ul style="list-style-type: none"> (a) paid out to the direct claimant; (b) expended on behalf of the direct claimant; or (c) paid out to an authorised representative of the direct claimant. 	<ul style="list-style-type: none"> The key criteria that Applicants are required to provide is assertion of residency at a Native Welfare Settlements and that their incomes were controlled, with no payment to the applicant, and that outstanding monies have not been paid back to the applicant. DIA informally advised that provided that an application identifies the relevant individual once lived in one of the State's Native Welfare Settlements, the application would be considered successful and a payment would be made. Proof of identification is key to the application to enable the DIA to cross-check the application (pursuant to section 13 of the Guidelines). 	<ul style="list-style-type: none"> This was an evidence-based scheme. Strong and reliable evidence had to show that money was owed from a government controlled trust fund account in order to provide a claim and receive a payment. Where the evidence was unclear or ambiguous, claimants had a right to present additional evidence. This included affidavit or oral evidence recounting the claimant's recollections of any dealings in relation to their trust fund accounts and/or the management of their wages and entitlements by government agencies. (PIAC Bulletin: Journal of the Public Interest Advisory Centre, 31 May 2010: p1) Category A - \$7,000, to be eligible for a payment of \$7,000 a person had meet the following criteria: <ul style="list-style-type: none"> Born on or before 31 December 1951; Living at 9 May 2002; Subject to Government control of wages and/ or savings through the Protection Acts' Category B - \$3,500, to be eligible for a payment of \$3,500 a person had meet the following criteria: <ul style="list-style-type: none"> Born between 1 January 1952 and 31 December 1956 (inclusive); Living at 9 May 2002; Subject to Government control of wages and/ or savings through the Protection Acts' <p>(Section 3.2 of the Manual.)</p>
10. What types trust funds are included? (i.e. wages, child endowment)	<ul style="list-style-type: none"> The scheme extended to any funds held in a Trust Fund Account, including wages and child endowment. In the case of child endowment payments they are treated as though they were held on behalf of the parent of the child in respect of whom the child endowment payment was made rather than the child itself (s.15.2). 	<ul style="list-style-type: none"> The key criteria for the Scheme is that the applicant resided at one Native Welfare Settlements identified as holding/managing wages for Aboriginal workers. Funds included are therefore only compensating for the funds paid pursuant to the scheme for that hostel. 	<ul style="list-style-type: none"> The scheme extended to any funds held in a Trust Fund Account, including wages, child endowment, pensions and maternity allowances. According to the Procedures Manual, evidence of wages or savings control included the following types of documents: <ol style="list-style-type: none"> savings Bank Ledger cards; memorandum of Agreement (Work agreement between employer and employee, witnessed by a Government official); pocket Money records; wage Earnings records; child Endowment cards; termination of management of property; continuation or determination of a management of property; audit Report reference to the claimant's savings account from the Heritage database; any other record that demonstrates Government control of the claimant's wages or savings e.g. Departmental letter to employer naming the claimant as the employee. <p>(Section 5.4 of the Manual p20)</p>
11. Are particular types of deductions from a trust fund deemed to be unjustified?	<ul style="list-style-type: none"> Yes. The following unlawful deductions are treated as not having been made (s.15.3): <ol style="list-style-type: none"> money expended from the account of an indentured child between 1 June 1910 and 1969 on their food, clothing, lodging, dental and medical care; and money expended from the account of an indentured ward between 14 June 1940 and 1969 on their food, clothing, lodging dental and medical care. This exception was required for the reason that the evidence uncovered that deductions of this nature commonly occurred in relation to the trust fund accounts notwithstanding the fact that such deductions were not consistent with the legal obligations of the Board at the relevant time. It was therefore decided that evidence of such distributions should be deemed to not to have been made at all. 	<ul style="list-style-type: none"> Not applicable – payment is a lump sum of \$2,000 and informal indication from the DIA was that the maximum would be paid to all successful applicants. In the Frequently Asked Questions document the quantum of the payment is described as being an "appropriate reparation payment". 	<ul style="list-style-type: none"> Not applicable – payment is in a lump sum.
12. Are there any restrictions in relation to the historical trust funds collection period?	<ul style="list-style-type: none"> Yes, the scheme relates to funds collected between 1900 to 1969 (s.15.1). 	<ul style="list-style-type: none"> Yes – can only be accessed by residents of settlements born before 1958 that were a resident at the Native Welfare Settlements from the age of 14. 	<ul style="list-style-type: none"> Yes – can only be accessed by people who were underpaid on the basis of race between 1975 and 1986. (QLD Government Submission to the Senate's 'Stolen Wages Inquiry', October 2006 p6)
13. Does a claim survive the death of an applicant? (i.e. can a claim be pursued by the estate of the claimant?)	<ul style="list-style-type: none"> No, where a direct claimant makes an application but dies before the application is determined, the application does not survive for the benefit of the direct claimant's estate and will not be determined. However, the claim will be considered as a descendant claim subject to 	<ul style="list-style-type: none"> The applicant must be living (Guidelines s.4), however if an applicant dies before payment of the fund, but after the application has been received by the DIA, then subject to the application being approved, the payment will be made into the account nominated in the relevant 	<ul style="list-style-type: none"> Yes, in certain circumstances. A relative can claim on behalf of a deceased relative as long as they were alive on 9 May 2002, when the government made its decision to make a reparations offer.

Key criteria	NSW	WA	QLD
	<p>a claim being made by a descendant (s.6.5).</p> <ul style="list-style-type: none"> Where a descendant claimant makes an application but dies before the application is determined the application does not continue for the benefit of her/his estate and will not be determined (s.6.6). 	<p>application (Guidelines s.17).</p>	<ul style="list-style-type: none"> Persons who were not alive at this date are not eligible. Evidence proving the deceased relative's date of birth as well as when they passed away is needed. (<i>Indigenous Wages and Savings (1890s-1980s) reparation process information sheet, February 2003</i>) Claims for Deceased Persons <ul style="list-style-type: none"> DATSIP will follow the Succession Act in making payments for eligible deceased claimants. This will mean paying back whoever paid for the funeral. Then if any money is left it will go to the Public Trustee for paying rightful beneficiaries. <p>(<i>Indigenous Wages and Savings Reparation Process, How will it work? Part 8</i>)</p>
14. What are the priority rules for multiple claimants of the same trust funds?	<ul style="list-style-type: none"> If there is an application by more than one descendant of a deceased Trust Fund Account holder, then all such applications received will be investigated and considered altogether (s.6.10). The order of priority of distribution is as follows (16.2): <ol style="list-style-type: none"> in accordance with a valid will of the direct claimant if applicable; if there is no will, the descendants that had registered a claim are given 6 weeks to agree a Family Agreement in relation to the distribution; and if no Family Agreement is reached, then payment will be made in accordance with detailed provisions set out in Annexure A of the Revised Guidelines allocating priority between the spouse, de facto spouse, children and grandchildren (the Original Guidelines also allocated priority positions for parents, brothers, sisters, aunts and uncles). As discussed in item 7, the Original Guidelines provided that both descendants who had registered with the scheme as well as non-registered descendants were entitled to be included in the order of priority. The Revised Guidelines changed this position and provided that only registered descendant claimants were entitled to be considered in the order of priority. The Original Guidelines also provided that 95% of eligible descendant claimants could conclude a binding family agreement. The Revised Guidelines provided that all registered descendant claimants needed to agree a family agreement in order for it to be effective for the purposes of the scheme. 	<ul style="list-style-type: none"> Not applicable, no descendent claims. 	<ul style="list-style-type: none"> Deceased claims may have multiple payees (e.g. where more than one person has contributed to the funeral and received a receipt from the Funeral Company). Payment of deceased claims is made in accordance with the Queensland <i>Succession Act 1981</i> and advice from the Public Trustee. In determining who/how to pay an eligible deceased claim, the Assessor and/or Administration Officer must ascertain: <ul style="list-style-type: none"> whether there is a funeral debt; or if the funeral costs have been paid, whether or not the person who paid seeks reimbursement; or if there is no funeral debt / reimbursement to be paid, whether or not there is a will. If there is any estate money left over after the above steps, identify the living beneficiaries. <p>(<i>Section 6.12 of the Manual p45-46 and 'Procedures Manual Addendum' July 2008, p13</i>)</p>
C Procedural rules			
15. What are the administrative steps in making an application?	<ul style="list-style-type: none"> The application process involves: <ol style="list-style-type: none"> filling in an application form in the approved form (this form is a couple of pages and requires the applicant to provide various details in relation to his/her experiences). In practice, an applicant was also able to submit additional evidentiary documentation together with an application form; and an application is accompanied by copies of any two of the following forms of identification: Birth Certificate, Driving Licence, Pensioner Concession Card, Medicare Card or Health Care Card. 	<ul style="list-style-type: none"> The application process involves completing the application form provided in the Guidelines, and providing proof of identification by either: <ol style="list-style-type: none"> two certified copies of at least two of the following: Birth Certificate; Birth Extract; Current Driver's License; Passport; Medicare Card; Centrelink Card; Credit Card or Bank Account Card, Utilities Bills; or two Statutory Declarations from two different referees. The application form includes a section to provide payment detail as well as the option to appoint a representative to assist in processing and completing the application (Section 9 of the Application Form). 	<ul style="list-style-type: none"> The application process involved: <ol style="list-style-type: none"> filling in an application form in the approved form. Completing and submitting the claim form did not commit a person to taking up the offer of the final payment. People were asked, if possible, to supply some evidence that they worked under one of the various Acts. e.g. they might have a savings bank ledger, a wages card or some other document to prove that they worked under the Acts; and an application was to be accompanied by copies of any two of the following forms of identification: Birth Certificate, Driving Licence, Pensioner Concession Card, Medicare Card or Health Care Card. <p>(<i>Minister for Aboriginal and Torres Strait Islander Policy, Judy Spence, Hansard response to questions on the Scheme dated 25 March 2003</i>)</p>
16. What are the key steps in the decision making process?	<p>The process is as follows (s.7):</p> <ul style="list-style-type: none"> application is received, registered and allocated a priority status; application is reviewed to confirm complete – claimant may be asked to provide further information; AFTRS Unit forwards application to Department of Aboriginal Affairs to undertake necessary searches; AFTRS Unit may seek expert assistance if necessary; AFTRS Unit may seek to conduct an interview with the claimant if necessary; AFTRS Unit prepares: <ol style="list-style-type: none"> a summary of information; a recommendation as to whether or not payment should be made and to whom payment should be made; and its reasons for making the recommendation. AFTRS Unit may, in its absolute discretion, choose to share the above information and recommendation with the claimant. The Original Guidelines provided that in relation to descendent claims, the information uncovered by and the recommendation of the AFTRS Unit was required to be sent to eligible descendants and such descendants were entitled 6 weeks to respond. The Revised Guidelines removed this requirement and made clear that providing information and interim recommendations to a claimant is at the discretion of the AFTRS Unit; 	<p>After the application is lodged, the process is set out in the Guidelines in Part 4 at s.18 as follows:</p> <p>When an Application is received by the Department an Assessor will:</p> <ol style="list-style-type: none"> Assess whether the Application is complete or incomplete; If the Application is incomplete: <ol style="list-style-type: none"> the Assessor will telephone, write or email the Applicant advising the Applicant what information or documentation is required to complete the Application; the Applicant will be given thirty (30) days to reply, and, if no response is received within 30 days, the Application will be considered to have ceased; and if a complete Application is received within thirty (30) days the Application will be assessed in accordance with Subsection 18(3). If the Application is complete: <ol style="list-style-type: none"> write to the Applicant acknowledging receipt of the Application and advising that an Assessor will assess the Application; assess the Application and make an intermediate determination as to whether the Application should be approved or not approved; and forward the Application to the Project Director who will then consider whether to approve the Application. <p>The applicant is then notified whether the application has been</p>	<p>The process is as follows:</p> <ol style="list-style-type: none"> Claim Form <ul style="list-style-type: none"> People wanting to put in a claim had to: <ul style="list-style-type: none"> fill in the claim form; and have proof of their date of birth. People putting in a claim for someone who passed away had to: <ul style="list-style-type: none"> fill in the claim form; have proof of the date of birth of the deceased; and have proof of their date of death. Acknowledgement letter <ul style="list-style-type: none"> DATSIP registered details of all claim forms received then sent letters to each claimant Assessing Claims <ul style="list-style-type: none"> DATSIP: <ul style="list-style-type: none"> assessed elderly and seriously ill claimants as first priority; assessors searched for 1 piece of documentary evidence of control of wages or savings by the Govt under a "Protection Act". no attempt was made to reconstruct individual work, wages, or savings histories assessed the claim as either 'eligible' or 'ineligible' Assessment letters - eligible <ul style="list-style-type: none"> DATSIP sent a letter to all "eligible" claimants telling them when a meeting

Key criteria	NSW	WA	QLD
	<ul style="list-style-type: none"> Claimant may then provide a response to the recommendation; ATFRS Unit will submit the recommendation to the Panel; Panel assesses the recommendation and may seek further evidence, consult experts and conduct interviews in its discretion; Panel prepares: <ol style="list-style-type: none"> a summary of information; a recommendation as to whether or not payment should be made and to whom payment should be made; and its reasons for making the recommendation, (In practice, it is common for the Panel to issue an interim assessment to the claimant and allow a period for a response submission to be prepared); The Director Program Delivery may seek clarifications from the Panel and may also provide their own alternative recommendation (through the Director General). Reasons must also be provided. This step was introduced by the Revised Guidelines; and Minister makes the decision or may refer the matter back to the Panel for further information and investigation. In relation to a descendant claim, the Original Guidelines provided that the Minister's final decision was subject to mandatory public notification and a 28 day waiting period during which other eligible descendants were able to register an interest in the claim – this step was removed by the Revised Guidelines. 	successful or not.	<p>would be held in their area so that could get independent legal advice</p> <ul style="list-style-type: none"> DATSIP provided an EFT form for eligible claimants so they could give their bank account details. If a claimant decided to accept a payment after receiving legal advice, they had to send the completed form to DATSIP.) <p>5. <i>Assessment letters - ineligible</i></p> <ul style="list-style-type: none"> DATSIP sent a letter to all ineligible claimants explaining why their claim was 'ineligible'. Claimants were given a free call phone number to enable them to call to talk about why their claim was 'ineligible'. If 'ineligible' claimants could give more information, their claim could be assessed again. <p>6. <i>Legal advice and Deed</i></p> <ul style="list-style-type: none"> DATSIP paid for a lawyer to give independent legal advice to the eligible claimants. Eligible claimants had a 24hr cooling off period before they had to decide if they wanted to accept or reject the offer and then sign the Deed of Agreement. If an Applicant agreed to accept a payment, he/she was required to sign a Deed of Agreement stating that he/she would not ever apply to the courts about the same claim. Once the Deed was signed, the Applicant received payment. It could take up to 6 weeks after signing the Deed to receive a payment. <p>7. <i>Payment and apology</i></p> <ul style="list-style-type: none"> DATSIP received the signed Deed of Agreement' document'. They then sent out a letter of apology from the Minister to the person who signed the Deed. Make the reparation payment to the claimant. <p>(Indigenous wages and savings reparation process, how will it work?) (Office for Aboriginal and Torres Strait Islander Partnerships, Indigenous Wages and Savings Reparations Process) (Indigenous Wages and Savings 1890s-1980s reparation process information sheet, February 2003)</p>
17. Are there rules for allocating priority in relation to the processing of claims?	<ul style="list-style-type: none"> When an application is received, it is registered and given a priority rating. Generally the scheme prioritises direct claimants over descendant claims. Priority is determined by the ATFRS Unit based on the following factors (s.7.1): <ol style="list-style-type: none"> whether the claimant is a direct claimant; whether the application is a descendant claim; any evidence of hardship and/or a life-threatening medical condition; and any other factors the ATFRS Unit and the ATFRS Panel considers relevant. A claimant can request a review of the priority rating assigned to their claim (s.7.2). 	<ul style="list-style-type: none"> Not dealt with in the Guidelines. 	<ul style="list-style-type: none"> Claims were assessed in the following priority order: <ol style="list-style-type: none"> 76 years old + and seriously ill 66-75 years olds 57 – 65 year olds 52 – 56 year olds Deceased claimants (Section 3.3 of the Manual p8) (Office for Aboriginal and Torres Strait Islander partnerships, Indigenous Wages and Savings Reparations Process) (QLD Government website http://www.atsip.qld.gov.au/people/claims-entitlements/wages-savings/wages-history/) The "Fixed Principles" include: <ul style="list-style-type: none"> The reparation funds will be administered by the Department of Aboriginal and Torres Strait Islander Policy; Any formula for distribution must: <ul style="list-style-type: none"> give priority to older people; ensure equitable access by potential claimants; be transparent and accountable; and be simple and timely. The Government requires that any compensation process be completed within three years of an agreement.
18. Is oral evidence sought, or written submissions only?	<ul style="list-style-type: none"> The scheme is able to consider both written and oral evidence (the Revised Guidelines included additional language confirming the scheme's ability to accept statutory declarations as evidence). However, the Guidelines do not provide the claimant with any right to an oral hearing or any right to otherwise provide oral evidence. The Guidelines provide that where, for reasons of language difficulty, distance or other reason the ATFRS Unit considers it necessary, it may, in absolute discretion, determine that it will conduct an interview with the claimant in person or by telephone and with any other person who may have information relevant to the determination of an application (s.7.3.5). The Revised Guidelines introduced the additional language "in its absolute discretion" to reinforce the fact that the ATFRS Unit was not obligated to seek oral evidence from claimants. 	<ul style="list-style-type: none"> The Scheme has been designed to avoid hearings or similar procedures, however if further information is required the assessor of the application may seek that information by telephone. 	<ul style="list-style-type: none"> Oral evidence could be provided to support a claim but it in itself was not enough. For a claim to be successful the assessors had to find 1 piece of documentary evidence confirming control of wages or savings by the Govt under a "Protection Act". (Section 5.3 of the Manual p19) (PIAC Bulletin: Journal of the Public Interest Advisory Centre, 31 May 2010: p1)
19. Are claimants able to present their own evidence or respond to evidence identified by the decision making body?	<ul style="list-style-type: none"> A claimant is able to submit relevant information together with their initial application to the ATFRS Unit. The Guidelines provide that if the ATFRS Unit exercised its discretion to provide their interim recommendation to the claimant, then the 	<ul style="list-style-type: none"> Applicants are able to send additional evidence as required. DIA informally advised that provided an application identifies the relevant individual once lived in one of the State's Native Welfare Settlements, the application would be considered successful and a 	<ul style="list-style-type: none"> Yes. Where the evidence was ambiguous or unclear following the Scheme's initial investigation of the claim, claimants had the right to present additional evidence. The evidence could take the form of an affidavit or oral evidence recounting their recollections of any dealings in relation to their trust fund accounts and/or the

Key criteria	NSW	WA	QLD
	<p>claimant had an opportunity to respond to that assessment and provide any other information that they considered relevant to the claim (s.9.3). In this circumstance, the Guidelines provide that the claimant has a period of 6 weeks to prepare a response (s.9.4).</p> <ul style="list-style-type: none"> The Guidelines encourage the ATFRS Unit to refer claimants to organisations such as Link-Up if it becomes aware that claimants have difficulty in providing responses to the ATFRS Unit in relation to a claim (s.9.7) However, the above arrangement is contingent upon the ATFRS Unit exercising its discretion to provide its interim recommendation to the claimant. A claimant does not have a formal right under the Guidelines to be provided with the information uncovered by the ATFRS Unit or the decision of the ATFRS Unit or the Panel and does not have a formal right to make submissions in relation to that information or decision. In practice, the ATFRS Unit accepted detailed submissions from legal counsel on behalf of the claimants. In the experience of HSF, often the evidence uncovered by the ATFRS Panel was incomplete or the analysis in relation to the evidence uncovered was incorrect or unfair. Often, a more thorough analysis by a lawyer on behalf of a claimant was sufficient to overturn the initial recommendation of the Panel leading to a successful claim. 	<p>payment would be made.</p>	<p>management of their wages and entitlements by government agencies. (PIAC Bulletin: Journal of the Public Interest Advisory Centre, 31 May 2010: p1)</p>
20. Do formal rules of evidence apply?	<ul style="list-style-type: none"> Formal rules of evidence do not apply. Evidence is considered if the relevant officer of the ATFRS Unit or the Panel is satisfied that it is relevant to a recommendation and the relevant officer of the ATFRS Unit or the Panel is satisfied that it is reliable (s.4.2, 5.5). The Revised Guidelines were amended to make clear that it is the "relevant officer" of the ATFRS Unit (rather than the ATFRS Unit itself) which is responsible for making a judgement with respect to the reliability of evidence. 	<ul style="list-style-type: none"> Formal rules of evidence do not apply (Guidelines at s.19(f)). 	<ul style="list-style-type: none"> No. Formal rules of evidence did not apply.
21. What is the burden of proof?	<ul style="list-style-type: none"> The Panel must be satisfied that (s.15): <ul style="list-style-type: none"> (1) there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of the direct claimant at any time was paid into a Trust Fund Account between 1900 and 1969; and (2) there is no evidence, or no reliable evidence, that the full amount of the money was either: <ul style="list-style-type: none"> (a) paid out to the direct claimant; (b) expended on behalf of the direct claimant; or (c) paid out to an authorised representative of the direct claimant. 	<ul style="list-style-type: none"> The applicant is primarily responsible for identifying the details of the Native Welfare Settlement they resided at. The assessor of the application may assist the applicant with the content of an application including to ensure that the application is complete and that all relevant documentary evidence is provided (see Guidelines at s.19). There is a low burden of proof for the application. 	<ul style="list-style-type: none"> There needed to be 1 record of documentary evidence showing control of wages or savings by the Govt under a "Protection Act". (Section 5.4 of the Manual p 20) An applicant did not have to provide evidence of control of wages/savings. DATSIP searched for records of evidence to confirm if an applicant was eligible to receive a reparation payment. (Queensland Indigenous Wages and Savings Reparation Process, What does control of wages or savings mean? March 2004).
22. Are allowances made/special consideration in particular circumstances?	<p>In considering an application, regard shall be had to the following factors (s.14.1):</p> <ul style="list-style-type: none"> the length of time that has elapsed and the difficulty claimants may have in substantiating their application as a result; any deficiencies in the official written record relating to the application or similar applications; the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people; the purpose of the scheme, which is to restore money which was held in trust for Aboriginal people and not repaid; any available evidence that money payable to the direct claimant or the deceased Trust Fund Account holder was paid into the Trust Fund Account and the reliability of that evidence; any available evidence that money was paid out of the Trust Fund Account and the reliability of that evidence; and any other matter which the ATFRS Unit, the Panel, the Director Program Delivery, the Director-General or the Minister considers relevant. 	<ul style="list-style-type: none"> Not formally although informal advice from DIA representative was that provided an applicant prima facie satisfied criteria (i.e. born and occupied Settlement in correct period) payment will be made. Suggested that a relatively relaxed approach would be taken to scrutinising applications received. 	<ul style="list-style-type: none"> For certain 'inside workers' for whom no control evidence can be located, Ministerial approval was given on 3 November 2003 for a special procedure to be followed: <ul style="list-style-type: none"> claim can be found eligible if all other criteria are met ; and assessor has located evidence that the claimant was resident on a Government Settlement or Church Mission beyond schooled age. (Section 5.3 of the Manual p20) "Because the government was aware that the relevant records may be incomplete for particular time periods and locations, it acknowledged that, for a small proportion of people who were subject to the controls over wages and savings, records may not be available. Consequently, provision was made for use of affidavit evidence." (Queensland Govt Submission to the Senate's 'Stolen Wages Inquiry' page 6)
23. Can the formal guidelines/rules be dispensed with in the interests of and justice?	<ul style="list-style-type: none"> The Guidelines are not binding and may be departed from if the Panel is satisfied that it is in the interests of justice and equity to do so (s.1.8). Where there is a departure, the reasons for the departure should be recorded, for purposes of transparency (s.1.8). 	<ul style="list-style-type: none"> See comment above. 	<ul style="list-style-type: none"> See comment above.
24. Is there a right to appeal? (courts, administrative body or minister)	<ul style="list-style-type: none"> The Guidelines contemplate the ability for the claimant to respond to the recommendations of the Panel (but only where the ATFRS Unit has elected to provide an interim assessment to the claimant) – however, there is no formal right to appeal the decision of the Minister under the Guidelines. The Guidelines provide that, In the case of a descendant claim, if any one or more claimants seek a review or appeal at any stage during the determination of a claim, then decisions related to other descendant claims associated with the same Trust Fund Account will be held over pending the final resolution of the matters under appeal (s.6.11). 	<ul style="list-style-type: none"> The Guidelines do not provide for a right of appeal but do identify a process for applicants to make complaints regarding the Scheme. Under the Guidelines, a complaint can only be made because the applicant considers that (Complaint): <ul style="list-style-type: none"> an error of process has occurred and/or an error of fact was made, (Guidelines at s.21). A Complaint is made initially to the Scheme Complaints Manager and, if found to have merit, then the application will be remitted to a Review Panel. 	<ul style="list-style-type: none"> In-built appeal and review mechanisms. If claim was assessed as ineligible, claimant received notification from DATSIP and was provided with a phone number to call. If the claimant could provide further information (or "new" information), they could ask for the claim to be reassessed. (Indigenous Wages and Savings 1890s – 1980s Reparation Process Information Sheet February 2003). Claimants who disagree with the reassessment result may apply for a review of the reassessment by writing to the Assistant Director General. The Senior Project Officer will prepare recommendations for the review based on briefing material prepared by assessors. (Section 5.7 of the Manual)

Key criteria	NSW	WA	QLD
25. Does accepting a payment from the scheme require the claimant to forgo their rights to claim under general law?	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> If an applicant is not satisfied after this path has been pursued, then further complaints to be referred to the State Ombudsman. No, refer to the Guidelines ss.4(3) and 23. 	<ul style="list-style-type: none"> Yes. People accepting payment were required to sign a Deed to waive their rights to recover further compensation. The Deed included the claimant indemnifying the QLD Government against: "all actions, suits, claims, costs and demands which the Claimant, and all other persons claiming by or through or under the Claimant may now have or could have, whether pursuant to common law or under the Protection Acts, against the State, its servants or agents." (Queensland Public Interest Law Clearing House (QPILCH), Submission 50, p. 21).
26. Is the decision making body required to provide reasons for its decisions?	<ul style="list-style-type: none"> The ATFRS Unit is required to prepare reasons for its recommendation to the Panel (s.9.5), the Panel is required to provide reasons for its recommendation to the Minister (s.10.1.5) and the Director General is required to provide reasons for any alternative recommendation (s.11.2). However, the Revised Guidelines give the claimant no formal right to actually receive such reasons. The provision of reasons and other information to the claimant is at the discretion of the ATFRS Unit. The Original Guidelines provided that in relation to descendent claims, the information uncovered by and the recommendation of the ATFRS Unit was required to be sent to eligible descendants and such descendants were entitled 6 weeks to respond. The Revised Guidelines removed this requirement and made clear that providing information and interim recommendations to a claimant is at the discretion of the ATFRS Unit. In practice, the ATFRS Unit would typically issue an interim assessment to claimants and allow claimants an opportunity to provide a further response. 	<ul style="list-style-type: none"> Yes, a letter advising whether the application has been successful or not will be sent to the applicant (Guidelines at s.18(4) & (5)). 	<ul style="list-style-type: none"> Yes. A letter was sent to all applicants advising them if they were eligible or ineligible. (Indigenous Wages and Savings Reparation Process, How will it work? & Indigenous Wages and Savings 1890s – 1980s Reparation Process Information Sheet February 2003)
27. Are claimants permitted to be represented by legal counsel?	<ul style="list-style-type: none"> The Guidelines provide for no formal acknowledgement of the right for claimants to be represented by legal counsel. However, in practice, the Panel is willing to engage with counsel and accept submissions from legal counsel acting on behalf of claimants. 	<ul style="list-style-type: none"> An applicant may identify an individual or organisation entitled to deal with their application. If an applicant wants a representative to be able to deal with their application, section 9 of the Application Form to be filled in identifying the details of that representative (Guidelines at s.12). If a person entitled to make an application has granted power of attorney to another person, the application may be made on his or her behalf by their attorney (Guidelines at s.16). 	<ul style="list-style-type: none"> Yes. Claimants were required to have legal advice in relation to the indemnity they signed. This legal advice was paid for by the Government. According to the Procedures Manual: <ul style="list-style-type: none"> Legal advice is to be provided by a legal practitioner on an individual basis to an eligible claimant, whether by personal interview and/or telephone and/or letter of advice... ...In certain circumstances (urgent/emergent) it may be necessary to deliver legal advice received before signing the Deed of Agreement. Claimants may choose to waive the waiting period or to extend it... ...A list of qualified legal practitioners will be provided to eligible claimants to obtain independent legal advice at no cost to eligible Queensland claimants. (Section 6.10 of the Manual)p38.)
D Claim amount calculation mechanism			
28. How is the repayment sum calculated for successful claimants?	<ul style="list-style-type: none"> The Original Guidelines provided that the amount of a claim was calculated in accordance with a detailed conversion rate mechanism which had been previously established by the Office of the Protective Commissioner. The mechanism took account of both interest and inflation and, as an example, provided that 100 dollars owed in 1969 would be worth \$3,521 in 2005. Various factors and assumptions were involved in determining the conversion rate including: <ol style="list-style-type: none"> monies that were deducted are assumed to have been invested on behalf of the recipients, and earn compound interest; the interest rate varies from year to year. In the case of the OPC rate data are available for the years 1987 to 2004. Prior to the establishment of the Office of the Protective Commissioner in 1987, a 'notional' OPC rate is obtained by increasing the Commonwealth Treasury 10 year bond rate by 6%; all monetary entries in the table are stated in the prices at the time (for the specified year) and all interest rates are expressed in nominal terms (they incorporate the effects of inflation). This means that inflation is included in the computed results; the computed results represent gross returns that would be obtained before applying income tax (if it had been applied) or charging management and/or transaction fees; all the interest rates are annual averages of the Reserve Bank of Australia statistics and have been taken over the 12 months ending in 30 June of the specified year; interest is assumed to be credited to the account only once per year; and it is assumed that money deposited or invested earns no interest until the following year. The Revised Guidelines removed this mechanism and provided that each claimant is entitled to an ex gratia payment of \$11 000 (s.15.1.2.3). This amount is specified as an "ex gratia" payment and the 	<ul style="list-style-type: none"> DIA indicated that all successful applications will be paid \$2,000. The Guidelines suggest entitlement with successful application is to \$2,000 for all successful candidates. Nb. By the Social Security (Exempt Lump Sum) (Stolen Wages Reparation Scheme WA) (FaHCSIA) Determination 2012 payments under the Scheme are exempt from the determination of total income of an individual, when determining eligibility for social security payments. 	<ul style="list-style-type: none"> People alive on 9 May 2002 who were born up to 31/12/1951 were eligible for a payment of \$4,000 and people born between 01/01/1952 and 31/12/1956 were eligible for a payment of \$2,000 (Office for Aboriginal and Torres Strait Islander Partnerships – Indigenous Wages and Savings Repatriation Process) A second round payment was administered over an 18 month period commencing in April 2008. The payment was made from unspent funds and payments of \$3,000 were made to people who received a \$4,000 reparations payment and a \$1,500 payment was to those people who had received a \$2,000 reparations payment. (Qld Dept of Communities, 'Indigenous Wages and Savings Repatriation Scheme – Round Two Payments') (Government website http://www.atsip.qld.gov.au/government/programs-initiatives/wages-savings-claims/)

Key criteria	NSW	WA	QLD
	Guidelines expressly state that such payment is not an admission of liability.		
E Scheme statistics			
29. How long was/has the scheme operating for?	<ul style="list-style-type: none"> No publicly available information. 	<ul style="list-style-type: none"> Commenced: 7 March 2012 	<ul style="list-style-type: none"> All in all, the scheme and second round offer ran from November 2002 to 30 April 2009. The scheme was launched on November 2002. The closing date for the offer was 31 January 2006. In March 2008, the Government re-opened a second round offer. During the second round: <ul style="list-style-type: none"> \$3,000 was given to people who previously received a \$4,000 reparations payment; \$1,500 was given to people who previously received a \$2,000 reparations payment. Eligibility criteria remained the same however only people who applied and were assessed as eligible for first round Reparations payments were eligible for the second round offer (QLD Government Department of Communities, 'Procedures Manual Addendum July 2008', P18) Previous ineligible claimants only had their claims looked at if they provided 'new' evidence. On 12 August 2008, the Government re-opened a final reparations offer to those who: <ul style="list-style-type: none"> did not apply during former reparations offers; submitted their applications too late; were assessed as eligible in round one, but who did not accept their payment. \$6 million was put aside out of the remaining funds. This final reparations offer closed on 30 April 2009. During this round: <ul style="list-style-type: none"> \$7000 was given to people born on or before 31 December 1951; \$3500 was given to people born between 1 January 1952 and 31 December 1956 Eligibility criteria remained the same. Previous ineligible claimants will only have their claims looked at if they provide 'new' evidence. (Office for Aboriginal and Torres Strait Islander Partnerships 'Indigenous Wages and Savings Repatriation Process') (QLD Government website http://www.atsip.qld.gov.au/people/claims-entitlements/wages-savings/wages-history/)
30. How many applications were received?	<ul style="list-style-type: none"> No publicly available information. 	<ul style="list-style-type: none"> Still in progress. 	<ul style="list-style-type: none"> By the closing date of 31 January 2006, 8,761 claims had been received (only half the number of applications expected. Of these, 5553 claims (63.5%) were eligible to receive a payment. By 2007 the IWSR Scheme had paid out nearly \$20 million to these 5553 people (the first round of payments). (Creative Spirits, Stolen Wages Timeline http://www.creativespirits.info/aboriginalculture/economy/stolen-wages-timeline.html; Indigenous Stolen Wages Preliminary Investigation – Stage One Report, 17)(See Unspent Indigenous Wages and Savings Reparations Funds: Frequently Asked Questions at http://www.qld.asu.net.au/4_faqs_factsheet.pdf) Government received less than half the number of claims expected with \$35.87 million of \$55.6 million unclaimed. By 7 August 2009, 1024 claims had been received for the re-opened reparations process. Approximately 42% of these are duplicates of claims received in the initial reparations process. (QLD Government website http://www.atsip.qld.gov.au/people/claims-entitlements/wages-savings/wages-history/)
31. How many claimants were successful?	<ul style="list-style-type: none"> No publicly available information. 	<ul style="list-style-type: none"> Still in progress. 	<ul style="list-style-type: none"> 5553 claims were assessed as eligible with 4,211 claimants receiving \$4,000 and 1,342 claimants receiving \$2,000. On 9 October 2006, a total of 5,413 successful claims had been processed with \$19.11 million in compensation paid. In March 2008, the QLD Government agreed that out of the \$35.87 million left in unclaimed funds would be used in the following ways: <ul style="list-style-type: none"> another \$14.64 million would be paid out to eligible people – this money has gone into round 2 payments (under the second round of the IWSR Scheme); and the remaining \$21.23 million would be paid into a Queensland Aboriginal and Torres Strait Islander Foundation to provide scholarships to Aboriginal and Torres Strait Islander children and young people. In the 2nd round, 131 new claims, totalling \$759 500, were paid. There were 4869 payments totalling \$12.7 million made by 7 August 2009. As at that date (88% complete) there were 26 outstanding living claims for payment and a further 645 deceased claims for settlement. (QLD Government website http://www.atsip.qld.gov.au/people/claims-entitlements/wages-savings/wages-history/)

Key criteria	NSW	WA	QLD
32. What was the total funds distributed?	<ul style="list-style-type: none"> No publicly available information. 	<ul style="list-style-type: none"> Still in progress. 	<i>entitlements/wages-savings/wages-history/</i> <ul style="list-style-type: none"> \$55.4 million was set aside with \$33.75 million being distributed to claimants (approx. \$40 million). Remaining \$21.23 million paid into a Queensland Aboriginal and Torres Strait Islander Foundation.
33. Key criticisms of the Scheme	<p>Key criticisms:</p> <ul style="list-style-type: none"> length of time for applications; lack of clarity in administrative timeframes or status of consideration of claims; complexity of evidentiary review process; too heavy reliance on documentary record (which was often absent, incomplete, contradictory or inconclusive) and not on oral evidence of the claimants. 	<p>Key criticisms:</p> <ul style="list-style-type: none"> length of time for applications; and concerns voiced regarding inadequacy of payment. 	<p>Criticism from witnesses and submitters included the following areas:</p> <ul style="list-style-type: none"> the inadequacy of the amount offered to claimants under reparations offer; the inadequacy of consultation with the indigenous community over the offer; the requirement for claimants to indemnify the government and forfeiture of all future claims and the nature of the legal advice given in relation to that indemnity; the necessity for documentary evidence in order for a claim to be accepted and the unfairness such given the problematic state of Queensland archival records; the decision to distribute the remaining reparation offer monies and Welfare Fund amounts to the Queensland Aboriginal and Torres Strait Islander Foundation (the Foundation); failure of government to recognise the extent and injustice of the issue; failure to offer reparation to the families of all deceased workers; unfairness of placing the burden of proof on the indigenous person to prove that they were not paid; it was argued that it should have been placed on the government to prove that an indigenous worker was paid, given the government was in the position to have this evidence; the imposition of strict deadlines meant many people missed out on making a claim. (<i>Stolen Wages: the long wait for Indigenous Workers; 20 August 2009 p13</i>) (<i>Indigenous Stolen Wages Preliminary Investigation – Stage One Report, 17; Senator Russell Trood (Senator for Queensland), Indigenous Stolen Wages Inquiry held by Senate Legal and Constitutional Affairs Committee on 9 March 2007 (organised by the Human Rights and Equal Rights Commission), speaking notes at http://www.hreoc.gov.au/legal/seminars/speeches/stolen_wages_sen_trood_mar07.htm; and Chapter 7: Repayment of monies by governments http://www.aph.gov.au/Senate/Committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/report/c07.pdf, 95-96.)</i>
F Related Schemes			
34. Overview	<ul style="list-style-type: none"> Not applicable. 	<ul style="list-style-type: none"> Not applicable. 	<p>Underpayment of Award Wages Process (UAW process)</p> <ul style="list-style-type: none"> Introduced on 31 May 1999 in direct response to the 1996 decision of the Human Rights and Equal Opportunity Commission in the Palm Island Wages Case where it was found that the QLD Government had contravened the <i>Racial Discrimination Act</i> by deliberately underpaying wages to seven indigenous settlement workers between 1975 and 1986. Each of the seven plaintiffs were awarded \$7000 compensation (<i>Bligh & Ors v State of Queensland [1996] HREOCA 28</i>) The closing date for applications was 31 January 2003. payment made to Aboriginal and Torres Strait Islander people employed by the government on Aboriginal reserves between 31 October 1975 (the commencement date of the RDA) and 29 October 1986 (from which point Award wages were paid to all workers). Any underpayment before that period not eligible for compensation 5729 claims were paid, totaling over \$40 million. \$7,000 was a flat sum, paid regardless of the total amount by which a person was underpaid. To be eligible, a claimant had to have been directly employed by the State. This excluded those employed by church organisations on 'mission' communities (such as Hopevale, Wujal Wujal, Doomadgee, Arukun and Mornington Island). The process covered the period between 1975-1986. It only compensated those alive as at 31 May 1999. The estates of workers who died before that time were not eligible for payment. People accepting payment under the UAW process were required to sign a deed to waive their rights to recover further compensation. The scheme was criticised because it only applied to workers on government-run reserves and not to people employed by church organisations on the mission communities. i.e. at Arukun, Doomadgee, Hammond Island, Hope Vale, Mornington Island, St Pauls and Wujal Wujal (<i>Repayment of Monies by Governments: Chapter 7, page 93</i>) (<i>Jonathon Hunyor (Acting Director of Legal Services, Human Rights and Equal Opportunity Commission), speech given at the Human Rights Law Bulletin Seminar, 9 March 2007; http://www.hreoc.gov.au/legal/seminars/speeches/stolen_wages_hunyor_mar07.html</i>)

Annexure 3A



THESE GUIDELINES HAVE BEEN REPLACED BY NEW GUIDELINES ISSUED IN JUNE 2009

**Guidelines for the Administration of the
NSW Aboriginal Trust Fund Repayment Scheme**

FEBRUARY 2006

CONTENTS

1. Preliminary
2. The Aboriginal Trust Fund Repayment Unit
3. The Panel
4. Lodging of applications
5. Investigation of applications
6. Additional investigations and procedures (in relation to descendant claims only)
7. Consideration of applications by the ATFRS Unit
8. Consideration of applications by the Panel
9. Consideration of applications by the Minister
10. Publication of Minister's decision and payment of applications
11. General principles relevant to a determination of applications
12. Determination of applications by *direct* claimants
13. Determination of *descendant* claims
14. Definitions

FORM ONE – Notice to be published in the case of a *descendant* claim/s

FORM TWO – Proforma to be sent to claimants requesting electronic banking details and acknowledging a repayment is being made.

Appendix A – Calculation of amount to be paid

Appendix B – Order of distribution to descendants (where there is no valid will)

THESE GUIDELINES HAVE BEEN REPLACED BY NEW GUIDELINES ISSUED IN JUNE 2009

1. Preliminary

- 1.1 In March 2004, the New South Wales Government issued a formal apology for the failure to repay wages and other money of Aboriginal people that were paid into the Aboriginal Trust Funds ("the Trust Funds") by the Aborigines Protection Board and the Aborigines Welfare Board between 1900 and 1969 and never repaid.
- 1.2 In May 2004, the Government established a three-person Panel, known as the Aboriginal Trust Fund Repayment Scheme Panel ("the first Panel"), to consult with the Aboriginal community and report back to the Government on the design of a scheme to repay money to Aboriginal people who had wages or other payments placed into Trust Funds.
- 1.3 In October 2004, the Panel provided its Report to the Government.
- 1.4 On 15 December 2004, the Government announced it would establish an Aboriginal Trust Fund Repayment Scheme ("the Scheme") to repay monies that were paid into the Trust Funds and never repaid. Repayments will be in current dollar value indexed using the Office of the Protective Commissioner conversion rate. Under this rate 100 dollars owed in 1969 would be worth \$3,521 in 2005.
- 1.5 The Scheme will be administered by the Aboriginal Trust Fund Repayment Scheme Unit ("the ATFRS Unit"), the Aboriginal Trust Fund Repayment Scheme Panel ("the Panel") and the Minister for Finance ("the Minister").
- 1.6 The ATFRS Unit was established in February 2005 in the Premier's Department and is located within the portfolio of the Minister for Finance.
- 1.7 On 31 May, 2005 the Minister, the Hon. John Della Bosca MLC, appointed the following persons to a new Panel:
 - Mr Aden Ridgeway as Chair;
 - Ms Robynne Quiggin; and
 - Mr Sam Jeffries.
- 1.8 These Guidelines are not binding upon the Director-General of the NSW Premier's Department, the Panel or the Minister and either the Director-General, the Panel or the Minister may depart from these Guidelines if they are satisfied that it is in the interests of justice and equity to do so.
- 1.9 Words and expressions used in these Guidelines have the meanings given to them in the Definitions.

2. The Aboriginal Trust Fund Repayment Unit

- 2.1 The responsibilities of the ATFRS Unit, in relation to the Scheme, include but are not limited to:
- (a) receiving and processing applications made pursuant to the Scheme;
 - (b) investigating the applications and compiling all relevant information;
and
 - (c) preparing an interim assessment in relation to applications.
- 2.2 Any findings that any officer of the ATFRS Unit makes pursuant to the exercise of its functions need only be based on evidence which, in the view of the officer, is reliable evidence.
- 2.3 The rules of evidence do not apply to findings of applications by the ATFRS Unit but it shall only consider evidence which is relevant to the recommendation/s which it shall make.

3. The Panel

- 3.1 The responsibilities of the Panel, in relation to the Scheme, include but are not limited to:
- Provide advice on the operation of an evidence based repayment scheme.
 - Endorse or reject the ATFRS Unit's interim assessments for payment of claims where there is certainty, strong evidence or strong circumstantial evidence of money paid into Trust fund accounts and no evidence, or unreliable evidence that money was paid out.
 - Have discretion to review the facts in each case using all available evidence, including oral evidence.
 - Review decisions of the ATFRS Unit at the request of claimants.
 - Contribute to a review of the operations of the ATFR Scheme after 3 years including reporting to Government the extent to which unclaimed Trust Fund monies have been identified where there is no living claimant and recommend a means of addressing the issue, if it arises.
- 3.2 The Panel shall meet 12 times a year, usually monthly.
- 3.3 The expenses of the Panel shall be funded by the Scheme.

-
- 3.4 A determination of the majority of the members of the Panel is a determination of the Panel for the purposes of these Guidelines.
- 3.5 Any findings that the Panel makes pursuant to the exercise of its functions need only be based on evidence which, in the view of the Panel, is reliable evidence.
- 3.6 The rules of evidence do not apply to determinations of applications by the Panel but it shall only consider evidence which is relevant to the recommendation/s which it shall make.
- 3.7 Recommendations of the Panel in relation to applications will be submitted to the Minister for his consideration.

4. Lodging of applications

- 4.1 The following persons may make an application for an ex gratia payment pursuant to the Scheme:
- (a) a *direct* claimant;
 - (b) an authorised representative of the *direct* claimant;
 - (c) where a *direct* claimant is deceased, a descendant or authorised representative of a descendant ("a *descendant* claim").
- 4.2 In the case of *descendant's* claims, one descendant may make an application on his or her own behalf as well as on behalf of other descendants. Approval to search the records for information relevant to a descendant's claim will be sought from a direct descendant, who in most cases will be the eldest direct descendant of the deceased Trust Fund Account holder. The Department of Aboriginal Affairs is responsible for administering access to the records of the Aborigines Protection Board and the Aborigines Welfare Board and has indicated that only direct descendants of a deceased person have the authority to give approval to search the records for information relevant to a claim. As far as practicable the ATFRS Unit will ensure that all descendants on whose behalf the application is being made will be kept informed of matters relating to the claim.
- 4.3 Where a direct claimant or descendants makes an application but becomes incapable before the application is determined, the application may be continued by an authorised representative of the claimant, on evidence of their status as an authorised representative having been provided to the satisfaction of the ATFRS Unit.
- 4.4 Where a *direct* claimant makes an application but dies before the application is determined, the application does not survive for the benefit of the *direct*

claimant's estate and will not be determined. The claim will however be considered as a descendant claim.

4.5 Where a descendant makes an application but dies before the application is determined the application does not continue for the benefit of his/her estate and will not be determined.

4.6 An application:

- (a) shall be on the approved form;
- (b) shall be accompanied by copies of any two of the following forms of identification:

- Birth Certificate
- Driving Licence
- Pensioner Concession Card
- Medicare Card
- Health Care Card

- (c) shall be lodged no later than 31 December 2008.

4.7 The person/s making the application shall be referred to in these Guidelines as "the claimant/s".

4.8 If there is an application by more than one descendant of a *direct* claimant, then all such applications received will be investigated and considered together.

4.9 In the case of *descendant* claims, if any one or more claimants seek a review or appeal at any stage during the determination of a claim, then decisions related to other descendant claims associated with the same deceased Trust Fund Account holder's monies, will be held over pending the final resolution of the matters under appeal, except where 13.2(b) applies.

5. Investigation of applications

5.1 When an application is received, it will be registered and given a priority rating. Generally the Scheme is prioritising *direct* claimants over *descendant* claims. Priority to be determined by the ATFRS Unit will be based on:

- (a) whether the claimant is a *direct* claimant;
 - (b) whether the application is a *descendant* claim;
 - (c) any evidence of hardship and/or a life-threatening medical condition;
- and

- (d) any other factors the ATFRS Unit and the ATFRS Panel considers relevant.

The priority rating will determine in what order applications are dealt with. Claimants can request a review of a priority rating from the ATFRS Panel.

5.2 The procedure for investigating an application includes the following sequential process.

- (a) The ATFRS Unit will review the application and ensure all appropriate documentation is attached. Applications can not be processed without the appropriate documentation and/or having a valid signature. The claimant may be requested to provide further information, either in documentary or oral form.
- (b) The ATFRS Unit will forward the application to the Department of Aboriginal Affairs, who will undertake a search of their index of records and provide and deliver a written report to State Records NSW.
- (c) On receipt of a written report from the Department of Aboriginal Affairs, State Records NSW will investigate all records relevant to the application and provide and deliver a report to the ATFRS Unit. State Records' report will include certified true copies of relevant records.
- (d) The ATFRS Unit may seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application.
- (e) Where, for reasons of language difficulty, distance, or other reason, the ATFRS Unit considers it is necessary, it may conduct an interview with the claimant in person or by telephone and with any other person who may have information relevant to the determination of the application.

6. Additional investigations and procedures (in relation to descendant claims only)

6.1 The ATFRS Unit shall make its best endeavour to collect all records and information relevant to the matters in Parts 11 and 12 of these Guidelines.

6.2 When the ATFRS Unit is satisfied it has made all reasonable attempts to collect all relevant evidence referred to in paragraph 6.1 above, it shall assess that evidence and make a determination in accordance with paragraph 13.1 as to:

- (a) whether an ex gratia payment may be due; and
 (b) if so, the amount.

6.3 If the ATFRS Unit makes a determination in accordance with paragraph 13.1 that it would have made a recommendation that an ex gratia payment be made the ATFRS Unit will then undertake the following process:

- (a) The ATFRS Unit shall arrange for there to be published in indigenous newspapers/publications or other appropriate media a notice in accordance with Form 1. Wherever possible, the ATFRS Unit will arrange for the notice to be published in at least two editions of the chosen newspaper, publication or other appropriate media.
- (b) Concurrently with the first publication as above, the ATFRS Unit shall, where it considers it appropriate, request NSW Births, Deaths and Marriages to do a "best endeavours" search of their records to seek information on any other possible descendants of the deceased Trust Fund Account holder.

7 Consideration of applications by the ATFRS Unit

7.1 When the ATFRS Unit is satisfied it has made all reasonable attempts to collect all relevant evidence in relation to an application/s (including any material received as a result of the process in 6.3 above) the ATFRS Unit shall assess the evidence and prepare the following:

- (a) a summary of the information found in the course of its investigation of that application/s, including copies of relevant documents,
- (b) in accordance with parts 11-13 of the Guidelines (as applicable), an interim assessment as to whether or not a payment should be made pursuant to the Scheme, to whom the payment should be made and the amount to be paid; and
- (c) its reasons for making the interim assessment including evidence relied on.

7.2 In the case of a *descendant* claim the ATFRS Unit shall not prepare the information referred to in paragraph 7.1 until at least six weeks from the date of the first publication as set out in paragraph 6.3 above.

7.3 After preparing the documents referred to in paragraph 7.1, the ATFRS Unit shall forward a copy of those documents to the claimant/s to whom the application relates. In the case of *descendant* claims, the ATFRS Unit will forward a copy of those documents to the descendant claimant. The ATFRS Unit will write to all other descendants to whom the application relates providing them with a condensed summary of the information found in the course of its investigation of the application/s and information on the interim assessment.

7.4 When forwarding these documents to a claimant the ATFRS Unit shall inform the claimant that they may provide the ATFRS Unit with a response to the interim assessment including:

- (a) whether or not the *direct* claimant or descendants agrees with the interim assessment; and
- (b) any other information the *direct* claimant or descendants may consider relevant to the application.

7.5 On receipt of a response from the claimant as outlined in 7.4 the ATFRS Unit will forward to the Panel the following:

- (a) the application;
- (b) the ATFRS Unit's interim assessment;
- (c) the documents forwarded to the claimant/s;
- (d) any response received from the claimant's; and
- (e) a recommendation to the Panel.

for the Panel's consideration and its possible recommendation to the Minister that an ex gratia payment be made to the claimant in accordance with Part 8.

7.6 In the case of a descendant claim, that the descendants may request that the Panel recommend that the Scheme payment be distributed in line with an optional "written family agreement" on how the descendants would like the payment distributed.

7.7 Where the claimant indicates, or the ATFRS Unit becomes aware, that they are finding it difficult to provide written responses as required in 7.4 above the Unit can offer to assist the claimant either through a referral to Link-up or other appropriate organisations or through any other process agreeable to both the claimant and the ATFRS Unit.

8 Consideration of applications by the Panel

8.1 The procedure for a review of an application by the Panel will be as follows:

- (a) The Panel shall review the documentation to ensure that it has received all of the documentation in accordance with paragraph 7.5.
- (b) The Panel may seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application. For example, in the case of a very complicated *descendant's* claim the Panel may wish to seek advice from the Public Trustee.

-
- (c) Where, for reasons of language difficulty, distance, or other reason, the Panel considers it is necessary, it may conduct an interview with the claimant in person or by telephone and with any person who may have information relevant to the determination of the application.
- (d) The Panel may request the ATFRS Director to conduct any further investigations including, but not limited to, further searches of records, interviews with persons or research and conduct further investigation as necessary.
- 8.2 When the Panel is satisfied it has properly reviewed the available evidence in relation to an application/s, it shall prepare the following:
- (a) a summary of the information considered in relation to the review of that application/s,
- (b) a recommendation as to whether or not a payment should be made pursuant to the Scheme, to whom the payment should be made and the amount to be paid, and
- (c) its reasons for the recommendation.
- 8.3 The recommendation is to be prepared in accordance with Parts 11-13 of the Guidelines (as applicable), and forwarded to the Minister.
- 8.4 In the case of *descendant* claims a notice of intention to process a *descendants* claim will be published in appropriate media outlets within fourteen days of the Panel reaching a decision that a recommendation for an ex gratia payment should be made to the Minister.
- 8.5 If any further applications are made by descendants within twenty-eight days of the publication date of the notice of intention to process a descendants claim, the applications shall be referred to the Panel for further investigation and consideration. The Panel will then re-consider the application/s and make a recommendation to the Minister.
- 8.6 If no further such applications are made within twenty-eight days then the claim will be processed as outlined in 8.1 to 8.3 above.
- 9 Consideration of applications by the Minister**
- 9.1 The Minister, on receiving the documentation referred to in paragraph 8.3 from the Panel, will determine either to make an ex gratia payment or not.
- 9.2 The Minister may refer the matter back to the Panel for further investigation or consideration.

9.3 If the Minister determines an ex gratia payment should be made the Minister will also determine the amount to be paid and to whom the amount is to be paid. It should be noted that an ex-gratia payment is made within the Minister's discretionary powers and is not an indication of any admission of liability.

10 Publication of Minister's decision and payment of applications

10.1 Notice of the Minister's decision under Part 9 shall be notified to the claimant(s), including descendants, as soon as possible after the decision.

11. General principles relevant to a determination of applications

11.1 In considering an application, regard shall be had to the following factors:

- (a) the length of time that has elapsed and the difficulty claimants may have in substantiating their application as a result;
- (b) any deficiencies in the official written record relating to the application or similar applications;
- (c) the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people;
- (d) the purpose of the Scheme, which is to restore money which was held in trust for Aboriginal people;
- (e) any available evidence that money payable to the *direct* claimant was paid into the Trust Funds and the reliability of that evidence;
- (f) any available evidence that money was paid out of the Trust Funds to the *direct* claimant or descendant of the *direct* claimant and the reliability of that evidence; and
- (g) any other matter which the Director-General of the Premier's Department, the Panel or the Minister considers relevant.

12 Determination of applications by *direct* claimants

12.1 If the ATFRS Unit or the Panel are satisfied that:

- (a) there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of the *direct* claimant at any time was paid into the Trust Funds between 1900 and 1969; and

-
- (b) there is no evidence, or no reliable evidence, that the full amount of the money was either:
- (i) paid out to the *direct* claimant;
 - (ii) expended on behalf of the *direct* claimant; or
 - (iii) paid out to an authorised representative of the *direct* claimant;

the ATFRS Unit or the Panel shall recommend that the Minister make an ex gratia payment to the *direct* claimant.

12.2 For the purposes of 12.1(a) in the case of child endowment payments paid into the Trust Funds they are to be treated as though they were held on behalf of the parent of the child in respect of whom the child endowment payment was made rather than the child.

12.3 For the purposes of 12.1(b):

- (a) money expended from the account of an indentured child between 1 June 1910 and 1969 on their food, clothing, lodging, dental and medical care; and
- (b) money expended from the account of an indentured ward between 14 June 1940 and 1969 on their food, clothing, lodging, dental and medical care,

shall not be treated as money paid out or expended.

12.4 If the ATFRS Unit or the Panel are not satisfied regarding the matters referred to in paragraph 12.1 then the ATFRS Unit or the Panel shall recommend that the Minister not make an ex gratia payment to the *direct* claimant.

12.5 The ATFRS Unit or the Panel, when making a recommendation that the Minister make an ex gratia payment, shall also make a recommendation as to the amount to be paid, calculated in accordance with Appendix A.

13 Determination of *descendant* claims

13.1 Before the ATFRS Unit or the Panel may make a recommendation of a payment to a descendant it must be satisfied that, applying the provisions of Parts 11 and 12, it would have made a recommendation that the Minister make an ex gratia payment to the deceased Trust Fund Account holder of whom the claimant claims to be a descendant, and also determine the amount they would have recommended be paid ("the Scheme payment").

13.2 If the Panel is satisfied of the matters referred to in paragraph 13.1, then:

- (a) where the deceased Trust Fund Account holder has made a will which appears to meet the requirements of being a valid will and as a result of information provided to the Panel, appears likely to be the last will made by the Trust Fund Account holder, the Panel may, if possible, recommend to the Minister that an ex gratia payment be made in accordance with the terms of the will, as if the scheme payment had formed part of the deceased Trust Fund Account holder's personal property at the time of the Trust Fund Account holder's death; or
- (b) where there is no valid will and the descendants have requested that a recommendation be made in accordance with an optional "written family agreement" and more than ninety five percent of the descendants are in agreement then the Panel shall recommend that:
 - (i) the total amount that would have been distributed to the descendants that agree with the family agreement had the Scheme payment been distributed in accordance with paragraph 13.2(b), be distributed in accordance with the family agreement; and
 - (ii) the balance be distributed in accordance with Appendix B;
- (c) where the Panel does not make a recommendation for distribution in accordance with sub-paragraphs 13.2(a) or (b) the Panel shall make a recommendation to the Minister as to the appropriate distribution of the scheme payment in accordance with Appendix B.

13.3 If the ATFRS Unit is satisfied of the matters referred to in paragraph 13.1, then:

- (a) where the deceased Trust fund account holder has made a will which appears to meet the requirements of being a valid will and as a result of information provided to the ATFRS Unit, appears likely to be the last will made by the Trust Fund Account holder, the ATFRS Unit may, if possible, recommend to the Minister that an ex gratia payment be made in accordance with the terms of the will, as if the scheme payment had formed part of the deceased Trust Fund Account holder's personal property at the time of the Trust Fund Account holder's death; or
- (b) where the ATFRS Unit does not make a recommendation for distribution in accordance with sub-paragraph 13.3(a) the ATFRS Unit shall make a recommendation to the Minister as to the appropriate distribution of the Scheme payment in accordance with Appendix B.

14 Definitions

14.1 **"ATFRS Unit"** means the Aboriginal Trust Fund Repayment Scheme Unit.

14.2 **"Aunt"** includes

- (a) an adoptive aunt;
- (b) a half-sister of a parent.

14.3 **"Authorised Representative"** means any of:

- (a) an attorney for the individual under an enduring power of attorney; or
- (b) a guardian within the meaning of the *Guardianship Act 1987*, or a person responsible within the meaning of Part 5 of that Act; or
- (c) having parental responsibility for the individual, if the individual is a child; or
- (d) person who is otherwise empowered under law to exercise any functions as an agent of or in the best interests of the individual.

14.4 **"Board"** means the Aborigines Protection Board and/or the Aborigines Welfare Board as applicable.

14.5 **"Brother"** includes:

- (a) a half-brother;
- (b) an adopted brother.

14.6 **"Child"** includes:

- (a) a biological child (regardless of whether that child is subsequently adopted out);
- (b) an adopted child;
- (c) a foster child;
- (d) a person for whom someone has parental responsibility.
- (e) a child accepted by the family as a child of the family through a kinship placement.

14.7 “**De facto spouse**” means an adult person with whom the *direct* claimant:

- (a) lived together as a couple immediately prior to the *direct* claimant's death; and
- (b) was not married to or related to by family.

In determining whether a person was a de facto spouse, their statement that they were a de facto spouse will be accepted unless proven otherwise. The ATFRS Unit or the Panel are entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to them in the circumstances of the case when determining whether a person is a de facto spouse.

14.8 “**Descendant**” includes:

- (a) spouse;
- (b) de facto spouse (where the de facto spouse was the de facto spouse of the *direct* claimant for a continuous period of not less than two years prior to the death of the *direct* claimant and the *direct* claimant did not, during the whole or any part of that period, live with the person to whom the *direct* claimant was married);
- (c) child;
- (d) grandchild;
- (e) parent;
- (f) brother;
- (g) sister;
- (h) aunt; and
- (i) uncle.

14.9 “**Direct claimant**” means an Aboriginal person whose wages or other money was allegedly paid into the Trust Funds between 1900 and 1969.

14.10 “**Direct Descendant**” means a blood relative of the deceased Trust Fund Account.

14.11 “**Grandparent**” includes:

- (a) a parent of a birth parent;
- (b) a parent of a foster parent; and
- (c) a parent of an adoptive parent.

whether the person himself or herself is a birth parent, foster parent or adoptive parent.

14.12 **“Incapable”** means lacking the capacity (whether temporarily or permanently) to understand the nature and effect of the application or to communicate their wishes and intentions with regard to their application.

14.13 **“Organisation”** means corporation, business, body corporate or body politic.

14.14 **“Minister”** means the Minister for Finance or any other Minister of the Crown in New South Wales who the Premier may appoint to oversight the ATFRS from time to time.

14.15 **“Panel”** means the Aboriginal Trust Repayment Scheme Panel established by the New South Wales Government. As at 31 May 2005, the ATFRS Panel comprises the following Members:

- Mr Aden Ridgeway as Chair;
- Ms Robynne Quiggin; and
- Mr Sam Jeffries.

The composition of the Panel may change from time to time.

14.16 **“Parent”** includes:

- (a) a birth parent;
- (b) a foster parent including informal kinship fostering;
- (c) an adoptive parent; and
- (d) a person who has been allocated parental responsibility.

14.17 **“Scheme”** means the Aboriginal Trust Fund Repayment Scheme established by the New South Wales Government on 15 December 2004.

14.18 **“Sister”** includes:

- (a) a half-sister;
- (b) an adopted sister.

14.19 **“Spouse”** means an adult person to whom the *direct* claimant was married at the time of the *direct* claimant's death.

-
- 14.20 **“Trust Funds”** means the accounts established by the Boards between 1900 and 1969 into which they deposited money held on behalf of Aboriginal people.
- 14.21 **“Trust Fund Account”** means the accounts established by the Boards between 1900 and 1969 into which they deposited money held on behalf of Aboriginal people.
- 14.22 **“Uncle”** includes :
- (a) an adoptive uncle;
 - (b) a half-brother of a parent.
- 14.23 **“Will”** has the meaning it has in the *Wills, Probate and Administration Act 1898*.

THESE GUIDELINES HAVE BEEN REPLACED BY NEW GUIDELINES ISSUED IN JUNE 2009

FORM ONE – Notice to be published in the case of a *descendant claim/s*

The Aboriginal Trust Fund Repayment Scheme Unit ("the Unit") believes there is reliable evidence that an amount of money payable to or held on behalf of the person(s) listed below was paid into the Trust Funds at any time between 1900 and 1969; and there is no evidence, or no reliable evidence, that the full amount of the money was either:

- (i) paid out to the *direct* claimant;
- (ii) expended on behalf of the *direct* claimant; or
- (iii) paid out to an authorised representative of the *direct* claimant.

[Insert Names]

.....

Any person who is a descendant of the person(s) listed may make an application for an ex gratia payment to the Aboriginal Trust Fund Repayment Scheme.

All such applications should be forwarded to the ATFRS Unit. For further information concerning applications please telephone 1800 765 889 or go to *[insert website address]*. All such applications must be received by the ATFRS Unit by *[insert date]*.

FORM TWO – Final Proforma letter and Form to be sent to claimants requesting electronic banking details and acknowledging a repayment is being made.

Address

Dear

As you know the NSW Government has established the Aboriginal Trust Fund Repayment Scheme (ATFRS) which will identify and pay to Aboriginal people and their descendants, money that was placed into Trust Accounts by the Aborigines Protection Board and then the Aborigines Welfare Board between 1900 and 1969.

In establishing the ATFRS the NSW Government is meeting its commitment to ensure that money placed into the Trust Accounts by the Boards is disbursed, and ensuring that there is practical action on the Government's formal apology to Aboriginal people affected by this issue.

Your claim for payment under this Scheme has been approved and a payment of will be forwarded to you shortly. In order to make this payment it would be appreciated if you could fill out the attached form to let the Scheme know your banking details so that the payment can be forwarded to you by electronic banking transfer.

The attached form you are asked to sign also contains a statement that you acknowledge that the payment is an ex-gratia payment made by the NSW Government plus a payment paid in compensation for the hurt caused by your not having control or use of the money during the time it was held by the Boards.

If you are uncertain about anything or would like to discuss any issues please don't hesitate to contact one of the ATFRS project officers on 1800 765 889. They will be happy to discuss with you any matters you might wish to raise.

Yours sincerely

Aboriginal Trust Fund Repayment
Scheme
GPO Box 53421
SYDNEY NSW 2061
Telephone 1800 765 889

Statement from Claimant

I acknowledge that the Aboriginal Trust Fund Repayment Scheme has identified that I am owed \$ in relation to Claim Number xxx

Please forward my repayment to:

Name on Bank Account _____

Bank and Branch _____

Bank Account Number _____

BSB Number _____

I acknowledge that the payment of \$ is the repayment of monies put into either my Trust Account or that of a deceased relative by either the Aborigines Protection Board or the Aborigines Welfare Board and which was never repaid, plus a payment in compensation for the hurt caused by deprivation of the money. I also acknowledge that the payment is an ex-gratia payment made by the NSW Government.

.....
Name

Date:

APPENDIX A - HOW THE ABORIGINAL TRUST FUND REPAYMENT SCHEME REPAYMENTS ARE CALCULATED.

Background

In its decision to establish the Aboriginal Trust Fund Repayment Scheme the Government accepted the recommendation of the first ATFRS Panel that the conversion rate that would be most appropriate is that used by the Office of the Protective Commissioner. This ensures both interest and inflation is considered. Under this rate 100 dollars owed in 1969 would be worth \$3,521 in 2005.

The reasons for using the Office of the Protective Commissioner indexation rate to calculate repayments under the ATFR Scheme are as follows:

- they are monies that have been deposited "on trust";
- the OPC and the Common Fund operate under government legislation and regulation, and are therefore "independent" of any action by Premier's Department;
- the OPC forms part of the Human Rights Program of NSW;
- the Common Fund is audited by the NSW Auditor General;
- the OPC continues in existence and therefore future rates of return can be easily obtained and are independent.

Information on how repayments are calculated.

The ATFRS payment is to be calculated by converting the amount of money that the Panel or the ATFRS Unit are satisfied that there is certainty, strong evidence or strong circumstantial evidence was paid into the Trust Funds between 1900 and 1968 on behalf of a direct claimant less the amount that the ATFRS Unit or the Panel are satisfied there is reliable evidence of having been either paid out to the trust fund account holder or expended on behalf of the trust fund account holder or paid out to an authorised representative of the trust fund account holder into present day value using a conversion table or "ready reckoner".

The "ready reckoner" converts past pounds/dollars from 1900 to present day value, based on the Office of Protective Commissioner rate of interest.

The assumptions made in constructing the table are as follows:

1. Monies that were deducted are assumed to have been invested on behalf of the recipients, and earn compound interest.
2. The interest rate varies from year to year. In the case of the OPC rate data are available for the years 1987 to 2004. Prior to the establishment of the Office of the Protective Commissioner in 1987, a 'notional' OPC rate is obtained by increasing the Commonwealth Treasury 10 year bond rate by 6%.
3. All monetary entries in the table are stated in the prices at the time (for the specified year) and all interest rates are expressed in nominal terms (they

incorporate the effects of inflation). This means that inflation is included in the computed results.

4. The computed results represent gross returns that would be obtained before applying income tax (if it had been applied) or charging management and/or transaction fees.
5. All the interest rates are annual averages of the Reserve Bank of Australia statistics and have been taken over the 12 months ending in 30 June of the specified year.
6. Interest is assumed to be credited to the account only once per year.
7. It is assumed that money deposited or invested earns no interest until the following year.

THESE GUIDELINES HAVE BEEN REPLACED BY NEW GUIDELINES ISSUED IN JUNE 2009

APPENDIX B – Order of distribution to descendants (where there is no valid will)

Where paragraphs 13.2(b) & (c) and 13.3(b) applies, the scheme payment shall be distributed as follows:

- (1) To any spouse of the *direct* claimant who is still alive.
- (2) Notwithstanding subparagraph (1), if a spouse and a de facto spouse of the *direct* claimant are still alive, the scheme payment shall be distributed to:
 - (a) where the de facto spouse was the de facto spouse of the *direct* claimant for a continuous period of not less than two years prior to the death of the *direct* claimant and the *direct* claimant did not, during the whole or any part of that period, live with the person to whom the *direct* claimant was married—the de facto spouse of the *direct* claimant; or
 - (b) in any other case—the spouse of the *direct* claimant.
- (3) If the *direct* claimant leaves no spouse or de facto spouse surviving then the scheme payment shall be distributed in equal amounts to each of the children of the *direct* claimant. Where a child of the *direct* claimant is deceased then the amount due to that child distributed in equal shares to the surviving children of the child of the *direct* claimant who has died.
- (4) If the spouse of the *direct* claimant has died but his de facto spouse and at least one of his children are still alive, then the scheme payment shall be distributed:
 - (a) where the de facto spouse was the de facto spouse of the *direct* claimant for a continuous period of not less than two years prior to the death of the *direct* claimant— to the de facto spouse of the *direct* claimant; or
 - (b) in any other case — in equal amounts to each of the children of the *direct* claimant.
- (5) If the spouse (if any), de facto spouse (if any) and children of the *direct* claimant have died the scheme payment shall be distributed to the eldest surviving grandchild of the *direct* claimant, and if more than one child of the *direct* claimant left children, then in equal shares to the eldest surviving child of each child.

-
- (6) If the spouse (if any), de facto spouse (if any), children and grandchildren of the *direct* claimant have died but one or both of the *direct* claimant's parents are still alive, the scheme payment shall be distributed as follows:
- (a) where both parents are still alive, to both parents in equal shares; or
 - (b) where only one parent is still alive, then to that parent absolutely.
- (7) If the spouse (if any), de facto spouse (if any), children, grandchildren and parents of the *direct* claimant have died, the scheme payment shall be distributed to the following persons living at the death of the *direct* claimant and in the following order and manner:
- (a) firstly, to the brothers and sisters of the *direct* claimant who are still alive and, if more than one of them are alive, in equal shares; but if the *direct* claimant leaves no surviving brothers or sisters, then
 - (b) secondly, to the grandparents of the *direct* claimant who are still alive and, if more than one of them are alive, in equal shares; but if the *direct* claimant leaves no surviving grandparents, then
 - (c) thirdly, to the uncles and aunts of the *direct* claimant who are still alive and, if more than one of them are alive, in equal shares.

THESE GUIDELINES HAVE BEEN REPLACED BY NEW GUIDELINES ISSUED IN JUNE 2006

Annexure 3B



Guidelines for the Administration of the

NSW Aboriginal Trust Fund Repayment Scheme

REVISED JUNE 2009

CONTENTS

1. Preliminary	1
2. Date on which applications to the Scheme will close	2
3. Application of these Guidelines to current applications	2
4. The Aboriginal Trust Fund Repayment Unit	2
5. The Panel	2
6. Lodging of applications	3
7. Investigation of applications	4
8. Additional investigations and procedures (in relation to descendant claims only)	5
9. Consideration of applications by the ATFRS Unit	5
10. Consideration of applications by the Panel	6
11. Alternate recommendation may be given by Director Program Delivery	7
12. Consideration of applications by the Minister	7
13. Publication of Minister's decision and payment of applications	7
14. General principles relevant to a determination of applications	8
15. Determination of applications by direct claimants	8
16. Determination of descendant claims	9
FORM ONE	12
Statement from Claimant	13
APPENDIX A	14

1. Preliminary

- 1.1 In March 2004, the New South Wales Government issued a formal apology for the failure to repay wages and other money of Aboriginal people that were paid into Aboriginal Trust Funds ("Trust Funds") by the Aborigines Protection Board and the Aborigines Welfare Board between 1900 and 1969 and never repaid.
- 1.2 On 15 December 2004, the Government announced it would establish the Aboriginal Trust Fund Repayment Scheme ("the Scheme") to repay monies that were paid into Trust Fund Accounts and never repaid. The Government directed that a review of the Scheme would take place after three years of operation. Any reforms would then be effective until the finalisation of the Scheme in 2010.
- 1.3 The Aboriginal Trust Fund Advisory Panel ("the Panel") was established in 2005. The then Minister responsible for the Scheme appointed the following persons to the Panel for a period of up to 5 years or until the Scheme is abolished, whichever is less:
 - 1.3.1 Mr Aden Ridgeway as Chair;
 - 1.3.2 Ms Robynne Quiggin; and
 - 1.3.3 Mr Sam Jeffries.
- 1.4 The Scheme became fully operational on 1 July 2005 and is administered by the Aboriginal Trust Fund Repayment Scheme Unit ("the ATFRS Unit") within the NSW Department of Premier and Cabinet ("DPC"). The ATFRS Unit supports the deliberations of the Panel, who make recommendations for repayments to the Minister responsible for the Scheme, the Hon Paul Lynch MP, the Minister for Aboriginal Affairs ("the Minister").
- 1.5 On 7 February 2006 the Government published the Guidelines for the administration of the Scheme on the NSW Premier's Department website ("the earlier Guidelines") that set out guidelines as to how the Scheme would be administered.
- 1.6 On 30 March 2009, the Government announced changes to the Scheme in order to build on its achievements and to ensure that it is better able to meet the objectives of the Scheme.
- 1.7 In June 2009, the earlier Guidelines were amended to reflect the changes to the Scheme. Key changes to the Scheme are, firstly, that there will be a standard lump sum repayment in the amount of \$11,000 where a repayment is found to be owed. Secondly, that the Scheme will continue to make repayments to the descendants of deceased Trust Fund Account holders but that there will be a streamlined descendant distribution focused on repaying the spouse, children or grandchildren. Only descendants who are registered will be eligible for a portion of the repayment.
- 1.8 These Guidelines are not binding upon the Director-General of DPC ("the Director-General"), the Director Program Delivery, the ATFRS Unit, the Panel or the Minister and either the Director-General, the Director Program Delivery, the ATFRS Unit, the Panel or the Minister may depart from these Guidelines if they are satisfied that it is in the interests of justice and equity to do so. Where there is a departure, it and the reasons for it should be recorded, for purposes of transparency.
- 1.9 The Scheme will remain an evidence-based scheme and the Panel will be able to take into account non-documentary evidence including Statutory Declarations and oral evidence when considering applications.

1.10 Words and expressions used in these Guidelines have the meanings given to them in the Definitions.

2. Date on which applications to the Scheme will close

2.1 Applications to the Scheme will not be accepted after 31 May 2009 but the Scheme will continue to operate until 2010 to finalise the processing of claims.

3. Application of these Guidelines to current applications

3.1 Subject to 3.2, these Guidelines apply to all current applications which have not yet been finalised as well as applications made in the future.

3.2 Applications to the Scheme which have been substantially assessed by the AFTRS Unit as at 30 March 2009 shall be finalised under the Guidelines applying before that date. The determination of what constitutes "substantially assessed" shall be at the absolute discretion of the Director General. A determination to apply the earlier Guidelines may be made by the Director General where it is in the interests of justice or equity to make such a determination.

4. The Aboriginal Trust Fund Repayment Unit

4.1 The functions and responsibilities of the AFTRS Unit in relation to the Scheme include but are not limited to:

4.1.1 receiving and processing applications made pursuant to the Scheme;

4.1.2 investigating the applications and compiling all relevant information, including Statutory Declarations and oral evidence when appropriate;

4.1.3 preparing assessments in relation to applications; and

4.1.4 making recommendations, in accordance with Parts 14-16 of the Guidelines, to the Panel or to the Director General (where appropriate) for the payment of claims.

4.2 The rules of evidence do not apply to assessments of applications by the AFTRS Unit but the AFTRS Unit shall only consider evidence which the relevant officer in the AFTRS Unit is satisfied is relevant to the recommendation/s which the AFTRS Unit shall make and which the officer is satisfied is reliable evidence.

5. The Panel

5.1 The responsibilities of the Panel, in relation to the Scheme, include but are not limited to:

5.1.1 providing advice to the Minister and the AFTRS Unit on the operation of an evidence-based repayment scheme;

5.1.2 making determinations, in accordance with Parts 14-16 of the Guidelines, to endorse or reject the AFTRS Unit's recommendations for payment of claims;

5.1.3 making determinations, in accordance with Parts 14-16 of the Guidelines, to endorse or reject the AFTRS Unit's assessments for non-payment of claims;

- 5.1.4 reviewing the facts in each case at the Panel's discretion using all available evidence, including Statutory Declarations and oral evidence;
 - 5.1.5 making recommendations to the Minister for the payment of claims;
 - 5.1.6 reviewing decisions of the ATFRS Unit at the request of claimants; and
 - 5.1.7 contributing to a final report on the operations of the Scheme in 2010.
- 5.2 The Panel shall meet 12 times a year, usually monthly.
- 5.3 The expenses of the Panel shall be funded by the Scheme.
- 5.4 A determination of the majority of the members of the Panel is a determination of the Panel for the purposes of these Guidelines.
- 5.5 The rules of evidence do not apply to determinations of the Panel but the Panel should only consider evidence which it is satisfied is relevant to the recommendation/s which it shall make and which the Panel is satisfied is reliable evidence.
- 5.6 Recommendations of the Panel in relation to applications will be submitted to the Minister for his consideration.
- 5.7 The Minister and the Director General may, from time to time, issue directions to the Panel in relation to the undertaking of the Panel's responsibilities and functions.
- 6. Lodging of applications**
- 6.1 The following persons may make an application for an ex gratia payment pursuant to the Scheme:
- 6.1.1 a direct claimant;
 - 6.1.2 an authorised representative of a direct claimant; and
 - 6.1.3 where a Trust Fund Account holder is deceased, a descendant (including a spouse or de facto spouse) or authorised representative of a descendant ("a descendant claimant").
- 6.2 Any person making an application pursuant to 6.1 is a claimant under the Scheme. Descendant claimants are considered to be eligible if they have made an application pursuant to 6.1 and fall within a category of a descendant to whom an ex gratia repayment can be made in accordance with the order of distribution to descendants in Appendix A to these Guidelines.
- 6.3 The Department of Aboriginal Affairs is responsible for administering access to the records of the Aborigines Protection Board and the Aborigines Welfare Board and has indicated that normally only direct descendants of a deceased person have the authority to give approval to search the records for information relevant to a claim. The Department has given special dispensation to the Scheme to allow the spouse of a deceased Trust Fund Account holder to give permission for a record search for the duration of the Scheme.
- 6.4 Where a direct claimant or a descendant claimant makes an application but becomes incapable before the application is determined, the application may be continued by an authorised representative of the claimant, on evidence of their

status as an authorised representative having been provided to the satisfaction of the ATFRS Unit.

- 6.5 Where a direct claimant makes an application but dies before the application is determined, the application does not survive for the benefit of the direct claimant's estate and will not be determined. The claim will however be considered as a descendant claim subject to a claim being made by a descendant.
- 6.6 Where a descendant claimant makes an application but dies before the application is determined the application does not continue for the benefit of his/her estate and will not be determined.
- 6.7 An application:
- 6.7.1 shall be on the approved form;
- 6.7.2 shall be accompanied by copies of any two of the following forms of identification:
- 6.7.2.1 Birth Certificate;
- 6.7.2.2 Driving Licence;
- 6.7.2.3 Pensioner Concession Card;
- 6.7.2.4 Medicare Card; or
- 6.7.2.5 Health Care Card, and
- 6.7.3 shall be lodged no later than 31 May 2009.
- 6.8 The ATFRS Unit may accept a late application if it is satisfied that it is in the interests of justice or equity to do so.
- 6.9 The person/s making an application/s shall be referred to in these Guidelines as "the claimant/s".
- 6.10 If there is an application by more than one descendant of a deceased Trust Fund Account holder, then all such applications received will be investigated and considered together.
- 6.11 In the case of descendant claims, if any one or more claimants seek a review or appeal at any stage during the determination of a claim, then decisions related to other descendant claims associated with the same Trust Fund Account will be held over pending the final resolution of the matters under appeal.

7. Investigation of applications

- 7.1 When an application is received, it will be registered and given a priority rating. Generally the Scheme is prioritising direct claimants over descendant claims. Priority to be determined by the ATFRS Unit will be based on:
- 7.1.1 whether the claimant is a direct claimant;
- 7.1.2 whether the application is a descendant claim;
- 7.1.3 any evidence of hardship and/or a life-threatening medical condition; and
- 7.1.4 any other factors the ATFRS Unit and the ATFRS Panel considers relevant.

- 7.2 The priority rating will determine in what order applications are dealt with. Claimants can request a review of a priority rating from the ATFRS Panel.
- 7.3 The procedure for investigating an application includes the following sequential process, noting that, depending on the evidence found by the Department of Aboriginal Affairs, a report from State Records may not be required:
- 7.3.1 The ATFRS Unit will review the application and ensure all appropriate documentation is attached. Applications cannot be processed without the appropriate documentation and a valid signature. The claimant may be requested to provide further information, either in documentary or oral form.
- 7.3.2 The ATFRS Unit will forward the application to the Department of Aboriginal Affairs, who will undertake a search of their index of records and prepare and deliver a written report to State Records NSW.
- 7.3.3 On receipt of a written report from the Department of Aboriginal Affairs, State Records NSW will investigate records relevant to the application and prepare and deliver a report to the ATFRS Unit. State Records' report will include certified true copies of relevant records.
- 7.3.4 The ATFRS Unit may seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application.
- 7.3.5 Where, for reasons of language difficulty, distance, or other reason the ATFRS Unit considers it is necessary, it may, in its absolute discretion, determine that it will conduct an interview with the claimant in person or by telephone and with any other person who may have information relevant to the determination of an application.
- 8. Additional investigations and procedures (in relation to descendant claims only)**
- 8.1 The ATFRS Unit shall utilise available resources to make reasonable attempts to collect records and information relevant to the matters in Parts 14 to 16 of these Guidelines.
- 8.2 When the ATFRS Unit is satisfied it has made all reasonable attempts to collect relevant evidence referred to in paragraph 8.1 above, it shall assess that evidence and make a determination in accordance with paragraph 14.1 as to whether an ex gratia payment may be due.
- 9. Consideration of applications by the ATFRS Unit**
- 9.1 When the ATFRS Unit is satisfied it has made all reasonable attempts to collect relevant evidence in relation to an application, the ATFRS Unit shall assess the evidence and prepare the following:
- 9.1.1 a summary of the information found in the course of its investigation of that application, including copies of relevant documents;
- 9.1.2 in accordance with Parts 14 to 16 of the Guidelines (as applicable), an assessment and recommendation as to whether or not a payment should be made pursuant to the Scheme, and to whom the payment should be made; and

- 9.1.3 its reasons for making the recommendation including evidence relied on.
- 9.2 The ATFRS Unit may, at its absolute discretion, forward a copy of those documents to the claimant to whom the application relates.
- 9.3 If these documents are forwarded to a claimant the ATFRS Unit shall inform the claimant that they may provide the ATFRS Unit with a response to the assessment including:
- 9.3.1 whether or not the direct claimant or descendant claimant agrees with the assessment; and
- 9.3.2 any other information the direct claimant or descendant claimant may consider relevant to the application.
- 9.4 The claimant will be advised that they have a period of 6 weeks from the date of the letter setting out the ATFRS Unit's assessment to respond to the assessment and inform the ATFRS Unit whether they wish the Panel to consider a Family Agreement in accordance with 9.6.
- 9.5 On receipt of a response from the claimant as outlined in 9.3, the ATFRS Unit will forward to the Panel the following:
- 9.5.1 the application;
- 9.5.2 the ATFRS Unit's assessment and recommendation;
- 9.5.3 the documents forwarded to the claimant;
- 9.5.4 any response received from the claimant; and
- 9.5.5 a recommendation to the Panel for the Panel's consideration and its possible recommendation to the Minister that an ex gratia payment be made to the claimant in accordance with Part 14 to 16.
- 9.6 In the case of a descendant claim where there is more than one claim registered with the Scheme, claimants can request an opportunity to develop a Family Agreement within a period of 6 weeks for consideration by the Panel, if requested by any person who is a claimant and who has registered a claim in respect of that deceased Trust Fund Account holder.
- 9.7 Where the claimant indicates, or the ATFRS Unit becomes aware, that they are finding it difficult to provide written responses as indicated in 9.3 above, the ATFRS Unit can offer to assist the claimant either through a referral to Link-up or other appropriate organisation or through any other process agreeable to both the claimant and the ATFRS Unit.

10. Consideration of applications by the Panel

- 10.1 The procedure for a review of an application by the Panel will be as follows:
- 10.1.1 The Panel shall review the documentation to ensure that it has received all of the documentation in accordance with paragraph 9.5.
- 10.1.2 The Panel may seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application. For example, in the case of a very complicated descendant claim, the Panel may wish to seek advice from the Public Trustee.

- 10.1.3 Where, for reasons of language difficulty, distance, or other reason, the Panel considers it is necessary, it may conduct an interview with the claimant in person or by telephone and with any person who may have information relevant to the determination of the application.
- 10.1.4 The Panel may request the ATFRS Project Director to conduct any further investigations including, but not limited to, further searches of records, interviews with persons, or research. The ATFRS Project Director may determine if such investigations will occur.
- 10.1.5 When the Panel is satisfied it has properly reviewed the available evidence in relation to an application, it shall prepare the following:
- 10.1.5.1 a summary of the information considered in relation to the review of that application;
 - 10.1.5.2 a recommendation to the Minister as to whether or not a payment should be made pursuant to the Scheme, and to whom the payment should be made; and
 - 10.1.5.3 its reasons for the recommendation.
- 10.1.6 The recommendation is to be prepared in accordance with Parts 14 to 16 of the Guidelines (as applicable) and forwarded to the Minister.
- 11. Alternate recommendation may be given by Director Program Delivery**
- 11.1 The Director Program Delivery, DPC, who has administrative oversight of the Scheme, may seek clarity from the Panel in respect of their recommendation to the Minister and may present through the Director General, DPC, an alternate recommendation to the Minister.
- 11.2 In providing this alternate recommendation, the Director must provide reasons why the recommendation of the Panel is not supported.
- 11.3 This alternate recommendation must be prepared in accordance with Parts 14 to 16 of the Guidelines (as applicable).
- 12. Consideration of applications by the Minister**
- 12.1 The Minister, on receiving the documentation referred to in paragraph 10.1.5 from the Panel, or from the Director Program Delivery as referred to in paragraph 11.1, will determine, in his absolute discretion, either to make an ex gratia payment or not.
- 12.2 The Minister may refer the matter back to the Panel or to the ATFRS Unit for further investigation or consideration.
- 12.3 The Minister determines whether an ex gratia payment should be made and to whom the payment is to be paid. It should be noted that an ex-gratia payment is made within the Minister's discretionary powers and is not an indication of any admission of liability.
- 13. Publication of Minister's decision and payment of applications**
- 13.1 Notice of the Minister's decision under Part 12 shall be notified to the claimant as soon as possible after the decision.

14. General principles relevant to a determination of applications

14.1 In considering an application, regard shall be had to the following factors:

- 14.1.1 the length of time that has elapsed and the difficulty claimants may have in substantiating their application as a result;
- 14.1.2 any deficiencies in the official written record relating to the application or similar applications;
- 14.1.3 the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people;
- 14.1.4 the purpose of the Scheme, which is to restore money which was held in trust for Aboriginal people and not repaid;
- 14.1.5 any available evidence that money payable to the direct claimant or the deceased Trust Fund Account holder was paid into the Trust Fund Account and the reliability of that evidence;
- 14.1.6 any available evidence that money was paid out of the Trust Fund Account and the reliability of that evidence; and
- 14.1.7 any other matter which the ATFRS Unit, the Panel, the Director Program Delivery, the Director-General or the Minister considers relevant.

15. Determination of applications by direct claimants

15.1 If the ATFRS Unit or the Panel are satisfied that:

- 15.1.1 there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of the direct claimant at any time was paid into a Trust Fund Account between 1900 and 1969; and
- 15.1.2 there is no evidence, or no reliable evidence, that the full amount of the money was either:
 - 15.1.2.1 paid out to the direct claimant;
 - 15.1.2.2 expended on behalf of the direct claimant; or
 - 15.1.2.3 paid out to an authorised representative of the direct claimant;

they shall make a recommendation that the Minister make an ex gratia payment of \$11,000 to the direct claimant.

15.2 For the purposes of 15.1.1 in the case of child endowment payments paid into a Trust Fund Account they are to be treated as though they were held on behalf of the parent of the child in respect of whom the child endowment payment was made rather than the child.

15.3 For the purposes of 15.1.2:

- 15.3.1 money expended from the account of an indentured child between 1 June 1910 and 1969 on their food, clothing, lodging, dental and medical care; and
- 15.3.2 money expended from the account of an indentured ward between 14 June 1940 and 1969 on their food, clothing, lodging, dental and medical care,

shall not be treated as money paid out or expended.

15.4 If the ATFRS Unit or the Panel are not satisfied regarding the matters referred to in paragraph 15.1 then a recommendation shall be made that the Minister not make an ex gratia payment to the direct claimant.

16. Determination of descendant claims

16.1 Before the ATFRS Unit or the Panel may make a recommendation for a payment to a descendant it must be satisfied that, applying the provisions of Parts 14 and 15, it would have made a recommendation that the Minister make an ex gratia payment to the deceased Trust Fund Account holder of whom the claimant is a descendant.

16.2 If the ATFRS Unit or the Panel is satisfied of the matters referred to in paragraph 16.1, then:

16.2.1 where the deceased Trust Fund Account holder has made a will which appears to meet the requirements of being a valid will and, as a result of information provided to the Panel, appears likely to be the last will made by the Trust Fund Account holder, a recommendation may be made to the Minister that an ex gratia payment of \$11,000 be made in accordance with the terms of the will, as if the Scheme payment had formed part of the deceased Trust Fund Account holder's personal property at the time of the Trust Fund Account holder's death; or

16.2.2 where there is no valid will and where more than one claim is registered with the Scheme in respect of the same descendant claim, registered eligible claimants will be given an opportunity to develop a Family Agreement within a period of 6 weeks for consideration, if so requested by any person who is a registered eligible claimant for that same deceased Trust Fund Account holder.

16.2.3 where a recommendation for distribution in accordance with subparagraphs 16.2.1 or 16.2.2 is not made, a recommendation shall be made to the Minister as to the appropriate distribution of the scheme payment of \$11,000 in accordance with Appendix A.

17. Definitions

17.1 "ATFRS Unit" means the Aboriginal Trust Fund Repayment Scheme Unit, located in the Program Delivery Branch in DPC, and includes the ATFRS Project Director and any person undertaking duties for the purposes of the Scheme.

17.2 "Authorised Representative" means any of:

17.2.1 an attorney for the individual under an enduring power of attorney; or

17.2.2 a guardian within the meaning of the Guardianship Act 1987, or a person responsible within the meaning of Part 5 of that Act; or

17.2.3 having parental responsibility for the individual, if the individual is a child; or

17.2.4 person who is otherwise empowered under law to exercise any functions as an agent of or in the best interests of the individual.

17.3 "Board" means the Aborigines Protection Board and/or the Aborigines Welfare Board as applicable.

17.4 "Child" includes:

17.4.1 a biological child (regardless of whether that child is subsequently adopted out);

17.4.2 an adopted child;

17.4.3 a foster child;

17.4.4 a person for whom someone has parental responsibility.

17.4.5 a child accepted by the family as a child of the family through a kinship placement.

17.5 "Claimant" means a direct or descendant claimant who has lodged an application with the Scheme for an ex gratia repayment.

17.6 "De facto spouse" means an adult person with whom the direct claimant:

17.6.1 lived together as a couple immediately prior to the direct claimant's death; and

17.6.2 was not married to or related to by family.

In determining whether a person was a de facto spouse, their statement that they were a de facto spouse will be accepted unless proven otherwise. The ATFRS Unit or the Panel are entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to them in the circumstances of the case when determining whether a person is a de facto spouse.

17.7 "Descendant" includes:

17.7.1 spouse;

17.7.2 de facto spouse (where the de facto spouse was the de facto spouse of the direct claimant for a continuous period of not less than two years prior to the death of the direct claimant and the direct claimant did not, during the whole or any part of that period, live with the person to whom the direct claimant was married);

17.7.3 child;

17.7.4 grandchild;

17.8 "Descendant claimant" means a descendant of an Aboriginal person whose wages or other money was allegedly paid into a Trust Fund Account between 1900 and 1969 who falls within the within a category of descendants to whom an ex gratia repayment can be made in accordance with the order of distribution to descendants in Appendix A to these Guidelines and who has made an application to the Scheme.

17.9 "Direct claimant" means an Aboriginal person whose wages or other money was allegedly paid into the Trust Fund Accounts between 1900 and 1969 and who has made an application to the Scheme.

17.10 "Family Agreement" means that the descendant claimants, who are in a class of descendants eligible for a proportion of a repayment in relation to that particular claim and where it has been found that a recommendation for an ex gratia repayment will be made to the Minister, can make a written request to the

Panel for a variation in the descendant distribution of such a repayment. Such a request will be a written and signed agreement by all registered eligible claimants in relation to that descendant claim. The Panel can consider such a Family Agreement and make a recommendation to the Minister as to whether or not to agree to the request at its discretion.

- 17.11 "Incapable" means lacking the capacity (whether temporarily or permanently) to understand the nature and effect of the application or to communicate their wishes and intentions with regard to their application.
- 17.12 "Organisation" means corporation, business, body corporate or body politic.
- 17.13 "Minister" means the Minister for Aboriginal Affairs or any other Minister of the Crown in New South Wales who the Premier may appoint to have oversight of the ATFRS from time to time.
- 17.14 "Panel" means the Aboriginal Trust Repayment Scheme Panel established by the New South Wales Government. As at 30 March 2009 the ATFRS Panel comprises the following Members:
- 17.14.1 Mr Aden Ridgeway as Chair;
 - 17.14.2 Ms Robynne Quiggin; and
 - 17.14.3 Mr Sam Jeffries.
- The composition of the Panel may change from time to time.
- 17.15 "Scheme" means the Aboriginal Trust Fund Repayment Scheme established by the New South Wales Government on 15 December 2004.
- 17.16 "Spouse" means an adult person to whom the direct claimant was married at the time of the direct claimant's death.
- 17.17 "Trust Fund Accounts" means the accounts established by the Boards between 1900 and 1969 into which they deposited money held on behalf of Aboriginal people.
- 17.18 "Trust Fund Account holder" means an Aboriginal person whose wages or other money was allegedly paid into a Trust Fund Account between 1900 and 1969.
- 17.19 "Will" has the meaning it has in the *Probate and Administration Act 1898*.

FORM ONE – Final Proforma letter and Form to be sent to claimants requesting electronic banking details and acknowledging a repayment is being made.

Address

Dear

As you know the NSW Government has established the Aboriginal Trust Fund Repayment Scheme (ATFRS) which will identify and pay to Aboriginal people and their descendants, money that was placed into Trust Fund Accounts by the Aborigines Protection Board and then the Aborigines Welfare Board between 1900 and 1969.

In establishing the ATFRS the NSW Government is meeting its commitment to ensure that money placed into the Trust Fund Accounts by the Boards is disbursed, and ensuring that there is practical action on the Government's formal apology to Aboriginal people affected by this issue.

Your claim for payment under this Scheme has been approved and a payment of \$..... will be forwarded to you shortly. In order to make this payment it would be appreciated if you could fill out the attached form to let the Scheme know your banking details so that the payment can be forwarded to you by electronic banking transfer.

The attached form you are asked to sign also contains a statement that you acknowledge that the payment is an ex gratia payment of \$11,000 made by the NSW Government which contains a compensatory component for the hurt caused by your not having control or use of the money during the time it was held by the Boards.

If you are uncertain about anything or would like to discuss any issues please don't hesitate to contact one of the ATFR Scheme project officers on 1800 765 889. They will be happy to discuss with you any matters you might wish to raise.

Yours sincerely

Project Director
Aboriginal Trust Fund Repayment Scheme

APPENDIX A

ORDER OF DISTRIBUTION TO DESCENDANTS (WHERE THERE IS NO VALID WILL)

Where paragraph 16.2.3 applies, the scheme payment of \$11,000 shall be distributed as follows:

- (1) To any spouse of the *direct* claimant who is registered as a claimant with the ATFRS and is still alive.
- (2) Notwithstanding subparagraph (1), if a spouse and a de facto spouse of the *direct* claimant are still alive and registered as claimants with the ATFRS, the scheme payment shall be distributed to:
 - (a) where the de facto spouse was the de facto spouse of the *direct* claimant for a continuous period of not less than two years prior to the death of the *direct* claimant and the *direct* claimant did not, during the whole or any part of that period, live with the person to whom the *direct* claimant was married—the de facto spouse of the *direct* claimant; or
 - (b) in any other case—the spouse of the *direct* claimant.
- (3) If the *direct* claimant leaves no spouse or de facto spouse surviving then the scheme payment shall be distributed in equal amounts to each of the children of the *direct* claimant who are registered as claimants with the ATFRS.
- (4) If the spouse of the *direct* claimant has died but his de facto spouse and at least one of his children are still alive and are registered as claimants with the ATFRS, then the scheme payment shall be distributed:
 - (a) where the de facto spouse was the de facto spouse of the *direct* claimant for a continuous period of not less than two years prior to the death of the *direct* claimant—to the de facto spouse of the *direct* claimant; or
 - (b) where the de facto spouse was the de facto spouse of the *direct* claimant for a continuous period of less than two years prior to the death of the *direct* claimant and there are one or more living children of the deceased *direct* claimant, the payment will be distributed 50% to the de facto spouse and 50% divided equally between the children registered as claimants with the ATFRS.
 - (b) in any other case — in equal amounts to each of the children of the *direct* claimant who are registered as claimants with the ATFRS.
- (5) If the spouse (if any), de facto spouse (if any) and children of the *direct* claimant have died the scheme payment shall be distributed to the surviving grandchildren of the *direct* claimant who are registered as claimants with the ATFRS in equal shares.

- (6) Where more than one claim is registered with the ATFRS in respect of the same *direct* claimant, registered eligible claimants will be given an opportunity to develop a Family Agreement within a period of 6 weeks for consideration by the ATFRS Panel, if so requested by any person who is a registered ATFRS eligible claimant for that same *direct* claimant
- (7) The ATFRS Panel has the discretion to extend the application of the Scheme to individuals registered with the ATFRS as making a claim for a deceased relative's Trust Fund Account and who are not, by a strict definition, family members, in order to address a range of circumstances such a "stolen generation" children who were adopted but who were re-united and accepted back into their natural families or other relevant circumstances as the Panel decides.

right thumb print Employee. Protector of Aborigines for the
at that £2;;18;;6
be paid to The Protect

Indigenous Wages and Savings Reparations Process

Procedures Manual

October 2008



right number of... that £2; ;18; ;6
 Protector of Aboriginals for the
 Procedures Manual
 Protector of Aboriginals for the
 be paid to T



CONTENTS

PART	TITLE	PAGE
1.	QUEENSLAND GOVERNMENT OFFER – WAGES & SAVINGS REPARATIONS	5
2.	OATSIP RESPONSIBILITY	5
2.1.	Administration of the IWSR Process	5
2.2.	Professional Integrity	6
	□ Code of Conduct	6
	□ Conflict of Interest	6
	□ Client confidentiality	7
3.	ELIGIBILITY	7
3.1.	Definitions	7
3.2.	Eligibility criteria	8
3.3.	Assessment priority	8
4.	ADMINISTRATIVE PROCESS OVERVIEW	9
4.1.	Process flow charts	9
4.1.1.	IWSR processing overview	10
4.1.2.	IWSR process – roles of Regional Offices and WSHB	11
4.2.	Definitions	12
4.3.	Roles and responsibilities	15
	□ WSHB	
	□ Regional Offices	
4.4.	Dealing with enquiries	16
	□ About the Reparations process	16
	□ About individual claims	16
	□ Requests for reassessment	17
	□ Requests for review of assessment decision	17
5.	ASSESSMENT GUIDELINES	17
5.1.	Assessors' responsibilities	18
5.2.	Date of birth confirmation	18
5.3.	Date of death confirmation	19
5.4.	Evidence of wages or savings control	19
5.5.	Assessment steps for 'Control' criterion	21
5.6.	Reassessment of IWSR claims	22
5.7.	Review process	22
6.	ADMINISTRATION PROCEDURES	22
6.1.	Delegations	22
6.2.	Integrity and security of the IWSR database	22
6.3.	Database access levels	23



Procedures Manual

Protector of Aborigines for the Territory of Northern Territory



PART	TITLE	PAGE
6.4.	Receipt of claims	26
	Entering new claims	26
	<input type="checkbox"/> Regional Office (Queensland and PNG claims)	27
	<input type="checkbox"/> WSHB (non-Queensland claims)	27
	Processing claims (WSHB)	29
6.5	Change of address details	30
6.6.	Additional claimant information	31
6.7.	Request for urgent assessment	31
6.8.	Assessing claims – administrative procedures	32
	<input type="checkbox"/> Prioritising the assessment of claims	32
	<input type="checkbox"/> Assessment of claims	32
	<input type="checkbox"/> Reassessment of claims	34
	<input type="checkbox"/> Requests for review of assessment decision	34
6.9.	Assessed claims	36
	<input type="checkbox"/> Ineligible claimants – living and deceased (WSHB)	36
	<input type="checkbox"/> Pending living claimants (RO & WSHB)	36
	<input type="checkbox"/> Eligible living claimants (WSHB)	37
	<input type="checkbox"/> Eligible deceased claimants (WSHB)	37
6.10.	Legal advice for pending claimants	38
6.10.1	Provision of legal advice	38
6.10.2	Queensland claimants – Panel of legal practitioners	38
	<input type="checkbox"/> Role of Regional Offices (Queensland claimants)	39
	<input type="checkbox"/> Standing offer to supply legal advice	39
	<input type="checkbox"/> Settlement documentation to be completed and returned to Regional Offices	39
6.10.3.	Non-Queensland claimants	40
	<input type="checkbox"/> Role of WSHB	40
	<input type="checkbox"/> Payment of legal providers	41
	<input type="checkbox"/> Settlement documentation to be completed and returned to WSHB	42
6.11.	Deeds of Agreement – receipt and processing	42
	<input type="checkbox"/> Regional Offices	
	<input type="checkbox"/> WSHB	
6.12.	Payment of eligible claimants (WSHB)	43
6.12.1	Living claimants	43
	<input type="checkbox"/> Processing payments	44
	<input type="checkbox"/> Mailing payments	45
	<input type="checkbox"/> SAP payment acquittal	45
6.12.2.	Deceased claimants	45
	<input type="checkbox"/> Succession Act	46
	<input type="checkbox"/> Payment / reimbursement of funeral costs	46
	<input type="checkbox"/> Where no funeral debt/reimbursement is to be paid OR an unspent balance remains	46
	<input type="checkbox"/> Burial Assistance Act	46
	<input type="checkbox"/> Making manual payments	46
6.12.3.	<input type="checkbox"/> Payment acquittal	50
	Rejected EFT payments	50



right
 Protector of Aborigines for the
 Procedures Manual
 Protector of Aborigines for the



PART	TITLE	PAGE
7.	MEDICALLY UNFIT PERSONS (MUP) CLAIMANTS	51
7.1.	Overview	51
7.2.	Processing of MUP claims (RO & WSHB)	51
	Documentary evidence of carer/agent status for MUPC claimants	
	MUPP claims (RO)	
	Pending MUPC claims (WSHB & RO)	
7.3.	Payment of MUP claims (WSHB)	53
7.3.1.	MUPP claims	
7.3.2.	MUPC claims	
8	CLAIMANTS RESIDENT IN PAPUA NEW GUINEA	54
8.1.	IWSR Process Plan	
9.	RECOVERY OF OVERPAYMENTS	54
	□ WSHB	56
10.	MONITORING AND REPORTING	56
11.	FORMS AND DOCUMENTS	56
	□ Claimant forms	
	□ Letters	
	□ Legal advice and Deed of Agreement forms	
	□ Administrative forms	
	□ Information materials	57
	ADDENDUM	



Procedures Manual



Part 1 The Queensland Government offer – wages and savings reparations

1.1 Reasons for the Offer

- From the 1890s until the 1980s, successive Queensland Governments controlled the labour, wages and savings of most Aboriginal and Torres Strait Islander Queenslanders.
- Indigenous peoples who were under a Protection Act and who worked on, or were sent out to work from, reserves did not directly receive their full wages.
- The Government, usually without the knowledge or consent of the individual, determined all spending on shelter, food rations and other basics.
- In the spirit of Reconciliation the Queensland Government has made an offer to those whose lives were affected by these past Government policies.

1.2 The Offer includes:

- Monetary compensation for individuals who had their wages or savings controlled under a Protection Act.
- A written apology to all living persons who had their wages or savings controlled and who are eligible for compensation.
- The introduction of protocol to commence government business with an acknowledgment of Traditional Owners.
- A statement, through the Premier, in the House (to be on the Parliamentary Record) as public recognition of past injustices; and the Premier to host a major function to commemorate the occasion at Parliament House.

Part 2 OATSIP responsibility

2.1 Administration of the indigenous wages and savings reparations (IWSR) process:

- provide information and claim forms to potential claimants
- obtain claims
- assess claims
- advise all claimants of the outcomes of the assessment process
- ensure claimants assessed as eligible receive independent legal advice
- pay eligible claimants who have signed Deeds of Agreement or who have been deceased.
- ensure all eligible living claimants receive written Ministerial apology.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6
be paid to T



2.2 Professional Integrity

Department of Communities Code of Conduct

OATSIP officers working within the Reparations Process are bound by the:

- Public Sector Ethics Act 1994
- Public Services Act 1996
- Department of Communities Code of Conduct
- Departmental Policy Statement and Procedures: information privacy

To observe the following ethics principles:

- respect for the law and system of government
- respect for persons
- integrity
- diligence
- economy and efficiency
- confidentiality

All staff must familiarise themselves with the following documents:

- Department of Communities Code of Conduct
- Queensland Government Reparation Offer
- Queensland Government Reparation Offer Frequently Asked Question & Answer sheet and Fact Sheet
- Deed of Agreement and/or Acknowledgement of Payment form

Conflict of Interest

A conflict of interest is defined by the Code of Conduct as .. *a conflict between the private interest of a public official and public duty...* where private interest means...the officer's own financial and personal interest, or those of their family members and friends.

All staff are to ensure that there is no actual, potential or perceived conflict of interest between their role as a public officer and their relationship to a claimant. If an actual, potential or perceived conflict of interest exists the officer is to declare the conflict and, if appropriate, pass the claim to another officer.

Assessors are to ensure before the assessment of every claim that there is no actual, potential or perceived conflict of interest between their role as assessor and their relationship to a claimant. If an actual, potential or perceived conflict of interest exists the assessor is to declare the conflict to the Senior Assessor and pass the claim on to another assessor to perform the initial assessment. They may perform the verifying assessment, although it is preferable that an assessor with no actual, potential or perceived conflict of interest undertakes verification.



Procedures Manual

Protector of Aborigines for the

that £2; ; 13; ; 6

be paid to T



Client Confidentiality

All staff are reminded of the requirement to maintain strict confidentiality and protect the privacy of claimants. This means that information about a claim is to be conveyed to other OATSIP staff only when necessary to complete the claim process. No information about a claim is to be conveyed to any party outside the relevant Regional Office or the Work and Savings Histories Branch (WSHB) without the claimant's expressed consent, this includes spouses and family members.

Part 3 Eligibility

3.1 Definitions

For the purposes of the Reparations Process, the following definitions apply:

- **Protection Act** – any of the following:
 - *Aborigines Protection and Restriction of the Sale of Opium Acts 1897 to 1901;*
 - *Aborigines Preservation and Protection Act 1939;*
 - *Torres Strait Islanders Act, 1939;*
 - *Aborigines' and Torres Strait Islanders' Affairs Act, 1965;*
 - *Aborigines Act, 1971;*
 - *Torres Strait Islanders Act, 1971;*
 - *Community Services (Aborigines) Act, 1984 or*
 - *Community Services (Torres Strait) Act, 1984.*
- **Inside Worker** – a person who was required under a Protection Act to perform work on a reserve.
- **Outside Worker** – a person who was sent under a Protection Act from a reserve to 'outside' employment.
- **Local Worker** – a person not resident on a reserve who was sent under a Protection Act to employment by a local Protector of Aborigines/District Officer.
- **Wages** – a payment to an employee, usually on an hourly or weekly rate – i.e. payments made to inside, outside or local workers in return for their labour.
- **Savings** – any money which has been saved – any balances which were held in the Queensland Aborigines Account or the Torres Strait and Cape York Trust Account.
- **Control** – to have power over, especially to restrain (Heinemann Australian Dictionary). In this case, the Government is primarily concerned with: ...the historical injustices suffered by many Aboriginal and Torres Strait Islander Queenslanders through the controls imposed by the successive governments over their wages and savings during the period from the 1890s to the early 1980s.



Procedures Manual



3.2 Eligibility criteria

Different reparation amounts are to be paid to two different age groups of claimants. This is because the controls exercised under the 'Protection' acts changed over time.

People born on or before 31 December 1951 were subject to the 1897 and/or the 1939 Acts. Their work and savings were subject to intensive controls under these Acts.

Those people born between January 1952 and December 1956 were more likely to have worked and had their savings controlled under the 1965 Act. This Act removed some of the controls, such as compulsory contributions to the Aborigines Welfare Fund, included in the earlier legislation.

Category A - \$7,000

- To be eligible for a payment of \$7000 a person must meet the following criteria.
- Born on or before 31 December 1951
- Living at 9 May 2002.
- Subject to Government control of wages and/or savings through the 'Protection Acts'.

Category B - \$3,500

- To be eligible for a payment of \$3,500 a person must meet the following criteria.
- Born between 1 January 1952 and 31 December 1956 (inclusive).
- Living at 9 May 2002
- Subject to Government control of wages and/or savings through the 'Protection Acts'.

Note: Whilst the 'Protection Acts' mainly affected Aboriginal people and Torres Strait Islanders, some non-Indigenous persons were also controlled under the 'Protection' legislation. For example, some Papuan persons, South Sea Islander people and other groups had their wages or savings controlled in the same way under the 'Protection Acts' as Indigenous persons. It is not intended to exclude anyone based on their identification, if they otherwise meet the criteria.

3.3 Assessment priority

Assessment Priority is given to claimants who are elderly or are critically/terminally ill.

Priority 1

- Living Claimants born on or before 31 December 1932 (Category A); and/or
- Claimants who are critically ill and who provide a recent statement from their doctor which explains why they need an urgent or priority assessment on medical grounds.
- Elderly spouses of deceased estates



Procedures Manual



Priority 2

- Living Claimants born between 1 January 1933 and 31 December 1942 inclusive (Category A)

Priority 3

- Living Claimants born between 1 January 1943 and 31 December 1951 inclusive (Category A)

Priority 4

- Living Claimants born between 1 January 1952 and 31 December 1956 inclusive (Category B)

Priority 5

- Deceased Claimants (living at 9 May 2002)

Priority 6

- People born after the eligibility cut-off date of 31 December 1956 or who died before 9 May 2002. These claimants are ineligible. Any claims received from or on behalf of such claimants will not be formally assessed until last.

Part 4 Administrative process overview

- Process flow charts
- See following pages.

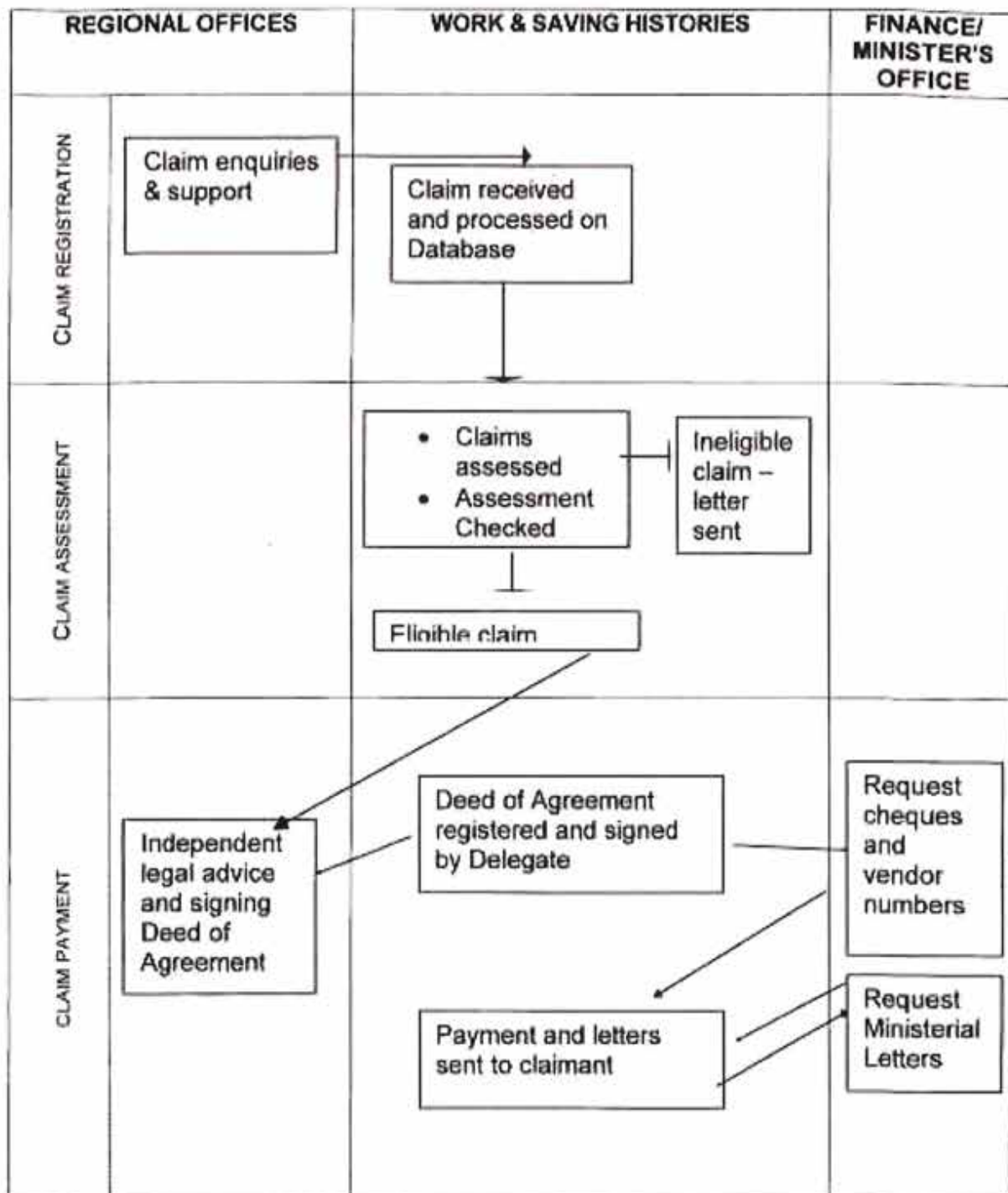


Procedures Manual

Protector of Aboriginals for the
 that \$2; ;18; ;6
 be paid to T



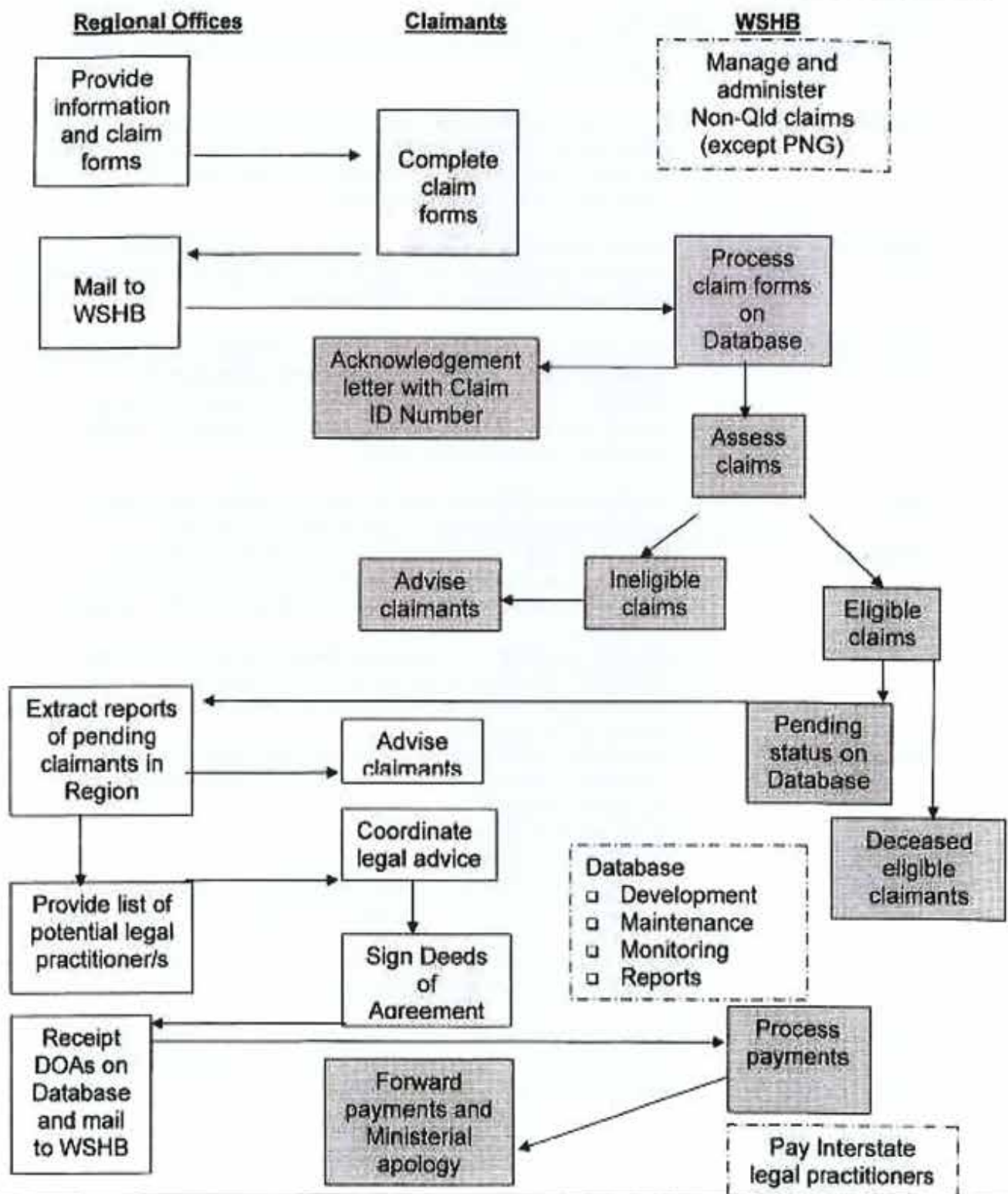
4.1.1. IWRS PROCESSING OVERVIEW



Protector of Aborigines for the Territory of Queensland Procedures Manual



4.1.2. IWSR PROCESS – ROLES OF REGIONAL OFFICES & WSHB



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the

that £2; ;13; ;6
be paid to T



4.2. Definitions

Term	Meaning
Assessor	Project Officer (AO5) in WSHB responsible for assessing IWSR claims received
Certified Copy	Copy endorsed as a true copy by a Justice of the Peace or a public servant such as a teacher, nurse, police officer etc. Where the copy is endorsed by a public servant, they must print their name and position clearly and legibly
Claim ID Number	Unique identification number automatically generated and assigned by Database when claim is initially entered; used to track each claim throughout the IWSR process
Claim Status	Until a claim has been receipted on the Database it has no status under the IWSR process. Once a claim is entered on the Database it is allocated a status, which will change as it goes through the administrative and assessment processes and the database is updated accordingly.
New	Entered into IWSR Database by Regional Offices, allocated a unique identification number, and in transit to WSHB.
Duplicate	<u>Exact duplicate</u> – the duplicate checking facility of the IWSR Database has indicated that the information entered from the claim form being processed is identical to another claim already in the Database <u>Possible duplicate</u> – the duplicate checking facility of the IWSR Database has indicated that the information entered from the claim being processed is, in most parts, identical to another claim already in the Database
Unassessed	Received by WSHB, either from a Regional Office or outside Queensland and all claimant details entered from the Claim form into the Database
Ineligible	Assessed as ineligible because a) Does not meet the eligibility criteria or b) no records found to establish eligibility (i.e. no records of Government control of wages or savings under a 'Protection' act)
Pending	Assessed as meeting the eligibility criteria but pending a signed Deed of Agreement and other documents
Eligible	Approved for payment, following receipt and verification by WSHB of signed Deed of Agreement and other required documents
Posted to SAP	Payment being processed by SAP



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the

that £2; ; 18; ; 6

be paid to T



Term	Meaning
Paid claim	Payment sent to claimant by Electronic Funds Transfer (EFT) or cheque
Claimant	Person the subject of a claim; ie person whose records will be checked to establish eligibility on the basis that their wages or savings were controlled under a Protection Act
Claimant type	
• Self	Person who has lodged claim on their own behalf
• Medically Unfit Person (MUP)	Person who, because of physical, medical or mental incapacity, cannot complete and/or sign a Claim Form, understand legal advice or legally sign a Deed of Agreement <ul style="list-style-type: none"> ➢ MUPP – MUP claimant for whom someone has documented Power of Attorney or Guardianship ➢ MUPC – MUP claimant for whom someone has documented Carer status (but not Power of Attorney or Guardianship)
• Deceased	Claim lodged on behalf of a deceased person <u>or</u> by a person who has died since lodging their claim
Contact person	Person lodging a claim on behalf of a deceased or medically unfit claimant <u>or</u> Person nominated by claimant as contact
Deed of Agreement	Legal document releasing the State of Queensland from further claims by the Claimant in relation to control of wages and savings under a Protection Act; to be signed by Claimant with a Pending status before being eligible to receive a compensation payment under the IWSR process
Acknowledgement of Payment form	Legal document releasing the State of Queensland from further claims by the claimant's carer in relation to control of wages and savings under a Protection Act; to be signed by Claimant's carer with a Pending status before being eligible to receive a compensation payment under the IWSR process
Government Officer	A Queensland State Government Public Servant
Legal Practitioner	For <u>Queensland claimants</u> – a legal practitioner engaged under to provide independent legal advice to claimants assessed as eligible For <u>non-Queensland claimants</u> – a legal practitioner engaged to provide independent legal advice to claimants assessed as eligible



Procedures Manual



Term	Meaning
Non-Queensland claimant	All claimants resident outside Queensland, with the exception of claimants resident in Papua New Guinea
Queensland claimant	Resident in Queensland; includes residents of PNG
Senior Assessor	Senior Project Officer (AO6) in WSHB, responsible for assessment of more complex IWSR claims and for making recommendations in relation to formal requests for review of decisions under the IWSR process
Verifying Officer	Project Officer (AO5) in WSHB responsible for checking assessments by another Assessor and confirmation of assessment result or referral of claim back to assessor for reassessment, whichever is appropriate



Procedures Manual

Protector of Aborigines for the

that 22; ;18; ;6

be paid to T



4.3 Roles and responsibilities

Work and Savings Histories Branch (WSHB)

- Develop and implement the Indigenous Wages and Savings Repairs Process:
 - reparations process database
 - reparations process database user manual
 - reparations process procedures manual and associated forms
 - audit processes
 - information materials
 - training for regional and WSHB staff
 - pay legal practitioners
- Administer claims for non-Queensland claimants
 - Provide information - Information packages, including fact sheets and answers to frequently asked questions.
 - Distribute Claim Forms - to potential claimants living outside Queensland; advise claimants on how to complete them as required.
 - Collect Completed Claim Forms
 - Receipt Claim Forms - on the IWSR Database, which will allocate each claim a unique claim identification number.
 - Coordinate the settlement process for Pending claimants – independent legal advice and signing of Deeds of Agreement
 - Pay legal practitioners
- Assess all Claims
- Advise all Claimants who are assessed as ineligible
- Advise non-Queensland Claimants who are assessed as eligible
- Process payments to eligible claimants
- Update, maintain and ensure the security of the IWSR Database
- Overall monitoring and reporting

Regional Offices

(Responsible for claims from claimants resident in their respective regions)

- Provide information - Information packages, including fact sheets and answers to frequently asked questions.
- Distribute Claim Forms - to potential claimants; advise and assist claimants on completing claim forms as required.
- Forward Claim Forms to WSHB.



Procedures Manual

Protector of Aborigines for the



4.4 Dealing with enquiries

WSHB will be the first point of contact for claimants to discuss their application via the freecall phone number. Regional office staff will be the face to face point of contact for some claimant enquiries.

WSHB staff may contact claimants in the course of assessing their claims. A series of information sessions will be convened across the state where opportunities will be provided for potential claimants to obtain support completing applications.

About the Reparations Process

- All enquires in relation to the Reparations process should be answered by referring to the Answering Client Queries information produced by the WSHB.
(<http://www.atsip.qld.gov.au/programs/iwsrs/>)

About individual Claims

- Prior to releasing any private and confidential information, a OATSIP Officer must verify the claimant's identity against information contained in the Reparations Database by asking for the following information:
 - full name (First, middle, last and any nee names)
 - date of birth
 - current address, or previous address if claimant has moved
 - parental information (if it has been supplied)
- Information cannot be released to a third party (including a family member) without the express permission or authority of the claimant.
- All enquiries in relation to the status of a claim must be answered only by referring to the information on the IWSR database.

Pending/Eligible Claimants

- A Pending claimant should be advised that his/her claim is still under consideration and that he/she will be advised of the outcome in due course.
- No other information about the claimant's status should be given.
- **Advice of eligibility should be given only when the relevant Office is making arrangements for the provision of legal advice to that claimant prior to signing of the Deed of Agreement, and after a letter advising of eligibility has been sent to the claimant.**
- Only staff of WSHB are to advise a Queensland claimant that he/she has been assessed as eligible.
- Only WSHB staff are to advise a non-Queensland claimant that he/she has been assessed as eligible.



Procedures Manual



Ineligible claimants

- Ineligible claimants must be referred to an Assessor for advice about the reasons for ineligibility (Freecall 1800 809 097).
- This is because only assessors have direct access to that claimant's claim form and the relevant records (if any) located during assessment.

Deceased claimants

- Refer to the Deceased Claimant Supplementary Claim Form and accompanying Instructions (Infonet: *regions/Reparations/Forms*).
- This will assist in answering questions from family members of recently deceased claimants.
- As soon as advice is received that a claimant has passed away, email the Senior Administration Officer, WSHB with the details so that the database can be updated.
- Enquiries about payment of an eligible deceased claim should be referred to the Senior Administration Officer, WSHB.

Requests for reassessment

- Claimants requesting reassessment should be referred to an assessor.

Requests for review of assessment decision

- If claimant is asking for a review of an assessment decision, advise that the request must be made in writing to the Assistant Director General.
- If the claimant wants further advice on what the review request should include, refer the caller to an assessor in WSHB.

Part 5 Assessment guidelines

Assessors in the Work & Savings Histories Branch (WSHB) will determine the eligibility of claimants for a reparation payment and apology under the Indigenous Wages and Savings Reparations Process.

These Guidelines have been prepared to ensure that assessment decisions are:

- in keeping with the Queensland Government's offer
- transparent
- consistently applied
- objective
- defensible
- able to be explained to claimants and others

The assessment process for Indigenous Wages and Savings Reparations (IWSR) claims will rely on evidence of:

- Date of birth
- Date of death (for claims on behalf of deceased persons)
- Control of Wages or Savings under a 'Protection Act'



Procedures Manual



5.1 Assessors' responsibilities

Assessing Officer is responsible for:

- checking proof of birth date documents;
- checking proof of date of death documents;
- searching all departmental databases to locate evidence of control (See: "File Note Minimum Search Standards.doc" at *worksav/IndigenousWagesandSavings reparations/Assessors/Helen*)
- attaching to the claim form copies of the evidence; and
- for ineligible results, summarising the research findings.

Verifying Officer is responsible for:

- checking proof of birth date documents;
- checking proof of date of death documents;
- checking evidence of control documents attached by assessing officer
- for ineligible results, checking databases to locate evidence of control.

5.2 Date of birth confirmation

This is an essential requirement, as this confirms which compensation category the claimant fits into:

- Category A: Claimants born on before 31 December 1951
- Category B: Claimants born from 1 January 1952 to 31 December 1956 (inclusive)

Documents admissible to confirm date of birth are:

- Evidence provided by claimant:
 - Certified copy of birth certificate
 - Certified copy of drivers licence
 - Certified copy of passport
 - Certified copy of age pension card
 - Certified copy of seniors card

Where a claimant provides other documentation to verify date of birth or if the claimant is not able to provide a certified copy of one of the above documents, assessors will try to confirm their date of birth from Departmental records.

Departmental records may include:

- Identification card
- Personal file
- Social history card
- Ledger card

If the claimant's date of birth cannot be confirmed and there are **NO** wages or savings records the claim will be assessed as **ineligible** for compensation.

If the claimant's date of birth cannot be confirmed, and there are wages or savings records, the assessor will contact the claimant for further information.



Procedures Manual

Protector of Aborigines for the

£2; ; 18; ; 6

be paid to T



5.3. Date of death confirmation

Documents admissible to confirm Date of Death (for deceased claimants) are:

- copy of death certificate
- copy of funeral notice
- copy of order of service
- copy of medical certificate of cause of death
- copy of burial certificate

5.4 Evidence of wages or savings control

- Assessors will search for documentary evidence that the claimant's wages or savings were controlled under a 'Protection Act'.
- Particular care will be taken to ensure that the evidence relates to the claimant by cross checking date of birth, spouse name, other family names, workplace, and etcetera.

Successful claimants for the Underpayment of Award Wages (UAW) process

- Persons who made a successful UAW claim already have met the 'control' criterion because documents proving Government control of that person's wage were obtained during the course of the UAW assessment. Therefore, once a claimant's successful UAW status is established, further research for records of wages or savings control is not necessary.
- Date of birth must match; otherwise assessors will continue to search for records elsewhere.

Other Claimants

- The Department holds many records relating to the control of wages and/or savings of Indigenous Queenslanders.

Guide to date range

- In practice, assessors will primarily be searching for a record from the period **1939 to 1986** as evidence that a claimant meets the 'control' criterion. This is because there will be few, if any, claimants who were controlled only under the 1897 Act. Similarly, there will be few, if any, claimants who were controlled only under the 1984 Act and none whose wages were controlled beyond October 1986 when full award wages were introduced for 'community' workers. Therefore, assessors should take those dates as a general guide to what records will be relevant to the assessment process. If an assessment relies only upon a record created later than 1986, assessors will consult with the Senior Project Officer or an officer nominated by the Senior Project Officer before completing the assessment.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6
be paid to T



Evidence of Wages or Savings Control

- Only one record of evidence is required to meet the 'control' criterion.
- Evidence of wages or savings control includes the following types of documents:
 - Savings Bank Ledger cards
 - Memorandum of Agreement (Work agreement between employer and employee, witnessed by a Government official)
 - Pocket Money records
 - Wage Earnings records
 - Child Endowment cards
 - Termination of management of property
 - Continuation or determination of a management of property
 - Audit Report reference to the claimant's savings account from the Heritage database
 - Any other record that demonstrates Government control of the claimant's wages or savings e.g. Departmental letter to employer naming the claimant as the employee.
 - *See: worksav / Indigenous Wages & Savings Reparations/Decisions re evidence of control for other documents acceptable as evidence of wages or savings control.*
- For certain 'Inside Workers' for whom no control evidence can be located, Ministerial approval was given on 3 November 2003 for a special procedure to be followed :
 - Claim can be found eligible if all other criteria are met AND
 - Assessor has located evidence that the claimant was resident on a Government Settlement or Church Mission beyond schooling age
 - *See: worksav / Indigenous Wages & Savings Reparations/Briefs/BN Minister re Stella Stafford 'inside' worker.doc*

Document Management System (DMS) – this is a database, searchable by person, containing images of historical records created during the 'Protection' era e.g. savings bank ledger cards, wages earnings cards, personal files etc.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the

Protector of Aborigines for the



Searching Hints:

- Use the wildcard % before and after each name eg. for George Hill, enter %Hill% and %George%.
- Use short versions of long names eg. for Robert Johnston, enter %Johns% and %Rob%.
- If no records are located, try contractions eg. for Robert, try %Bob%, for Edward, try %Ed% or %Ted%, for Elizabeth, try %Beth% or %Betty%., for Margaret, try %Maggie%, for Thomas, try %Tom%. for William, try %Will% or %Bill%.
- Remember spelling variations or typographical errors eg. if there are no results for %Edwards%, try %Edw%.
- If no records are located under the claimant's name, try spouse's name or parents' names. (Records for a person were sometimes kept on the personal file of another family member, usually husband or parent.)

'Heritage' Database – this is an index, searchable by person, to Queensland Government records.

Searching Hints:

- Use the wildcard * either before or after surname
- Use the 'nearby' function to link either surname with first name or a name with a community
- Use contractions and spelling variations
- Department records can also provide evidence that people were not under Queensland 'Protection' Acts. However, assessors should remember that a person who was not 'under the Act' in say the 1960s might have been 'under the Act' before or after that time.

5.5 Assessment steps for 'control' criterion

- Assessors will carry out the following steps until an assessment result is reached:
 - Check the UAW database for the claimant's name. If the claimant's names and date of birth match a pending or paid claim for the UAW process, print out the UAW claim details, attach to the IWSR claim form and record the assessment result as 'pending'. If the claimant's name does not match any UAW claimant details, go to Step 2.
 - Check the DMS for documentary evidence such as a copy of a wages or savings record. If there is a record, print it, attach it to the claim and record the assessment result as 'pending'. If there is no record, go to Step 3.
 - Check Heritage for an Audit Report reference. If there is a reference, print screen, attach it to the claim and record the assessment result as 'pending'. If there is no Audit Report reference, record the assessment result as 'ineligible'.
 - For other searches see 'File Note Additional Databases.doc' in *worksav/Indigenous Wages and Savings Reparations/Assessors/Helen*.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the



5.6 Reassessment of IWSR claims

- If claimants can provide additional information or evidence of control, claims can be reassessed at any time.
- Refer reassessments to the Senior Project Officer for allocation.
- An assessor not involved in the original assessment carries out a reassessment.
- An assessor not involved in the original assessment may conduct verification of a reassessment.

5.7 Review process

- Claimants who disagree with the reassessment result may apply for a review of the reassessment by writing to the Assistant Director General. The Senior Project Officer will prepare recommendations for the review based on briefing material prepared by assessors
(Refer Part 6.8: Assessing Claims – Administrative Procedures)

Part 6 Administration procedures

6.1 Delegations (Administration/Financial)

Sign Letters

- | | |
|---------------------------------------|---------------|
| • Acknowledgment | Manager, WSHB |
| • Ineligible | Manager, WSHB |
| • Eligible (Queensland claimants) | Manager, WSHB |
| • Eligible (non-Queensland claimants) | Manager, WSHB |

Approve change of priority for assessment/payment	Manager, WSHB
--	---------------

Approve assessment results	Manager, WSHB
-----------------------------------	---------------

Execute Deed of Agreement	Manager, WSHB
----------------------------------	---------------

Approve IWSR payments	Manager, WSHB
------------------------------	---------------

6.2 Integrity and security of the IWSR database

- The integrity of the data contained in the IWSR Database is dependent upon high levels of competency, accuracy, and concentration whilst performing the tasks involved with data processing at all levels of access.
- Accurate information within the database is critical to providing:
- Responsive and accountable client service; and
- Correct, reliable and timely reporting to Executive and Ministerial level
- To ensure the security of the data within the database, all staff with access must be aware of their responsibilities overall, but in particular, within the level of access they have been granted.



Procedures Manual



6.3 Database access levels

- Requests for access of changes to access levels must be approved by the Manager, WSHB in respect of Branch staff, or by the relevant Regional Director in respect of Regional staff. The WSHB contact for queries is the Resource Officer (Administration Team).
- For details on access levels of specific positions refer to the tables on following pages.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



Work and Savings Histories Branch

Position	Functions / Access
Manager	<ul style="list-style-type: none"> • Generate and print reports (statistical/financial by Region and Project) • Approve assessment • Approve payment
Senior Administration Officer	<ul style="list-style-type: none"> • Add new claims • Process regional claims • Update claims • Claim enquiry (update) • Process regional claims • Generate and print correspondence • Generate and print forms • Generate and print reports (financial/statistical by Region and Project) • Add/amend details in locked records • Process payments (SAP upload)
Administration Officers	<ul style="list-style-type: none"> • Add new claims • Process regional claims • Update data • Generate and print relevant correspondence • Generate and print relevant forms • Claim enquiry • Add/amend details in certain locked records
Senior Project Officer (Senior Assessor)	<ul style="list-style-type: none"> • Claims enquiry – read only • Add entries to below fields: <ul style="list-style-type: none"> - Claim comment - Assessment comments - WSHB Actioning Officer - Review date - Actioning Officer Brief Review Comments - Deceased comments - Generate relevant reports (statistical by project and assessment) • Allocate claims
Project Officers (Assessors)	<ul style="list-style-type: none"> • Claims enquiry – read only • Add entries to below fields: <ul style="list-style-type: none"> - Claim comment - Assessment comments - WSHB Actioning Officer - Review date - Actioning Officer Brief Review Comments - Deceased comments - Generate relevant reports (statistical by project and assessment) • Allocate claims



Procedures Manual

Protector of Aborigines for the



Position	Functions / Access
Resource Officer (Systems Administrator)	<ul style="list-style-type: none"> • Add new claims • Process regional claims • Update claims • Claim enquiry (update) • Process regional claims • Generate and print correspondence • Generate and print forms • Generate and print reports (financial/statistical by region and project) • Add/amend details in locked records • Check updated claims • Process payments (SAP upload)

Regional Offices

Position	Functions / Access
Regional Director	<ul style="list-style-type: none"> • Claim enquiry (read only)
Administration Officers	<ul style="list-style-type: none"> • Claim enquiry (read only)
Other staff as requested by RD	<ul style="list-style-type: none"> • Claim enquiry (read only)



Procedures Manual

Protector of Aborigines for the

that 22; ;18; ;6

be paid to T



6.4 Receipt of claims

NB. The integrity of the IWSR Database is dependent upon high levels of competency, accuracy, and concentration whilst performing the tasks involved with data processing at all levels of access.

Entering new claims

Process Summary - The summary is below.

1. Date stamp claim form (Internal Use Only Section on back page of claim form)
2. Check that claim form is:
 - Filled in correctly; and
 - Signed by claimant (or, for deceased or MUP claimant, by contact person)
3. Check that copy of proof of date of birth (DOB) document is:
 - Attached; and
 - Certified as a true copy by JP, Council or government official
4. Where claimant is unable to provide proof of DOB documents, attach a signed and dated note (either by claimant or OATSIP officer obtaining the information) to claim.
5. Enter claimant details on IWSR Database in **only** these fields:
 - Prefix
 - First Name
 - Second Name
 - Third Name
 - Last Name
 - Suffix
 - Other First Name
 - Other Second Name
 - Other Last Name
 - Alias First Name
 - Alias Second Name
 - Alias Last Name
 - Date of Birth
 - Proof of Date of Birth Documentation supplied
 - Gender
 - Claimant Identifies as
6. Write Claim ID number (Internal Office Use Only space)
7. Batch claims (maximum of 20 per batch)



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



8. Regional offices to Mail batches by **EXPRESS POST** to:
Reparations Team
PO Box 15397
BRISBANE CITY EAST QLD 4002
9. Record:
 - Express Post Number
 - Date mailed to WSHB

Detailed Process

Regional Office (Queensland/ PNG claims) and WSHB (non-Queensland claims)

- Record all incoming claim forms in mail register
- Date stamp claim forms (Internal Office Use Only Section on back page of form), plus any attached documents on the day they are received.

Note: Original documents (eg. birth certificates) should not be stamped or marked in any way.

- Check that all relevant sections have been completed correctly.
Sections to be completed:

Claimant

- Who is this application for
- Personal details
- Additional information
- Wages-Savings-Labour history
- Contact person
- Declaration

Deceased claimant

- As above plus
- Deceased claim section

NB each claim form must be signed by the claimant OR the contact person applying on behalf of a deceased or medically unfit claimant.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the



- Check that the required certified copies of documents, ie. one of the following have been attached:
 - birth certificate or extract or
 - drivers licence or
 - passport or
 - age pension card or
 - seniors card.
- If copies of documentation, other than the above, have been provided as proof of date of birth they should be certified.
- If the claimant is unable to provide the required documentation concerning date of birth, attach a signed and dated note, either from the claimant or officer obtaining the information (e.g. by phone) to the claim form before forwarding.
- Claims on behalf of a deceased person should also have attached copies of one of the following:
 - Death certificate or
 - Funeral notice or
 - Order of service or
 - Medical certificate of cause of death
 - Burial certificate
- Register each claim on the IWSR Database, which will allocate a unique identification number.
- Write the Claim ID number on Page 2 of the claim form in Internal Office Use Only space.
- **All claim forms should be entered on the Database, even if incomplete.**

Regional Offices only

- If information or documents are lacking or copies are uncertified, contact the claimant to try and complete claim form before forwarding to WSHB. Incomplete claim forms to be forwarded to WSHB only after all reasonable attempts to complete claim form have been unsuccessful (e.g. one month).
- Generate a covering Batch Form from the Database (for **maximum 20 claims**. Keeping batches to a low number is a risk management requirement in case of loss in transit).
- Before mailing, ensure that
- The Express Post number is recorded
- Send batched claims by Express Post as soon as possible to:



Procedures Manual



Reparations Team
PO Box 15397
BRISBANE CITY EAST QLD 4002

Processing claims (WSHB)

Process Summary - The summary is below

1. Check all data already entered is correct.
If any errors/differences discuss with Senior Admin Officer
2. Enter data in remaining fields
3. Run Duplicate Check
4. If duplicate, refer:
 - a) Definite duplicate to Senior Admin Officer to confirm; or
 - b) Possible duplicate to Assessor to determine
5. Cross reference with original; **Enter as duplicate on database**; and Attach to original claim.
6. File claim

Handy hints:

Telephone numbers

- Maximum number of characters, including brackets and spaces, is 12
- If more than this is entered, the number recorded by the Database will be incomplete
- E.g. (07)34056433 **NOT** (07) 3405 6433

PNG addresses

- When entering Residential Address note the following:
 - SUBURB Field – enter village or island (e.g. Daru) name
 - POSTCODE Field – do not leave blank; enter a dot (.)
 - STATE Field – select PNG and appropriate Province
 - COUNTRY Field – enter Papua New Guinea

Detailed Process

All claims (Queensland and non-Queensland claims)

- Access database and process the claims
- Check that all information (i.e. claimant name, DOB, salutation) entered is correct.
- If correct, enter other claim information.
- If not correct:
 - Minor errors/differences – check with the Senior Administration Officer before amendment
 - Significant differences – must be discussed with the relevant Regional Office and approved and initialled by the Senior Administration Officer before amendment



Procedures Manual

Protector of Aborigines for the
Protector of Aborigines for the



- Run the duplicate checking facility in the database to see if there are any exact duplicates or possible duplicates for that claim already in the database.
- If no duplicates:
- Duplicate Claim type is "Not Duplicate"
 - Continue entering information from claim form (e.g. address, contact details).
 - Generate Assessment Form from Database and attach to the claim form.
 - Generate envelope and mail acknowledgement letter and Change of Address Form generated by the database in next available mail.
 - File the claim form in strict numerical order in Records Compactus.
- If an exact duplicate exists in the database:
- Duplicate claim type is "Duplicate"
 - Enter primary claim ID
 - Refer to Senior Administration Officer to confirm as duplicate
 - Attach duplicate claim form to primary claim file
 - No further action required.
- If a possible duplicate claim exists in the database:
- Duplicate claim type is "Possible Duplicate"
 - Reference to primary claim ID is noted
 - Consult an assessor who will determine whether the claim is a duplicate or new claim, and note Claim Form accordingly.

6.5. Change of address details

- Only WSHB staff can change claimant details on the Database once a claim has been processed by WSHB in the Database.
- The claimant must sign change of details provided in writing or in person.
- Where change of details are provided over the phone, Regional/WSHB staff must verify the caller's identity before accepting new details (**refer Part 4.4 Dealing with Enquiries**)
- Change of Address information should be forwarded directly to WSHB.
- If change of details information is received by Regional Offices, fax to WSHB on (07) 3224 8662, and mail the original documentation to WSHB.
- WSHB to update the database with change of details, as necessary, and note claim form.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the



6.6 Additional claimant information Regional Offices

- If the claimant wishes to provide additional information to assist in the assessment of their claim they should provide this information in writing or on an Additional Information Form and forward it to the WSHB.
- Fax documentation to WSHB on (07) 3224 8662, and mail original to WSHB.
- Send an email to the Senior Administration Officer if the additional information added to the Comments field requires further action.

Work and Savings Histories Branch

- A file note attached to the claim and/or notes added to the comment field in the Database for that claim, dated and initialled by the author, must record any new information provided by claimants during the assessment process.
- Update the database with change of details, as necessary.
- If reassessment is required as a consequence of the new information provided, refer to an assessor (see Part 5.6 Reassessment of IWSR claims).

6.7 Request for urgent assessment

- Claimants who are, or who become critically or terminally ill may request an urgent assessment and/or payment of their claim.
- This must be supported by documentary evidence such as a recent letter from a medical practitioner or senior medical staff of a hospital outlining the need for an urgent assessment on medical grounds. A doctor's certificate that provides a medical history or outlines the conditions for which a claimant is being treated is not necessarily sufficient to upgrade their priority over and above other claimants. In most instances, the condition needs to be considered acute and life-threatening, however, the Manager of the WSHB will determine the final approval on a case by case basis.

Regional Offices

- Obtain further information or documentation if required.
- Recommend action as appropriate, by memo or email to the Manager, WSHB.
- If a new claim, attach recommendation and supporting documentation to the claim form and process as normal.
- If existing claim, fax recommendation and documentation to WSHB on (07) 3224 8662 and mail the original documents to WSHB.

Work and Savings Histories Branch

- Refer to Manager, WSHB for decision whether or not to approve as an urgent assessment and/or payment.



Procedures Manual



6.8 Assessing claims – administrative procedures (Refer Part 5 Assessment Guidelines for assessment of eligibility)

Prioritising the Assessment of Claims

- Create Query on unassessed IWSR claims in the database to establish priority assessments (refer Part 3.3).
- Sort data in order of dates of birth
- Print priority assessment list
- Retrieve claims from the Records Compactus
- Allocate claims to self (assessor) on IWSR Database

Assessment of Claims (refer Assessment Form)

Assessor

Conflict of interest

- Check the name of claimant to establish if there is a conflict of interest.
- If no conflict of interest continue with the assessment process.
- If there is a conflict of interest declare conflict of interest on Assessment Form and pass to another assessor.

Assess Claim

- Confirm date of birth
- If documentation provided is insufficient or if claimant is unable to provide documents, check Departmental records to see if date of birth can be confirmed
- Confirm date of death (if claimant is deceased)
- If dates of birth and/or death are inside the assessment criteria continue with the assessment process.
- Search for direct evidence of control of wages or savings.
- Contact the claimant if and as necessary to assist in the search for evidence.

Eligible claims

- If evidence is found the claim is eligible for compensation.
- Check claim form and attachments.
- Ensure that the claimant has signed the claim form.
- Check date of birth confirmation attachments (if provided) have been certified.
- Check for MUP status
- Fill out Assessment Criteria, Assessment Details/Notes and Assessment results areas on the Assessment Form, attach all documents and submit for verification.



Procedures Manual

Protector of Aborigines for the

that £2; ;IB; ;6

be paid to P



- In the case of an eligible MUP claimant (refer Part 7: Medically Unfit Person (MUP) Claimants):
- Check if MUPP or MUPC
- Ensure relevant documents are provided by claimant or contact person and attach to claim form
- Tick relevant box on Assessment Form

Ineligible claims

- If dates of birth and/or death are outside the criteria the claim automatically is ineligible for compensation. Fill out the assessment result area on assessment form, attach all documents and submit claim for verification.
- If no evidence is found the claim is ineligible for compensation. Fill out the Assessment Criteria, Assessment Details / Notes and Assessment results areas on the Assessment Form, attach all documents, and submit for verification.

Batch assessed claims (a maximum of 20 claims)

- In separate categories as follows:
 - Eligible/ Eligible Urgent/ Eligible MUP/ Reassessment – Eligible/ Eligible – Inside Worker :- Use YELLOW cover sheet
 - Ineligible/ Reassessment – Ineligible :- Use BLUE cover sheet

Verifying Officer

Conflict of interest

- Check the name of claimant to establish if there is a conflict of interest.
- If no conflict of interest continue with the verification.
- If a conflict of interest forward claim to another assessor to perform verification.
- If no other assessor available declare conflict of interest on assessment form and seek Senior Assessor's endorsement before proceeding with verification.

Verify assessment

- Check all attachments against assessment criteria to confirm assessment.
- If agree with assessment fill out the verifying officer area on the Assessment Form and forward to administration area for update.
- If do not agree return to assessment officer for discussion and for possible further research.



Procedures Manual

Protector of Aborigines for the

that 22; ;18; ;6

be paid to T



Reassessment of claims

- If more information has been supplied a reassessment can occur.
- All reassessments will start from the beginning of the assessment process.
- A new assessor (i.e. one who did not undertake the original assessment or verification) must do the reassessment.
- A new Assessment Form must be used for every reassessment.
- The old Assessment Form must be crossed through and a reassessment reason must be given. Assessor to sign and date.
- It is desirable, but not essential, that the verifying assessor also be new (i.e. not involved in the original assessment).

Requests for review of assessment decision

The Senior Project Officer has primary responsibility for undertaking reviews.

- a) Retrieve claim and update assessment comments section in IWSR database:
 - date review letter received; and
 - location of the claim with Senior Project Officer.
- b) Arrange reassessment of claim, if required

NB A claim must be reassessed before a review can be undertaken. If the claim has not previously been reassessed the Senior Project Officer should delegate the reassessment to an assessor who has not assessed the claim before.

If reassessment results in an eligible finding, the claim will go through the normal process but batched separately as 'Reassessment-Eligible'.

- c) If reassessment results in an ineligible finding, proceed with the review.
- d) Prepare draft Review Statement Document
File Path: *H:\programs\worksav\Indigenous Wages & Savings Reparations \ Review of Assessment\Review Statement (template).doc*
 - This document consists of Background, Evidence, Review Findings and Review Decision.
 - Attach evidence documentation and flag with numbers corresponding to the numbered list of evidence
 - Place 'sign here' sticker on signature block.
- e) Prepare Memo to Assistant Director-General
File Path: *H:\programs\worksav\Indigenous wages & savings reparations3\review of assessment\review memo (template).doc*
 - Place 'sign here' sticker on signature block.



Procedures Manual



- f) Prepare draft Ineligible letter from Assistant Director-General
File Path: H:\programs\worksav\Indigenous Wages & Savings Reparations3\Review of Assessment\Review Letter (template).doc
- Attach original and one copy of the draft Ineligible letter for ADG signature as well as an addressed envelope.
 - Place 'sign here' sticker on signature block.
- g) Place all documentation in see through red folder marked **Private and Confidential IWSR Review Case**. Order of documentation:
- Memo to Assistant Director-General
 - Draft Review Statement Documentation
 - Draft Ineligible Letter
 - Addressed Envelope
 - Draft Ineligible Letter (copy)
 - Claim form and numbered attachments
- h) Update assessment comments of IWSR database to show that the claim has gone to ADG for review.
- i) Forward all documentation to Manager, Work and Savings Histories Branch.

Manager

- a) Check and sign memo and forward all documentation to ADG
- b) On return of review documentation and decision by ADG, return to Senior Project Officer.

Senior Project Officer

- a) Update assessment comments on IWSR database with review outcome.
- b) If review decision is **Ineligible**:
 - Post original letter signed by ADG to claimant
 - Photocopy Memo, Review Statement Documentation, copy of Ineligible letter and place on file WSH/434
 - Add claimant and review decision to review register stored as top document (in plastic sleeve) in file WSH/434
 - Attach original signed copy of paperwork to claimant's claim form
 - Return claimant paperwork to administration area for filing.
- c) If review decision is **Eligible** or ADG has asked for further information/action:
 - Follow ADG instructions.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



6.9 Assessed claims

Assessment results are recorded on the database and approved electronically by Manager, WSHB

Updating Database with Assessment Results (WSHB)

Administration officer

- Update the database for each batched assessed claim, as noted by an assessor on the Assessment Form, to record assessment results
- Initial and update Assessment Form (lower right hand corner)
- Place updated batches in Resource Officer's in-tray for checking.

Resource officer

- Check all assessment updates for accuracy – assessment result and reason
- Initial and date assessment form and batch cover sheet
- Place in Manager's in-tray for approval of assessment results

Approval of Assessment Results (WSHB)

Manager

- Check assessment form – assessment result; signatures by assessor, verifier and data entry checker; copies of evidence attached to assessment form
- Sign and date assessment form to approve assessment result
- Electronically approve assessment result on database
- Sign and date Approval of Assessment batch cover
- Place approved batches in Senior Administration Officer's in-tray

Senior Administration Officer

- Allocate to Administration staff to action as follows

Ineligible Claimants - Living and Deceased (WSHB)

Administration Officer

- Access database and print off Ineligible letters
- Copy ineligible letters and file copy with each Claimant's paperwork.
- Envelope and mail original letter to the claimant.
- File all claimant paperwork in numerical order in the Records Compactus.

Pending Living Claimants (WSHB and Regional Offices)

File claims in numerical order in the Records Compactus (WSHB)

Claimants from outside Queensland (WSHB)



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



Resource Officer

- Produce a Pending Claims Report for non-Queensland claims on a monthly basis
- Generate Eligible letters from the database.
- Give Eligible letters to the Manager, WSHB to check and sign.

Manager, WSHB

- Check claimant eligibility status on Database
- If correct, sign Eligible letters and return to Resource Officer.

Resource Officer

- Envelope and mail original letter, including **EFT Application Form and Reply Paid Envelope**, to the claimant.
- File all claimant paperwork in the Records Compactus
- Liaise with relevant claimants and legal practitioner/s to arrange for:
 - Independent legal advice and
 - Signing of Deeds of Agreement as appropriate
 (**Refer: Legal advice for pending claimants, Part 6.10**)

All claimants except those from outside Queensland

- Generate Eligible letters from the database.
- Copy the signed Eligible letters. Hold until signed Deeds of Agreement are received.
- Envelope and Mail original letter, including **EFT Application Form and Reply Paid Envelope (WSHB Address)** to the claimant
- Liaise with relevant claimants and legal practitioner/s to arrange for:
 - Independent legal advice and
 - Signing of Deeds of Agreement as appropriate
 (**REFER: Legal advice for pending claimants, Part 6.10**)

Eligible Living Claimants (WSHB)

- Claims are deemed eligible once the Deed of Agreement, signed by the claimant, is returned to WSHB and verified correct by an Administration Officer.
- Initiate payments process. (**REFER: Payment of eligible claimants, Part 6.12**)

Eligible Deceased Claimants (WSHB)

- File the claims in the Records Compactus unless and until ready for immediate payment. (**Refer: Payment of eligible claimants, Part 6.12**)





6.10 Legal advice for pending claimants

- Eligible claimants who wish to accept the Reparations Payment are required to release the State of Queensland from further claims in accordance with a Deed of Agreement.
- The Deed requires each claimant to acknowledge and agree that he/she has received, prior to executing the Deed, independent legal advice.

6.10.1 Provision of Legal Advice

- Legal advice is to be provided by a legal practitioner on an individual basis to an eligible claimant, whether by personal interview and/or telephone and/or letter of advice.
- The provision of legal advice to each eligible claimant will ensure that he/she:
 - a) Understands her or his current rights
 - b) Understands the content and effect of the claim form, and in particular the Government Offer and Deed of Agreement
 - c) Is fully informed as to a) and b), having regard to all the relevant circumstances (including cultural and language requirements) of the Claimant
 - d) Where the Claimant decides to enter into the Deed of Agreement he or she completes and executes the Deed of Agreement correctly
- Claimants are to be offered at least 24 hours to consider the legal advice received before signing the Deed of Agreement. Claimants may choose to waive the waiting period or to extend it.
- In certain circumstances (urgent/emergent) it may be necessary to deliver legal advice by phone and to have the Deed of Agreement witnessed by a local Justice of the Peace or Government Official.
- The legal practitioner will provide the legal advice in a culturally appropriate and sensitive manner, without rush or pressure, giving due regard to the age of each claimant, and to any other relevant circumstances, and using language understood by each claimant.

Queensland Claimants - Legal Practitioners

- A list of qualified legal practitioners will be provided to eligible claimants to obtain independent legal advice at no cost to eligible Queensland claimants.

Role of Regional Offices (Claimants living in Queensland)

- Departmental Officers must at all times observe the protocols concerning the claimant's right to receive independent legal advice, and remain at an "arms length" from the legal process.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the



Supply of Legal Advice

Raise a purchase order for provision of legal advice as required

- The Arrangement is not an exclusive contract and OATSIP may, at its discretion, engage any of the legal practitioners recommended by the Law Society to provide legal advice to eligible claimants.

The legal practitioner will submit invoices to the WSHB

- Invoices must identify the title of the Services and be directed to the Department of Communities.

Pay legal practitioners, charging expenditure to Cost Centre

- The Cost Centre Manager is Manager, WSHB (only for professional fees and travel costs for legal practitioners relating to the IWSR process).
- Professional fees should be charged to Account Code:
- Travel costs should be charged to Account Code:
- Only costs directly relating to the provision of legal advice (excluding OATSIP staff costs) are to be charged to the department.

Settlement documentation to be completed and returned to WSHB Office (See also Deeds of Agreement Checklist)

- For each eligible claimant advised, the legal practitioner must:
 - Complete Legal Practitioner's Checklist
 - Complete Practitioner's Certificate
 - Witness the Deed of Agreement, where the Claimant decides to execute
 - Collect Payment Instructions
- The legal practitioner will deliver originals of all signed Deeds of Agreement and supporting documentation (as above) to the Regional Office within 5 working days of a community visit (or round of visits)
- Special arrangements may be made when claimants are in remote locations
 - If the 5 day deadline cannot be met, the legal practitioner will advise the WSHB in writing as soon as possible and within the 5 day response period.
 - The legal practitioner will advise the WSBH which claimants have either declined to sign or have asked for more time.



Procedures Manual

Protector of Aborigines for the

ght

Protector of Aborigines for the

It that £2; ;18; ;6

be paid to T



Non-Queensland claimants

Role of WSHB

- Information about eligible claimants will be provided to the relevant legal practitioners by the WSHB.
- WSHB will access the Database to:
 - Identify pending claimants
 - Generate eligible letter for each pending claimant
 - Generate Deed of Agreement together with Payment Instruction, Practitioners Checklist and Practitioners Certificate for each pending claimant
- Facilitate provision of legal advice in consultation with the legal practitioner, as follows:
- Engage solicitors as required, on a fee for service basis, where and when they are needed to provide independent legal advice to eligible claimants at no cost to those claimants.
- Where interstate claimants live just over the Qld/NSW or Qld/NT border, liaise with SQRO or WQRO respectively concerning the possible provision of legal advice by existing Panel members for WQRO and SQRO as appropriate. This could entail WSHB generating eligibility correspondence and Deeds of Agreement for those claimants and sending them to the relevant Regional Office.
- When interstate claimants contact WSHB, administration staff:
 - Ask claimant if they have a lawyer
 - If yes, obtain contact details
 - If no, ask claimant if they know of an Aboriginal and Torres Strait Islander Legal Service or a Legal Aid Office in their area and obtain contact details
 - Advise claimant that we will contact their lawyer or the Legal Service or some other law firm in their area and
 - Explain what the Reparations process and the Deed of Agreement is about
 - Send the lawyer the Deed of Agreement for the claimant
 - Ask the lawyer to contact the claimant directly about the legal advice once they have received the Deed



Procedures Manual

Protector of Aborigines for the

that £2; ; 18; ; 6

be paid to T



- Advise claimant further that:
 - the lawyer will explain the Deed of Agreement to them and ask whether or not they want to accept the offer of payment
 - if and when claimant signs the Deed, the lawyer will send it to WSHB
 - when we receive the signed Deed we will process their payment
 - this could take up to 4 weeks from the date the Deed is received in WSHB
- Check with the claimant that they understand and are comfortable with the proposed arrangement
- Record date of contact with claimant and outcomes of discussion (e.g. lawyer details) and attach to claim form &/or database
- Provide claimant file and lawyer information to Resource Officer.

Resource Officer

- Telephone and/or write to lawyer (refer template letter at *h:\programs\worksav\Indigenous Wages & Savings Reparations\Interstate Claimants*)
- Include the following information with letter:
 - Attachment (Qld Indigenous Wages & Savings Reparations Process – Provision of Independent Legal Advice)
 - Deed of Agreement, Checklist, Practitioners Certificate, Payment Instructions
 - IWSR Information Sheets (2)
 - Wages and Savings History Sheet
- Record on register/database of DOAs sent
- Monitor return of signed Deeds of Agreement and follow up outstanding Deeds each month
- Update and maintain a Register of Legal Practitioners for Interstate Claimants, to include name, address, phone number etc.
- Arrange payment of legal practitioners on receipt of invoices

Departmental officers must at all times observe the protocols concerning the claimant's right to receive independent legal advice, and remain at an "arms length" from the legal process.

Payment of legal providers

- Raise a purchase order for provision of legal advice.
- Pay legal practitioners on receipt of invoices in respect of services to claimants, charging expenditure **only for professional fees and travel costs for legal practitioners relating to the IWSR process.**



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



Settlement documentation to be completed and returned to WSHB

- For each eligible claimant advised, the legal practitioner must:
 - Complete Legal Practitioner's Checklist
 - Complete Practitioner's Certificate
 - Witness the Deed of Agreement, where the Claimant decides to execute
 - Collect Payment instructions
- The legal practitioner will deliver originals of all signed Deeds of Agreement and supporting documentation (as above) to WSHB within 5 working days.
- Special arrangements may be made when claimants are in remote locations.
- If the 5 day deadline cannot be met, the legal practitioner will advise the WSHB in writing as soon as possible and within the 5 day response period.
- The legal practitioner will advise the WSHB which claimants have either declined to sign or have asked for more time.

6.11 Deeds of Agreement – Receipt and processing

NB. Deeds of Agreement are original legal documents and must not be date stamped or marked in any other way.

WSHB

- Date stamp Deed of Agreement on the day they are received.
- For Deeds received from non-Queensland claimants, copy the front page and date stamp **COPY ONLY** on the day received.
- Check that the Deeds of Agreement have been completed correctly, signed, and witnessed.
- Check that the following completed and signed documentation is attached:
 - Practitioner's Checklist
 - Practitioner's Certificate
 - Payment Instructions
- If documents are incomplete or lacking refer back to the relevant Regional Office or, for non-Queensland residents, the relevant legal practitioner.
- Check that all details on the Deed of Agreement, particularly the signature, match those on the claim form and the Reparations Database.
- If any of the details are incorrect consult the relevant Regional Office to investigate, or in the case of claimants outside of Queensland, consult the relevant legal practitioner for clarification.
- When verified correct, receipt the Deeds of Agreement on the Database.
- Commence payments process.



Procedures Manual

Protector of Aborigines for the

that £2; ; 18; ; 6

be paid to T



6.12 Payment of eligible claimants (WSHB)

6.12.1 Living claimants

Processing payments

Administration Officer

- Collect claimant paperwork from filing area
- Update database
- Select claim/s to be processed from *DoA Return to W&SH* list
- Check and enter payment details (*Edit Payments* button)
- If details provided on EFT Application Form have not been verified by bank, phone the relevant bank.
- Give your name and the name of the Department, and request verification of the details submitted.
- Note the bank's advice (i.e. verified or invalid) on the EFT form, initial and date.
- If invalid, payment is to be made by cheque.
- Print Ministerial Apology and Payment Letter.
- Attach DOA Batch sheet to these letters.
- Print SIGN OFF sheet (*Print/Process* button) and sign
- Attach signed SIGN OFF sheet to claim form/s and pass to another administration officer to verify

Verifying officer

- Check data entry
- Select Region from drop-down list from Main Menu and click on *Payment Details Outstanding*
- Select claim/s to be processed (*Edit Payments* button)
- Check all payment details (name, address, salutation, BSB number, Account name and number,) against Claim form and EFT Form or verify that it is a cheque payment and, if correct, verify payment (*Payment Ready* box) and save
- Sign the SIGN OFF sheet near signature of officer who entered payment details
- Pass all documents to Resource Officer

Resource Officer

- check all payment details for accuracy and countersign SIGN OFF sheet
- check there are Apology and Payment letters for all claims in the batch
- pass all documents to Manager, WSHB for approval of payment



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



Manager

- Check DOA and accompanying documentation (details, certifications, signatures)
- If all is in order, execute Deed of Agreement
- Select claim/s to be approved from Approval of Payment list by selecting each claim individually and approve payment (*Print/Process* button)
- Sign the Approval of Payments SIGN OFF sheet and pass all documents to Senior Administration Officer

Senior Administration Officer

- Perform SAP Upload (select claims on Database *SAP Upload list* and *Print/Process* button) – can be performed once a day only
- Database will send email to Senior Administration Officer with upload details
- Forward SAP Upload email to Kevin Kelly, Financial Services Unit (FSU); cc to Resource Officer
- Make two photocopies of the Approval of Payments Sign Off sheet
 - Send original to Kevin Kelly, FSU and attach DO NOT POST cover sheet
 - File one copy on WSH/422 – Approval of payment
 - Attach one copy to Ministerial Apology and Payment letters
- Send Ministerial letters to Minister's Office for signature
- File Batch Cover sheets as follows:
 - DOAs received by Region – WSH/426
 - DOAs received by WSH – WSH/425
 - File SAP Upload print-out in WSH/423

Mailing Payments

Administration Officer

- Collect payments from Financial Services Unit
- Collect signed Apology and Payment Letters from Minister's Office
- Collate letters and payments (cheques or EFT remittance advices)
- Photocopy:
 - Executed Deed of Agreement (i.e. signed by Manager and witnessed by Administration Officer)
 - Cheque or remittance advice
- Mail to claimant:
 - Ministerial Apology
 - Ministerial payment letter
 - Copy of Deed of Agreement
 - Centrelink Advice
 - Cheque or EFT remittance advice



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6
be paid to T



- Give copies of cheques and remittance advice to Resource Officer for SAP Acquittal (see below)
- Once Resource Officer has acquitted payments:
 - File original Deeds of Agreement open-faced in clear A4 protection sheets with copy of payment inserted in the middle
 - Print Claim View from the Database for each paid claim, attach to claimant paperwork and file.

SAP Payment Acquittal

Resource Officer

- Acquit payments on Database on receiving Remittance Advice from Finance Branch (*SAP Payment Acquittal* and *Print/Process* button)
- Select claims individually to open payment acquittal screen.
- Update with Payment reference number from copies of cheque/remittance advice and save.
- Return to SAP Payment Acquittal table.
- Print, sign and date SIGN OFF sheet and file in WSH/424.
- Return copies of cheque/remittance advice to Senior Administration Officer

Deceased claimants

Succession Act

- Payment of deceased claims is made in accordance with the Queensland Succession Act 1981 and advice from the Public Trustee.
- There is no requirement for a Deed of Agreement in respect of a deceased eligible claimant.
- The first charge upon a deceased estate is the funeral expenses.
- In determining who/how to pay an eligible deceased claim, the Assessor and/or Administration Officer must ascertain:
 - Whether there is a funeral debt (i.e. funeral costs still to be paid); or
 - If the funeral costs have been paid, whether or not the person who paid seeks reimbursement; or
 - If there is no funeral debt/reimbursement to be paid, whether or not there is a will.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the

that £2; ;18; ;6
be paid to T



Payment / reimbursement of funeral costs

To pay an outstanding funeral debt

- WSHB requires an invoice from the Funeral Company made out to the Department on behalf of a member of the deceased claimant's family for funeral costs (up to the maximum IWSR payment of \$4,000 or \$2,000 whichever is relevant)
- If authorised by the deceased claimant's family, the Senior Administration Officer will liaise directly with the Funeral Company

To reimburse someone for the payment of funeral costs

- WSHB requires a copy of the receipt from the Funeral Company or payee, for funeral costs in the name of the claimant, made out in the name of the person who is seeking reimbursement

Where no funeral debt/reimbursement to be paid or an unspent balance remains

- If the deceased left a will, the payment/balance is sent to the executor to administer as part of the estate.
- If the deceased died intestate:
 - The assessor undertakes genealogical research to enable the Public Trustee to determine the rightful beneficiaries.
 - The payment/balance is sent to the Public Trustee together with the genealogical information to administer as part of the estate or **(subject to advice from the Public Trustee) to the surviving spouse.**

Making Manual Payments

- Eligible deceased claims are paid by manual payment (as payment is made to someone other than the claimant)
- **NB. Deceased claims may have multiple payees** (e.g. where more than one person has contributed to the funeral and received a receipt from the Funeral Company).
- **NB. Some claims may remain as FACT on the IWSR Database** i.e. further action is required because there is a balance still unpaid once funeral costs have been reimbursed or paid.



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the



To pay an outstanding funeral debt:

Administration Officer

- Obtain correct Tax Invoice from Funeral Company which must be:
 - addressed to Department of Aboriginal and Torres Strait Islander Policy (not DATSIP), PO Box 397, Brisbane Albert Street, Qld 4002;
 - made out on behalf of the member of deceased claimants family with whom the Department and the Funeral Company are dealing;
 - for the total amount (\$4,000 or \$2,000) to which the claimant is entitled or a lesser amount (NB. The invoiced amount cannot exceed the reparations entitlement)
- Obtain Funeral Company's payment details including ABN and address; and set up as vendor using FORM FIN 23.
- Update IWSR Database under Payment Details Outstanding:
 - Manual payment
 - Funeral company details
- Print off and attach signed cover sheet
- Pass all documents to another administration officer to verify

Verifying Officer

- check accuracy of payment details and save as 'Ready'.
- Sign cover sheet
- Pass all documents to Resource Officer

Resource Officer

- check data entry for accuracy of payment details.
- initial as correct and
- pass all documents to Manager, WSHB for approval of payment

Manager

- Check invoice and other documentation
- Approve payment on IWSR database
- Sign the SIGN OFF sheet and pass all documents to Senior Administration Officer

Senior Administration Officer

- Perform "dummy" upload of manual payment (Database will generate email to AO4, but because this is a manual payment email cannot be sent to FSU)
- Documents referred to originating administration officer.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



Administration Officer

- Raise FORM FIN 10 voucher to enable manual payment (as per the Tax Invoice)
- Refer to Resource Officer to check
- Make two photocopies of completed and signed FORM FIN 10
- Send original under cover of a DO NOT POST sheet to Cliff Bauer at FSU for processing
- Prepare funeral expenses payment letter addressed to relevant family member (*See: worksav/Indigenous Wages and Savings Reparations/deceased estates/funeral expenses letter*) and refer to Manager for signature
- Copy signed letter
- Collect cheque or EFT payment advice from FSU and photocopy
- Mail letter and photocopies of tax invoice and cheque/remittance advice sent to Funeral Company to relevant family member
- File one copy of FORM FIN 10 on WSH/419 and other copy with claimant paperwork
- If payment is to be made by cheque, mail to funeral company.

Resource Officer

- Check and if okay refer to Manager, WSHB for signature as delegate

To reimburse someone for the payment of funeral costs

Administration Officer

- Obtain a copy of the receipt either from the Funeral Company or payee
 - for funeral costs in the name of the claimant,
 - made out in the name of the person/s seeking reimbursement
- Establish person/s in whose name the receipt is made out as vendor/s using FORM FIN 23.
- Update IWSR Database under Payment Details Outstanding
 - Manual payment (note that reimbursement must be for \$4,000 or \$2,000 depending on entitlement or a lesser amount. It cannot exceed the claimant's entitlement)
 - Payee details
- Print off and attach signed cover sheet
- Pass all documents to another administration officer to verify

Verifying Officer

- check accuracy of payment details and save as 'Ready'.
- Sign cover sheet
- Pass all documents to Resource Officer

Resource Officer

- check data entry for accuracy of payment details,
- initial as correct and
- pass all documents to Manager, WSHB for approval of payment



Procedures Manual



Manager

- Check receipt and other documentation
- Approve payment on IWSR database
- Sign the SIGN OFF sheet and pass all documents to Senior Administration Officer

Senior Administration Officer

- Perform "dummy" upload of manual payment (Database will generate email to AO4, but because this is a manual payment email cannot be sent to FSU)
- Documents referred to originating administration officer.

Administration Officer

- Raise FORM FIN 10 voucher to enable manual payment (as per the receipt)
- Refer to Resource Officer to check
- Make two photocopies of completed FORM FIN 10
- Send original under cover of a DO NOT POST sheet to Cliff Bauer at FSU for processing
- Prepare funeral reimbursement payment letter addressed to relevant person (*See: worksav/Indigenous Wages and Savings Reparations/ deceased estates/reimbursement letter*) and refer to Manager for signature
- Copy signed letter
- Collect cheque or remittance advice from FSU and photocopy
- Mail letter and remittance advice/cheque to person being reimbursed.
- File one copy of FORM FIN 10 on WSH/419 and other copy with claimant paperwork

Resource Officer

- Check and if okay refer to Manager, WSHB for signature as delegate

Administration Officer

- Make two photocopies of completed FORM FIN 10
- Send original under cover of a DO NOT POST sheet to Cliff Bauer at FSU for processing
- Prepare funeral reimbursement payment letter addressed to relevant person (*See: worksav/Indigenous Wages and Savings Reparations/ deceased estates/reimbursement letter*) and refer to Manager for signature
- Copy signed letter
- Collect cheque or remittance advice from FSU and photocopy
- Mail letter and remittance advice/cheque to person being reimbursed.
- File one copy of FORM FIN 10 on WSH/419 and other copy with claimant paperwork



Procedures Manual

Protector of Aborigines for the

be paid to T



6.12.3 Payment Acquittal

Resource Officer

- Acquit payments on Database on receiving Remittance Advice from Finance Branch (*SAP Payment Acquittal* and *Print/Process* button)
- Select claims individually to open payment acquittal screen.
- Update with Payment reference number from copies of cheque/remittance advice and save.
- Return to SAP Payment Acquittal table.
- Print, sign and date SIGN OFF sheet and file in WSH/424.
- Return copies of cheque/remittance advice to Senior Administration Officer

Rejected EFT Payments

- FSU will advise Senior Administration Officer by email when an EFT payment is rejected.

Senior Administration Officer

- Forward FSU email to Beth Mason (Vendor Clerk, IWSR), cc to Kevin Kelly and Michael Carmody FSU, requesting that:
 - Vendor number be changed from EFT to CHQ
 - Kevin Kelly and Michael Carmody be advised when the vendor is changed
- Cheques are clearly marked **NOT TO BE POSTED**
- WSHB be advised by phone when cheques are ready
- Update IWSR Database Comments field with advice from FSU: "EFT rejected; CHQ payment to be organised; date of update"
- Mark EFT remittance advice "REJECTED" and date
- Collect cheque and photocopy
- Prepare EFT rejection letter for each claimant for Manager's signature (see: *h:/programs/worksav/Indigenous Wages & Savings Reparations / Finance Forms / EFT rejection letter.doc*) and photocopy signed letter
- Mail cheque and EFT rejection letter to claimant
- Update IWSR Database Comments field with CHQ number, payment reference number, date cheque posted
- Acquit cheque payment on database
- File copy of all EFT rejection emails and correspondence on "EFT Rejections" file folder held on Senior Administration Officer's desk
- File copy of all EFT rejection email and correspondence, letter to claimant, and cheque with claim form
- Print Claim View from the Database for each paid claim, attach to claimant paperwork and file
- File copy of rejected EFT remittance advice and cheque in Deed of Agreement file



Procedures Manual

Protector of Aborigines for the

Protector of Aborigines for the

that £2; ; I8; ; 6 *
be paid to T



Part 7 Medically unfit person (MUP) claimants

7.1 Overview

- Medically unfit Claimants are those claimants who, because of physical, medical or mental incapacity, cannot:
 - Complete and/or sign a Claim Form;
 - Understand legal advice;
 - Legally sign a Deed of Agreement.
- MUP Claimants generally have someone who cares for them (a Carer) who may or may not also have Enduring Power of Attorney or Guardianship for them. These persons may lodge a claim on behalf of the MUP Claimant.
- Where a person has documented proof of Power of Attorney or Guardianship on behalf of a Claimant, the Database will show that Claimant as MUPP. For MUPP Claimants:
 - All correspondence will be sent to the Guardian or person with Power of Attorney
 - Where a MUPP Claimant is assessed as eligible, before a payment can be made the Guardian or person with Power of Attorney must sign a Deed of Agreement on their behalf, after receiving legal advice about what acceptance of the offer means.
- Where a person has documented evidence (refer below) that they are the Carer of a Claimant, but has no legal authority to sign a Deed of Agreement on their behalf, the Database will show that Claimant as MUPC. For MUPC Claimants:
 - All correspondence will be sent to the Carer
 - Where a MUPC Claimant is assessed as eligible, before a payment can be made the Carer must sign an Acknowledgement of Payment form, have it witnessed and return it to the Department.
 - If the Carer would like to receive independent legal advice about what the Acknowledgement Form means before signing it, they can contact the relevant Regional Office. The Regional Office will then arrange free, independent legal advice for the Carer in the same way as for other Claimants.

7.2 Processing of MUP claims

Regional Office (Queensland claims)

- Enter claims as MUP and forward to WSHB.



Procedures Manual



Work and Savings Histories Branch

- Administration staff to enter new (non-Queensland) claims as MUP.
- Assessors to determine whether claim is MUPP or MUPC and note Assessment Form accordingly.
 - If documentary evidence is not attached to the claim form, the assessor will follow up with the contact person to obtain the necessary documentation.
- Administration staff to update the Claimant's Database file to MUPP or MUPC.

REGIONS PLEASE NOTE:

- **If a lawyer advises that an eligible claimant does not have the capacity to legally sign a Deed of Agreement, please:**
 1. Advise WSHB immediately; and, if possible,
 2. ascertain whether anyone has either:
 - Guardianship or Power of Attorney and, if so, obtain the documentary evidence and forward to WSHB; or
 - Carer status and, if so, obtain the documentary evidence and forward to WSHB.
- Once appropriate documents are received by WSHB and the Database updated, the relevant Deed of Agreement (MUPP) or Acknowledgement of Payment form (MUPC) can be generated and actioned

Documentary evidence of carer/agency status for MUPC claimants

- The circumstances of MUPC claimants vary from case to case.
- Depending on those circumstances, acceptable documentary evidence identifying the carer may be one or other of the following:
 - Centrelink notice – identifying person as acknowledged carer of MUPC claimant
 - Centrelink notice – advice of payment of Carer pension in relation to MUPC claimant
 - Statement from Manager of an Aged Care Hostel or Nursing Home (on letterhead) where MUPC claimant is a resident – identifying manager or other person as appropriate agent
 - Statement from Aboriginal or Island Council (on letterhead) – identifying Manager of an Aged Care Hostel or Nursing Home where MUPC claimant is a resident, as appropriate agent
 - Statement/Statutory Declaration from child or spouse of MUPC Claimant – identifying another person as appropriate agent/carers
 - Statutory Declaration from child/spouse – nominating self as appropriate agent/carers (there is a presumption that children act in the interest of their parents)
- Where none of the above apply, Manager WSHB to determine (or refer to Director-General of Communities to determine) what other documentary evidence is acceptable.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



MUPP claims

Work and Savings Histories Branch

- For MUPP Claimants with a Pending status, WSHB will:
 - generate an eligibility letter and EFT form and mail to the Guardian or Person with Power of Attorney;
 - arrange the provision of independent legal advice;
 - receive signed Deeds of Agreement from the legal practitioner.

Pending MUPC claims

Work and Savings Histories Branch

- Manager will refer each MUPC claim assessed as eligible to the Director-General to endorse MUPC status.
- If and when approved by Director-General of the Department of Communities, Manager will approve assessment result.
- Generate an eligibility letter, EFT form, Acknowledgement of Payment Form and Payment Instructions and mail them to the Carer, and
- **If requested by the Carer**, arrange the provision of independent legal advice (note that provision of legal advice is not a requirement but is optional); and
- Receive signed Acknowledgement of Payment forms.

7.3 Payment of MUP claims

7.3.1 MUPP claims

- The payment is made either by:
 - EFT to an account in the name of the Claimant; or
 - Cheque in the name of the Claimant.

7.3.2 MUPC claims

- Payment will be made in one of the following ways (NB: the eligibility letter and Acknowledgement of Payment specify that the payment is to be used only on behalf of, and in the best interests of, the claimant):
 - a) Where the claimant has a bank account in their name, or in the name of the carer "In Trust For" the claimant, the payment is made by EFT to that account.
 - b) Where the claimant does not have a bank account and Centrelink pays their pension directly to the carer, the payment is made by cheque to the claimant.
 - c) Where the claimant does not have a bank account and the claimant's carer is not the recipient of Centrelink payments on their behalf, to be referred to the Manager WSHB to determine how payment will be made.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6 *
be paid to T



Part 8 Claimants resident in Papua New Guinea

8.1 IWSR Process Plan for PNG Claimants

Communication/contact

- To be through the border liaison officer of PNG

Lodging claims

- OATSIP will accept all claim forms via the border liaison officer who will contact all the Treaty Villages to give information and to complete and collect forms

'Eligible' advice

- Will be given through the border liaison contact.

Legal advice and Indemnity

- A solicitor will accompany the OATSIP team on its visits to the villages to sign Deed of Agreements. Legal services will be consulted about the legal issues around a Deed of Agreement in Australian Law being signed in PNG.

Payments - bank accounts

- Eligible claimants will be advised to open bank accounts in PNG and payments will be transferred to those accounts.

Deceased claimants

- Settlements same as being proposed for Australian claimants.

Part 9 Recovery of overpayments

WSHB

- Immediately a WSHB Officer becomes aware that an overpayment or double payment has been made, advise the Senior Administration Officer

Senior Administration Officer

- Advise the Manager, WSHB of the overpayment providing all relevant paperwork including the file, the vendor report and financial report information
- Contact the Senior Finance Officer, Receivables and Banking Section, Financial Services Unit, Corporate Services Centre to advise and request a stop payment if possible
- If the payment has already been made, **IMMEDIATELY raise a FORM FIN 54 (Request for Tax Invoice or Adjustment Note)** and forward to the Senior Finance Officer, Receivables and Banking Section, Financial Services Unit, Corporate Services Centre.



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6

be paid to T



- Draft a letter to the claimant for signature by the Assistant Director General which:
 - Gives details of the date the payment was made, the cheque number or EFT details, the value of the payment and in the case of an EFT payment, details of the bank account to which it was transferred.
 - Includes a copy of the Tax Invoice
 - Advises that the cheque/EFT amount in full must be returned to the Manager, Work and Savings Histories Branch within 14 days of the date of this letter.
 - Advises that any enquiries may be made to the WSHB Freecall number.
- If claimant wants to make alternative arrangements for repayment, discuss options first with the Senior Finance Officer, Receivables and Banking Section, Financial Services Unit, Corporate Services Centre before reaching agreement with the claimant.
- When all or part of the overpayment is returned, Senior Administration Officer notes repayment on the database and immediately forwards repayment to the Senior Finance Officer, Receivables and Banking Section, Financial Services Unit, Corporate Services. **[Note that if the Departmental cheque is returned this is to be returned to CSC for cancellation – not payment into the Department's account].**
- If there is no satisfactory response from the claimant within designated timeframes, discuss options for further action with the Senior Finance Officer, Receivables and Banking Section, Financial Services Unit, Corporate Services Centre.
- **Refer to the Financial Procedures Manual Book 1 section**
- **1.7.4 - Accounts Receivable - Overdue Accounts for the follow up procedure to recover outstanding funds that are not paid in line with the terms of payment.**



Procedures Manual

Protector of Aborigines for the

that £2; ;18; ;6
be paid to T



Part 10 Monitoring and reporting

- **WSHB** will monitor the progress of the IWSR Process and provide monthly reports to the Minister, Director-General, Assistant Director-General, Executive Director and Regional Directors, including as a minimum:
 - Number of claims
 - Received
 - assessed
 - paid
 - Number of claims assessed as:
 - eligible to be paid
 - pending
 - ineligible
 - Number and status of claims categorised by:
 - Priority group
 - Former DATSIP Region
- Other reports and analysis will be provided as and when required.

Part 11 Forms and documents

Claimant forms

- Claim Form
- Claim Form Instruction Sheet
- Deceased Claimants Supplementary Claim Form *
- Additional information form *
- Change of Address Form *
- EFT application form *

Letters

Acknowledging receipt of claim

- Living Claimant ~
- Deceased/Medically Unfit Claimant ~

Advising assessed as ineligible

- Living claimant - DOB after 31 December 1956 ~
- Living claimant - No records found establishing eligibility ~
- Deceased or medically unfit claimants - DOB after 31 December 1956 ~
- Deceased or medically unfit claimants - DOD before 9 May 2002 ~
- Deceased or medically unfit claimants - No records found establishing eligibility ~



Procedures Manual



Advising assessed as ineligible after reassessment

- Living claimants - No records found establishing eligibility ~
- Deceased or medically unfit claimants - No records found establishing eligibility ~

Advising assessed as eligible, pending signing Deed of Agreement

- Living claimants ~
- Deceased claimants ~
- Medically unfit claimants (MUPP) – Guardian or Power of Attorney ~

Advising assessed as eligible, pending signing Acknowledgement of Payment

- Medically unfit claimants (MUPC) – where there is no Guardian and/or no-one with a Power of Attorney, but someone has documented Carer status ~

Payment Letters

- Living claimants - Ministerial Payment advice ~
- Living claimants - Ministerial Apology ~
- Living claimants - Centrelink advice ~
- Medically unfit claimants - Ministerial Payment advice ~
- Medically unfit claimants - Centrelink advice ~
- Deceased claimants - DATSIP Payment letter ~

Legal advice and Deed of Agreement

- Deed of Agreement ~
- Deed of Agreement (medically unfit - MUPP) ~
- Payment Instruction Form ~
- Practitioner's Certificate ~
- Legal Practitioner's Checklist ~

Acknowledgement of payment (MUPC claimants)

- Acknowledgement of Payment form ~
- Payment Instruction Form ~

Administration forms

- New Claims Checklist ^
- Assessment Form ~
- Deeds of Agreement Checklist ^

Information materials

- Information Sheets #
- Q&A #
- Power Point Presentations
- Answering Client Queries ^



Procedures Manual

Indigenous Wages and Savings Reparations Process - Round Two Payments



Indigenous Wages and Savings Reparations Process - Round Two Payments

PROCEDURES MANUAL

ADDENDUM

July 2008

**Office for Aboriginal and Torres Strait Islander
Partnerships**

Department of Communities



Procedures Manual



TABLE OF CONTENTS

1. Introduction.....	3
2. Key Dates	3
3. Development of the Indigenous Wages and Savings Reparations (IWSR) process.....	4
4. Definitions/glossary of terms	5
5. IWSR 2 Processing overview.....	10
6. IWSR process – Roles of regional offices and IWSR team	11
7. Change of Status	12
8. Deceased Estates	12
9. When to do a file note?	15
10. Request for priority payment.....	15
11. A guide to how to respond to phone calls	16
12. IWSR Round two – frequently asked questions	18



Procedures Manual



1. Introduction

The addendum to the Procedures Manual has been designed to assist the administration of payments of the Indigenous Wages and Savings Reparations (IWSR) process round two.

The Queensland Government introduced the IWSR Process in November 2002. This was not related to the issue of *underpayment* of wages. The process offered limited payments to people whose wages and savings were controlled under Queensland 'Protection Acts'. People alive on 9 May 2002 who were born before 1952 were eligible for payment of \$4,000 and people born between 1952 and 1958 were eligible for \$2,000 during the first round of IWSR.

The second round payment is provided to all eligible claimants from the first round of IWSR, and is \$3,000 and \$1,500 respectively.

The addendum also includes a brief background outlining activities by Queensland Government which lead to the payment of the IWSR. Definitions have also been included to assist in the understanding of the administrative procedures.

Please note: All staff are encouraged to seek advice from their respective supervisor at any time for clarification of administrative procedures.

<http://www.atslp.qld.gov.au/programs/iwsrs/round-two-payments.html>

2. Background Information and key dates

1964-1965 legislation provided for complete protection of persons within its scope including the control of their working lives, earnings and property.

1965-1971 assisted persons, primarily those residents upon reserves, continued to be subject to Departmental management.

1897 Protection Act Queensland government could declare any Aboriginal a ward of state & control every aspect of their lives.

1904 all employment, wages and savings were controlled by government under compulsory labour contracts.

1910 government took levies from wages of people living on reserves

1919 government began to take deductions from earnings from relief/settlement maintenance.

1933-1966 individual Savings Bank accounts were controlled by the Department.

1939 The Act of 1939 provided for a Welfare Fund.

1943 government set up Aboriginal Welfare Fund to receive wages levies & profits from reserve enterprises, to be used to develop enterprises on reserves.

1965 The Act of 1965 abolished the system of compulsory deductions for welfare and other purposes and continued the system of management of wages and property only for those persons who were 'assisted'.



Procedures Manual

Indigenous Wages and Savings Reparations Initiative



2002 May 9: the Government Negotiation Team comprising the Premier and Minister for Trade, the Deputy Premier, Treasurer and Minister for Sport, and the Minister for Aboriginal and Torres Strait Islander Policy, met with representatives of QAILSS and of the Aboriginal and Torres Strait Islander Advisory Board.

- A Government offer was tabled at this meeting and QAILSS were asked to consult with the community on the offer and return with proposals by 9 August.

As the outcomes of this process supported the offer proceeding.

2002 November: the Government announced that the offer was to proceed

- In making the reparation offer the Government recognized that any compensation process based on research of Government records would be extremely time and resource intensive, possibly unsuccessful and probably inconclusive for the majority of claimants.
- The offer was capped at \$55.4M, with individual payments of either \$4000 or \$2000, plus a range of other reparation initiatives.
- The differing amounts reflect the assumption that:
 - people born before 31 December 1951 were subject to the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* and/or the *Aboriginals Preservation and 'Protection Act' 1939* and their wages/savings were subject to intensive controls; and
 - those born between 1952 and 1956 were more likely to have worked and had their savings controlled under the *Aborigines and Torres Strait Islanders Affairs Act 1985*. This Act removed some of the controls, such as compulsory contributions to the Aborigines Welfare Fund, included in the earlier legislation.

2002: the Department began the process of scanning and indexing many thousands of documents including personal files, savings bank ledger cards, child endowment payment cards, and community wages records. This facilitated the research and assessment process for the Indigenous Wages and Savings Reparations initiative.

2003 February: Commencement of the first round of IWSR process.

2006 January 31st: No further acceptances of new IWSR applications after this date

2006 December: Finalisation of the first round of IWSR payments by the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP)

2008 May: Recommencement of the second round of reparation payments.

4. Definitions/Glossary of terms

Adult Guardian - A statutory officer who can act as an adult's decision maker in personal health care, lifestyle and some legal matters under an order by the GAAT consent to health care issues and investigate allegations of neglect, abuse or exploitation against an adult.

Affidavit evidence- An affidavit is a written statement prepared by a party or witness. It is the main way you present evidence (facts of the case) to a court. Any affidavit you file in court to support a case must be served on all parties.



Procedures Manual



Assisted persons- Aboriginal people who had their property managed by the local protector, who used their wages to pay debts or do what was best for the family.

Beneficiary- a broad definition for any person or entity (like a charity) who is to receive assets or profits from an estate, a trust, an insurance policy or any instrument in which there is distribution. There is also an "incidental beneficiary" or a "third party beneficiary" who gets a benefit although not specifically named, such as someone who will make a profit if a piece of property is distributed to another.

Capacity - An adult is deemed to have capacity if they are capable of understanding the nature and effect of the decisions they are making and can freely and voluntarily make those decisions and can communicate those decisions in some way

Certified Copy- A certified copy is a copy of an original document that has been certified as a true and correct copy by a person who is authorised to witness a statutory declaration. Persons who are authorised to witness statutory declarations (under the Commonwealth Statutory Declarations Act 1959) include:

- Accountant (Chartered or Certified)
- Clerk of a Court
- Commissioner for Affidavits
- Commissioner for Declarations
- Dentist
- Justice of the Peace
- Legal Practitioner
- Magistrate
- Medical Practitioners
- Nurse
- Pharmacists
- Police Officer
- Post Office Manager
- Sheriff or Sheriff's Officer
- Teacher
- Veterinary Surgeon



Procedures Manual



Statutory declaration (a) - is a written statement declared to be true in the presence of an authorised witness. A person wishing to use a statutory declaration in connection with a law of the Commonwealth, the Australian Capital Territory or certain other Territories must make the declaration in accordance with the *Statutory Declarations Act 1959* (the Act) and the *Statutory Declarations Regulations 1993* (the Regulations).

Under the Act a person who wilfully makes a false statement in a statutory declaration is guilty of an offence and may be fined or jailed, or both

'Stolen Wages' - Australian state legislation from the late 1800s established government control of the lives of many Indigenous Australians, including control of financial earnings and entitlements. Often, Indigenous Australians only received a portion of their wages or entitlements with the remainder being paid into various trust funds. This practice is referred to as 'stolen wages'. The Queensland, New South Wales and Western Australian state governments are now taking various actions in this area, while Indigenous Australians in other states are considering their position.

Underpayment of Award Wages Process (UAW) - The Queensland Government introduced the payment towards UAW in May 1998. This process made a single payment of \$7,000 available to Indigenous people employed by the government on Aboriginal reserves between 1975 and 1988 which was when the Queensland government's policy of paying below-award rates to Indigenous people formally ended.

5,729 claims were paid under the UAW process, totaling approximately \$40 million.

Paid Carer - is someone who receives remuneration for caring for an adult from any source other than a carer payment or benefit received from the Commonwealth or a State

Personal matter - for an adult, is a matter relating to the adult's care including the adult's health care or welfare. It does not include a special personal matter or special health matter

Power of Attorney - There are two types of power of attorney:

- general power of attorney
- enduring power of attorney

A general power of attorney is given to someone to make financial decisions on your behalf when you are absent, for example, if you are overseas and need someone else to sell your house or pay your bills

An enduring power of attorney is put in place in the event something happens to you - usually illness or accident - that you will be unable to make your own decisions.

Public Advocate - The Public Advocate's role is to identify widespread situations of abuse, exploitation or neglect of people with impaired capacity due to shortcomings in the systems or facilities of a service provider and then reports these findings to State Parliament.



Procedures Manual

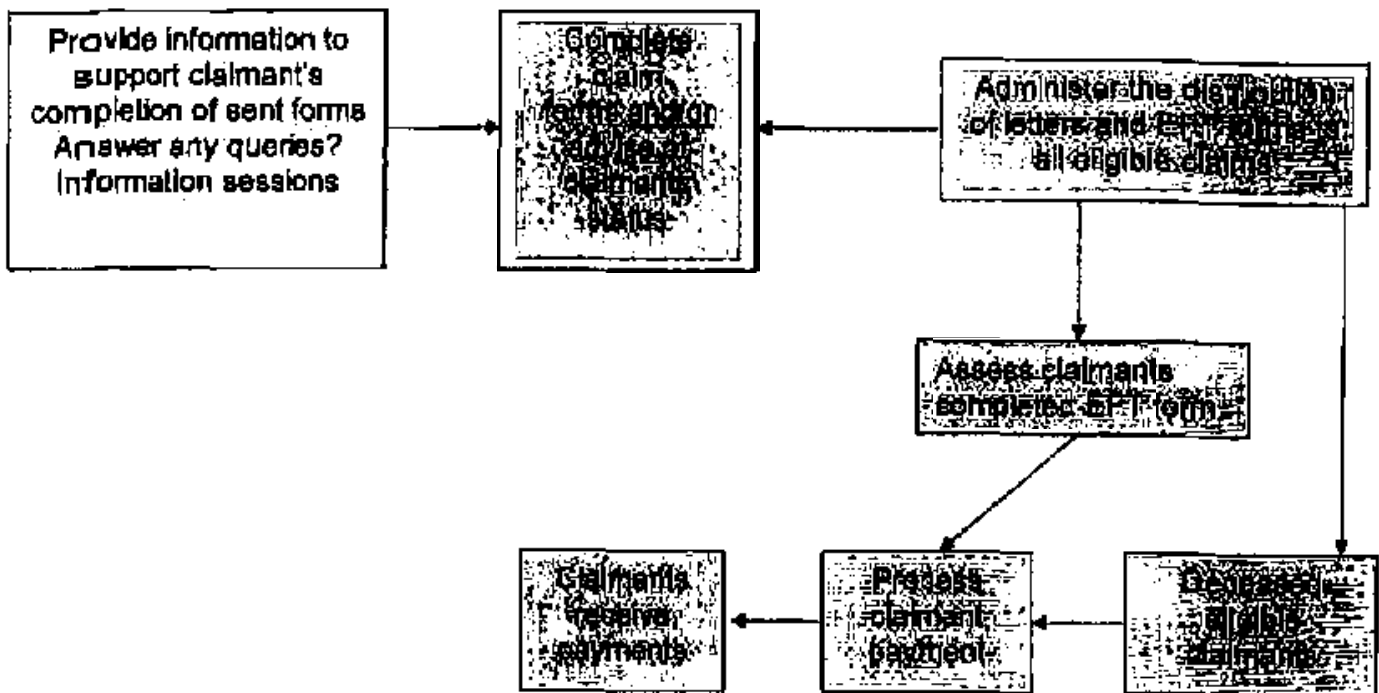


6. IWSR PROCESS – Role of regional office & IWSR team

REGIONAL OFFICES

CLAIMANTS

IWSR TEAM



Procedures Manual



7. Change of Status

Claimants may have changed their status since the first round of IWSR payments, and supporting information will be sought to verify their change of status.

In most instances, the change of status will be related to a claimant's death, or their 'capacity' may have changed either physically and/or mentally rendering them to be declared as a 'medically unfit person' (MUP) (Database definition only). Another potential change of status will be that of an Identified 'carer' for claimants who were previously identified as MUP's. In all instances, verification will be sought.

8. Deceased Estates

Did the claimant have a Last Will and Testament?

If Yes, to progress the estate the departments requires:

- A certified copy of the claimant's Last Will and Testament.
- A copy of the claimants Death Certificate OR a copy of claimants death certificate, death information form, funeral notice, eulogy, written confirmation from the Registry of Births, Deaths and Marriages
- Contact details of the Executor/s of the estate
- Bank details of the executor/s or the estate

If No, the claimant died intestate. Using the Succession Act as a guide the department requires:

- A Statutory Declaration completed by a family member, stating that the claimant did not leave a Will. Then:

Establish if there are any outstanding funeral expenses to be paid.

If yes, a tax invoice made out in the name of Department of Communities with the outstanding amount is required for payment to be made direct to the Funeral Company.

If No, a paid receipt or a Statutory Declaration stating that there are no outstanding funeral expenses is required.

If estate money left over:

Establish if any person/s and /or organisation is seeking reimbursement of funeral expenses already paid.

If yes, the person / organisation needs to produce a paid receipt for funeral expenses (includes: paid account from funeral company and tombstone - excludes: tombstone opening celebrations, airfares for family, clothing for family etc)

If No, Statutory Declaration stating that no one is seeking reimbursement, or that the person / organisation is waiving their right for reimbursement is required.



Procedures Manual

Procedures Manual
 Unit 159; 159.6
 159.6.1



If the funeral expenses have been paid and there is no reimbursement:
 Establish if the family is wanting the estate money towards a headstone /
 tombstone for the claimant's grave site.

If yes, the family is required to place an order with a headstone company and the
 department is to be billed directly.

If there is any estate money left over after the above steps:
 Identify who the living beneficiary/ies are.

If there is a living spouse:

Evidence required:

- either a copy of claimants death certificate, death information form, funeral notice, eulogy, written confirmation from the Registry of Births, Deaths and Marriages.
- either a copy of the Marriage Certificate, written confirmation from the Registry of Births, Deaths and Marriages, departmental record or a Statutory Declaration stating details about defacto relationship.
- If divorced, need copy of divorce papers
- If applicable, a current marriage certificate
- If applicable, a Statutory Declaration regarding defacto relationship at the time of death.

* Note:

- if separated from legal wife and never divorced, the legal wife is still considered the legal beneficiary.
- if separated from legal wife and has a defacto, will need to seek advice.

If there is no living spouse, but there are living children:

Evidence required:

- either a copy of claimants death certificate, death information form, funeral notice, eulogy, written confirmation from the Registry of Births, Deaths and Marriages.
- If married either a copy of the Marriage Certificate, written confirmation from the Registry of Births, Deaths and Marriages, departmental record or a Statutory Declaration stating details about defacto relationship.
- Either a copy of children's birth certificates (this may be the youngest or all of the children) or written confirmation from the Registry of Births, Deaths and Marriages.
- If any children are deceased, need death certificate or written confirmation from the Registry of Births Deaths and Marriages.

* Note:

- the State of Queensland does not recognise Traditional adoptions.
- the listing of children on death certificates is only as accurate as the advice provided by the informant, so the birth certificates for the children may be required.



Procedures Manual



If there is no living spouse, no living children, but there are living parents:

Evidence required:

- either a copy of claimant's death certificate, death information form, funeral notice, eulogy, written confirmation from the Registry of Births, Deaths and Marriages.
- If claimant's spouse is deceased, written confirmation of the death from the Registry of Births, Deaths and Marriages, departmental record or a death certificate
- If claimant was divorced from their spouse, a copy of divorce papers are required or verbal confirmation from the Family Law Court can be obtained by WSR Officers.
- If there are no children of the claimant, we require a Statutory Declaration stating that.
- If any deceased children of the claimant, need death certificate or written confirmation from the Registry of Births Deaths and Marriages.
- To confirm the living parents of the claimant, a copy of the claimant's birth certificate or written confirmation from the Registry of Births, Deaths and Marriages is required.

If there is no living spouse, no living children, no living parents, but there are living siblings:

Evidence required:

- either a copy of claimant's death certificate, death information form, funeral notice, eulogy, written confirmation from the Registry of Births, Deaths and Marriages.
- If claimant's spouse is deceased, written confirmation of the death from the Registry of Births, Deaths and Marriages, departmental record or a death certificate
- If claimant was divorced from their spouse, a copy of divorce papers are required or verbal confirmation from the Family Law Court can be obtained by WSR Officers.
- If there are no children of the claimant, we require a Statutory Declaration stating that.
- If any deceased children of the claimant, need death certificate or written confirmation from the Registry of Births Deaths and Marriages.
- If claimant's parents are deceased, a copy of the parents' death certificates, written confirmation from the Registry of Births, Deaths and Marriages or departmental records (to help confirm siblings).
- To confirm claimant's siblings, their birth certificates, written confirmation from the Registry of Births, Deaths and Marriages or departmental records
- Death certificates or written confirmation from the Registry of Births, Deaths and Marriages or departmental records of any of the claimant's siblings who have passed away.



Procedures Manual

Procedures of A.I.S.P. claimants

Chapter 9: 2011-2012

Page 15 of 15



If there is no living spouse, no living children, no living parents and no living siblings:

A case is to be put up to the manager of any living relatives found.

9. When to do a file note

The Indigenous Wages and Savings Reparations database has capacity to add comments to each individual claim.

Officers can add small comments that add value to or are important to the individual claim. For example:

- The claimant gives his/her permission for IWSR staff to speak to (person's name) about their claim.
- (Name) daughter of claimant advised that her father passed away on dd/mm/yy. (Name) confirmed that she is the executor of his estate and that she will post or Fax a certified copy of his Will.
- Documents (name type) received on (date), still waiting on (documents)

A file note is required when a comment / issue cannot be summed up in a few sentences or the issue is contentious, confidential and/or sensitive and should not be logged into the database. For example:

- Beneficiary research issues, containing sensitive family information.
- Personal information around a claimant's medical condition or mental capacity.
- Background information regarding a claimant – change of status from the first round payment.
- Cultural issues – Traditional adoptions or other family issues
- A phone conversation that is contentious or contains important information
- Any issue that needs to be documented.

If appropriate a comment can be placed in the database to cross reference that there is a file note on the claimant's file regarding the particular issue. For Example:

- Refer to claim form for information regarding current medical condition.

10. Request for priority payment

Priority payment requests can be made on the grounds of:

- Serious Illness
- Financial Difficulties



Procedures Manual



Serious Illness

Claimants who have a serious illness will be considered for a priority payment depending on the severity of their illness. In all instances a medical certificate will be required on letterhead, and all enquirers will be advised that the Manager may be contacting the Medical Officer. All of these claimed will be approved by the Manager only and considered on a case by case basis. Please note that a chronic medical condition does not necessarily denote a 'serious illness', all requests will be determined on a case by case basis by the Manager.

Financial Difficulties

Claimants who request priority payment due to financial difficulties will be considered, but in most cases are not likely to receive a priority payment as our client base is over the age of 51 with a large number of claimants over the age of 65 years.

To request a priority payment, the claimant needs to provide either

- A medical letter outlining their medical condition, or
- A letter outlining their financial situation.

Priority payment decisions are made at the discretion of the Manager, Reparatons Team.

The Manager, Reparatons Team is to:

- note the documentation provided by the claimant of the priority payment decision
- forward the paperwork to a member of the Reparatons administration team to update the Reparatons Database and take appropriate action.

Admin team to take appropriate action than file documentation with WSR claim form.

11. A guide on how to respond to phone calls

Payments

Some claimants are very anxious about when they will receive their second payment.

If the payment has not been processed, we need to ensure that we stick to the standard reply that payments will be paid within 28 days on receipt of the EFT form.

If the payment has been processed, we can give an approximate time frame after we check with the senior administration officer.

Deceased Estates

* Refer to the Deceased Estate section of the procedure manual for the process and evidence required.



Procedures Manual



We need to be mindful that relatives of deceased claimants could still be grieving and this can be a very emotional time for them. If a claimant has passed away recently, we can pay the funeral company directly. The funeral company needs to bill the Department (Department of Communities) directly (tax invoice) and payment will be made within 28 days of receipt.

It is extremely important to remember cultural protocols at this time and bear in mind that sometimes it is necessary to go against cultural protocols to finalise the estate.

If this is a general deceased estate enquiry, explain the procedure to the family.

If the family is in an emotional state transfer the call through to the Senior Program Officer or Program Officers.

Incoming Calls

Some claimants purchase phone cards especially to contact us or have limited credit on mobile phones. If you know that the claimant is using a mobile phone or has called STD another number then provide them with the toll free 1800 phone number or ask if you can call them back immediately.



Procedures Manual



12. IWSR 2 – frequently asked questions

Question	Answer
What is the second round Reparations Offer?	The second round Reparations Offer is: <ul style="list-style-type: none"> • \$3,000 to people who previously received a \$4,000 reparations payment • \$1,500 to people who previously received a \$2,000 reparations payment.
Will this offer be the final offer?	Yes
Who is eligible for this offer?	People who applied and were assessed as eligible for first round Reparations payments are eligible for this offer.
How many people are eligible?	A total of 5,559 people are eligible. Of these: <ul style="list-style-type: none"> 4,211 previously received \$4,000 1,342 previously received \$2,000 8 were assessed as eligible but did not accept the offer. (these will be offered this offer, but this is being approved by the Premier).
Where is the money coming from?	This is money that was left over from the first round of the reparations process. The Queensland Government allocated up to \$55.4 million for reparations payments in 2002. When the process was finalised, \$19.528 million had been paid to eligible claimants, leaving \$35.872 million unspent.
How much will be used for these payments?	Approximately \$14.6 million will be used for these payments.
What will happen to the rest of the money?	The rest of the unspent balance, together with the balance of the Aborigines Welfare Fund will be used to establish the Indigenous Queenslanders Foundation.



Procedures Manual

Department of Communities
 100 Waterloo Road, Brisbane
 Queensland 4000
 Tel: 07 306 1000
 Fax: 07 306 1001
 Email: info@communities.qld.gov.au



QUESTION	ANSWER
What is this Foundation?	The Indigenous Queensland Foundation (IQF) will be a public foundation set up to serve the State's Aboriginal and Torres Strait Islander peoples by providing a funding source for scholarships for Aboriginal and Torres Strait Islander children and young people.
When will people receive this payment?	Payments will be made over an eighteen month period commencing in May 2008, with priority given to elderly people and people who are seriously ill.
Will I be paid automatically?	Payment will not be an automatic process, as we will have to contact people and verify their details and get them to finalise some paperwork, before we can pay them.
How do I make sure that I get paid?	
What about family members who have passed away since they received their reparations payment?	If you wish to make a claim on behalf of a deceased relative who received a reparations payment you will need to provide proof of that person's birth date as well as proof of when they passed away. Please call 1800 619 505 or 1800 809 097 to provide us with your details and we will then get back in touch with you.
I didn't claim because I thought the offer wasn't enough. Now that it is going to be topped up, can I put in a claim?	The final date for applications was 31 January 2006. No further claims will be accepted.
I wasn't eligible in the first round of Reparations; can I put in another claim?	The second round of payments are for people who were eligible for the first round of payments, you are not able to put in another claim.



Procedures Manual



QUESTION	ANSWER
<p>Why did the Queensland Government make the original reparations offer?</p>	<p>The reparations offer was made in 2002 by the Queensland Government in the spirit of reconciliation. It recognised the historical injustices suffered by many Aboriginal and Torres Strait Islander Queenslanders through the controls imposed successive governments over their wages and savings during the period from the 1890s to the early 1970s.</p> <p>The Queensland Government was committed to negotiating an outcome to this matter, recognising that legal actions were likely to be extremely complex and expensive and would take time to resolve.</p> <p>Because a lot of people affected by past controls over their wages and savings were elderly, the Government offered a simple and speedy way to resolve these issues. Under this offer, priority was given to paying elderly people and those who were seriously ill.</p>
<p>What was the original offer?</p>	<p>The Queensland Government made an offer of up to \$55.4 million for individual reparations payments. The offer included:</p> <ul style="list-style-type: none"> • \$4,000 to each person alive on 9 May 2002, who was subject to Government controls over their wages or savings and who was born on or before 31 December 1951, • \$2,000 to each person alive on 9 May 2002, who was subject to Government controls over their wages or savings and who were born between 1 January 1952 and 31 December 1958; • A written apology; • A parliamentary acknowledgement – a statement in the Legislative Assembly; and • A protocol to acknowledge Traditional Owners at the commencement of all official government business.
<p>My relative, who was a claimant during the first round, has been unwell and no longer has the ability to understand what this offer will mean to them, what should I do?</p>	<p>Special consideration is being made to ensure that the second round payment will be paid into an account for the claimant.</p> <p>Should the claimant's capacity be affected since the last round of payments, it is advisable for the family or carers to contact 1800 619 505 or 1800 809 097</p>
<p>If a claimant was classed as 'Medically Unfit' during the first round of payments and the carer has changed since that time, what actions need to be taken?</p>	<p>In the event that a carer has changed, those currently caring for the claimant will need to advise the Reparations Team by phoning 1800 619 505 or 1800 809 097.</p>



Procedures Manual

Department of Communities

2011-12 Budget

10/10/11



QUESTION	ANSWER
How is the Department handling the priority of reparations payments?	The first priority for the Department is to pay the most elderly and those with critical illnesses. Other people will progressively be paid in order of their date of birth.
I am critically ill and require my payment earlier than planned, what do I do?	If you are critically ill, you may be eligible for an earlier payment, however you will need to advise the Reparations Team by phoning 1800 019 505 or 1800 809 097. The Manager of the Reparations Team will assess all of these enquiries once appropriate documentation has been received, you will NOT be automatically paid
When will the Department be arranging to settle the payments with PNG?	Special consideration is being given to PNG claimants. These claimants will be paid following the Australian payments, and a dedicated team is following up the process for payments such as opening bank accounts and processing payments, and completing a dedicated visit to PNG following the wet season to follow-up on complications.
Internal FAQ: What is the process for settling deceased estates?	<p>Claims on behalf of a deceased person should also have attached copies of one of the following:</p> <ul style="list-style-type: none"> o Death certificate; or o Funeral notice; or o Order of service; or o Medical certificate of cause of death; or a o Burial certificate o Once the death is verified, according to the Succession Act 1981, the following procedure must be followed; o There is no requirement to amend a Deed of Agreement in respect of a deceased eligible claimant. o The first charge upon a deceased estate is the funeral expenses. o In determining who/how to pay an eligible deceased claim, the Assessor and/or Administration Officer must ascertain: o Whether there is a funeral debt (i.e. funeral costs still to be paid); or o If the funeral costs have been paid, whether or not the person who paid seeks reimbursement; or o If there is no funeral debt/reimbursement to be paid, whether or not there is a will. o Further processes are adopted to proceed with payment of beneficiaries.



Procedures Manual



QUESTION	ANSWER
<p>Internal FAQ: What do I do when I am suspicious of a signature on the returned EFT form?</p>	<p>Clarify with the supervisor, and contact the claimant on the phone number provided to clarify the details provided. Ask them their date of birth, and other information which only the claimant would be aware of. Check the database in the comments field.</p>
<p>Internal FAQ: What should I do when a claimant's relative phones requesting details about the payment?</p>	<p>Always ask to speak directly to the claimant to obtain consent to provide information to the relative/carer. Verify the claimants identity by asking questions only the claimant would know, such as their date of birth and place of birth. Check the comments field in the database.</p>
<p>Internal FAQ: What do I do when I have been advised that a claimant is deceased?</p>	<p>In the first instance establish whether the claimant completed a will. Check the database in the comments field.</p>



APPLICATION PACK
Stolen Wages Reparation Scheme WA

CONTENTS

Part 1 – Preliminary

1. Short Title
2. Commencement
3. Interpretation

Part 2 - Purpose and Intent of the Stolen Wages Reparation Scheme WA

4. Purpose and Intent of Payment of the Stolen Wages Reparation Scheme WA

Part 3 – Applying for an Ex gratia Payment

5. Eligibility Requirements
6. Time Limit for Making an Application
7. Access to Application
8. How to Make an Application
9. Applicant's Personal Details and Information
10. Applicant's Proof of Identification
11. Lack of Proof of Identity
12. Authorisation of Persons to Assist
13. Information Sought from Government Records
14. Payment Authorisation
15. Guardianship and Administration Act
16. Power of Attorney
17. Death of an Applicant

Part 4 – Assessment of an Application

18. Assessment Process
19. General Functions of an Assessor
20. Payment Amount
21. Complaint Process
22. Access to Records

Part 5 – Miscellaneous

23. Effect on Legal Rights
24. Confidentiality
25. Costs
26. Effect of Giving False Information
27. Applicants with Incomplete Application who Cannot be Located
28. Amendments of Guidelines

Schedule 1 – Application for Stolen Wages Reparation Scheme WA

Schedule 2 – List of Suitable Witnesses to the Application and Declaration

Schedule 3 – Instructions for Witnesses

Schedule 4 – Referee Statutory Declarations

Schedule 5 - Checklist

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA

Part 1 – Preliminary

1. Short Title

These Guidelines may be cited as the Stolen Wages Reparation Scheme WA Guidelines.

2. Commencement

The Stolen Wages Reparation Scheme WA Guidelines come into effect from 6 March 2012.

3. Interpretation

In these Guidelines, unless the contrary intention appears :

"Applicant" means a person who submits an Application to the Department of Indigenous Affairs by the closing date, for an Ex gratia payment under the Stolen Wages Reparation Scheme WA pursuant to these Guidelines;

"Application" means Stolen Wages Reparation Scheme WA Application and Declaration for an Ex gratia payment under the Stolen Wages Reparation Scheme WA pursuant to these Guidelines in the prescribed form referred to in Schedule 1;

"Assessor" means a person who is employed by the Department of Indigenous Affairs and includes Policy Officers, Senior Policy Officers, Principal Policy Officers, the Project Director and other Stolen Wages Reparation Scheme WA team members;

"Closing date" means 5:00pm (Perth, Western Australia), on 6 September 2012;

"Department" means the Department of Indigenous Affairs;

"Eligible Applicant" means a living person who:

- (1) is an Aboriginal or Torres Strait Islander person born before 1958;
- (2) from the age of 14 years or older was resident at a Government Native Welfare Settlement in Western Australia;
- (3) while resident at one or more of the Government Native Welfare Settlements in Western Australia experienced direct Western Australian Government control over the Applicant's income and all or part of the income was withheld from the Applicant; and
- (4) was never repaid the outstanding monies owed by the Western Australian Government.

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA

"Ex gratia payment" means a payment made voluntarily as an act of grace, without recognising liability or obligation;

"Government" means the past and present State Government of Western Australia.

Part 2 - Purpose and Intent of the Stolen Wages Reparation Scheme WA

4. Purpose and Intent of Payment of the Stolen Wages Reparation Scheme WA

- (1) The approval of an Ex gratia payment is an expression of regret on behalf of the Western Australian State Government towards Aboriginal and Torres Strait Islander people who fulfil the Eligibility Requirements set out in Section 5 of these Guidelines. An Ex gratia payment is not intended to represent full reparation.
- (2) The Stolen Wages Reparation Scheme WA does not require or make provision for hearings or negotiating an Ex gratia payment. The intent of the Western Australian State Government is to avoid the expense, delay and stress that any such processes necessarily involve.
- (3) Neither the submission of an Application or an Ex gratia payment by the Department to any Applicant shall in any way affect the legal rights which that Applicant may otherwise have.

Part 3 – Applying for an Ex gratia Payment

5. Eligibility Requirements

- (1) An Ex gratia payment under these Guidelines may not be made unless the Applicant is a living person who:
 - (a) is an Aboriginal or Torres Strait Islander person born before 1958;
 - (b) from the age of 14 years or older was resident at a Government Native Welfare Settlement in Western Australia;
 - (c) while resident at one or more Western Australian Government Native Welfare Settlements in Western Australia experienced direct government control over the Applicant's income and all or part of the income was withheld from the Applicant; and
 - (d) was never repaid the outstanding monies owed by the Western Australian Government.
- (2) An Applicant may only make one Application for an Ex gratia payment under the Stolen Wages Reparation Scheme WA.

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA**6. Time limit for making an Application**

Applications under the Stolen Wages Reparation Scheme WA must be received by the Closing Date. No applications will be accepted after the Closing Date of 5:00pm (Perth, Western Australia) on 6 September 2012.

7. Access to Application

An Application for an Ex gratia payment under the Stolen Wages Reparation Scheme WA is available via:

- (1) Download from the Department of Indigenous Affairs internet website at www.dia.wa.gov.au; or
- (2) Calling 1800 441 570 (free call) and requesting an Application be mailed in the post.

8. How to make an Application

(1) An Application must:

- (a) be made in writing on the Application set out in Schedule 1 of these Guidelines;
- (b) include proof of the Applicant's identity as required under Section 7 or Section 8 of the Application;
- (c) be addressed and posted to:
Stolen Wages Reparation Scheme WA
PO Box 7770, Cloisters Square
Perth WA 6850, and
- (d) be received by the Department before the Closing Date.

(2) It is recommended that the Applicant keeps a photocopy of their Application for future reference.

9. Applicant's Personal Details and Information

(1) An Applicant must in the Application provide:

- (a) their current full legal name and current address;
- (b) their current occupation;

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA

- (c) their current home phone number, if applicable, mobile phone number, if applicable and email address, if applicable;
- (d) their date of birth, in days, months and years, as far as it is known;
- (e) details of any other names the Applicant has been or is currently known by;
- (f) the name or names of the Government Native Welfare Settlement or Settlements in Western Australia the Applicant was resident at, at age 14 years or older; and
- (g) details of any name change since birth, whether through marriage, de facto relationship, deed poll or other means.

10. Applicant's Proof of Identification

- (1) As required by Section 7 of the Application the Applicant must submit two (2) certified copies of at least two (2) of the required forms of identification. Original copies of documents must not be submitted.
- (2) Certified copies of those documents set out in Section 7 of the Application shall be deemed to be acceptable proof of identity for the purposes of the Stolen Wages Reparation Scheme WA.
- (3) A witness certifying the copies of the original documents must also cite the original documents.
- (4) A certified copy must:
 - (a) be a true copy of the original document;
 - (b) have the words "I certify this appears to be a true copy of the document produced to me on (date)" clearly written by a witness on the certified copy; and
 - (c) be signed by a witness i.e. a person qualified to witness a Statutory Declaration as set out in the *Oaths, Affidavits and Statutory Declarations Act 2005* and as set out in Schedule 2 of the Application;
 - (d) have the witness' name, qualification as witness, and date clearly printed on the certified copy.

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA**11. Lack of Proof of Identity**

- (1) Where an Applicant cannot verify their identity through the production of acceptable proof of identity as set out in Section 7 of the Application, then the Applicant must complete Section 8 of the Application.
- (2) Pursuant to Section 8 of the Application, the Applicant must obtain a Statutory Declaration from each of two (2) independent Referees (refer to Schedule 4).
- (3) The Referees must not be related to the Applicant by birth or marriage and must have known the Applicant for at least twelve (12) months.
- (4) The two (2) Statutory Declarations must form part of the Application at Schedule 4.
- (5) The Statutory Declarations will be used by the Assessor to assess and make a determination that in the absence of documentary proof of identity the Applicant is the person they declare they are.

12. Authorisation of Persons to Assist

If an Applicant chooses to seek assistance from an independent person, friend or family member to complete an Application, Section 9 of the Application should be completed.

13. Information sought from Government Records

The Department may contact, discuss and obtain relevant information from other Government records relating only to the details contained in this Application. Information sought will be limited to cross-checking names, addresses, date of births, residency at Government Native Welfare Settlements in Western Australia and dates of residency at Government Native Welfare Settlements in Western Australia.

14. Payment Authorisation

- (1) An Applicant must provide details of the nominated bank account into which the payment will be made by the Department if the Application is approved.
- (2) In completing Section 11 of the Application an Applicant must ensure that the Bank account number and BSB number are correct, as the Department will make automatic payment into that account.

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA

- (3) The Department will not make any further investigation to verify that the account number and BSB numbers provided relate to an account held by the Applicant.
- (4) The Department takes no responsibility for making payment into an account not belonging to an Applicant, if an Applicant has made an error in his or her Application.

15. Guardianship and Administration Act

If a person entitled to make an Application is a Represented Person within the meaning of the *Guardianship and Administration Act 1990 (WA)*, the Application may be made on his or her behalf by the person's guardian or administrator appointed under that legislation.

16. Power of Attorney

If a person entitled to make an Application has granted power of attorney to another person, the Application may be made on his or her behalf by their attorney.

17. Death of an Applicant

If the Department receives notification that an Applicant has died after his or her Application has been received by the Department, but before a payment has been approved, then subject to the Application being complete and subsequently approved, an Ex gratia payment will be made to the nominated bank account set out in Section 11 of the Application and in accordance with the *Administration Act 1903* and the *Aboriginal Affairs Planning Authority Act 1972*.

Part 4 – Assessment of an Application**18. Assessment Process**

When an Application is received by the Department an Assessor will:

- (1) Assess whether the Application is complete or incomplete;
- (2) If the Application is incomplete:
 - (a) the Assessor will telephone, write or email the Applicant advising the Applicant what information or documentation is required to complete the Application;

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA

- (b) the Applicant will be given thirty (30) days to reply, and, if no response is received within 30 days, the Application will be considered to have ceased; and
 - (c) if a complete Application is received within thirty (30) days the Application will be assessed in accordance with Subsection 18(3).
- (3) If the Application is complete:
- (a) write to the Applicant acknowledging receipt of the Application and advising that an Assessor will assess the Application;
 - (b) assess the Application and make an intermediate determination as to whether the Application should be approved or not approved; and
 - (c) forward the Application to the Project Director who will then consider whether to approve the Application;
- (4) If an Application is approved by the Project Director an Ex gratia payment will be made directly into the account of the Applicant and a letter confirming payment will be sent to the Applicant.
- (5) If an Application is not approved by the Project Director the Applicant will be advised by letter.

19. General Functions of an Assessor

- (1) For the purposes of assisting Applicants an Assessor may carry out the following general functions:
- (a) ensure that each Application is fully completed and that all available documentary evidence is provided, including, if necessary, telephoning the Applicant to discuss the Application before the Application is assessed;
 - (b) if the Applicant is unavailable by telephone, request the Applicant to provide further information, documentation or comment by making the request in writing giving thirty (30) days to reply, and, if no response is received within thirty (30) days the Application will be considered to have ceased;
 - (c) conduct informal telephone conferences with the Applicant to further assist him or her in the presentation of his or her Application if necessary;
 - (d) generally provide information and assistance as necessary to Applicants;
 - (e) assessors must determine Applications expeditiously and without formality having regard to the requirements of natural justice as far as this is practicable

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA

under the Stolen Wages Reparation Scheme WA, and as required by these Guidelines; and

- (f) in assessing an Application, Assessors are not bound by rules or practice as to evidence or procedure but may inform themselves in any manner they think fit and determine a matter on the basis that they are or are not reasonably satisfied that the Applicant is eligible for the Ex Gratia payment.

20. Payment Amount

Should an Application be approved under Section 18, the Applicant will receive up to \$2,000.

21. Complaint Process

- (1) The quantum of the Ex gratia payment cannot be the subject of a complaint by an Applicant.
- (2) An Applicant's complaint shall only be made on the following grounds:
- (a) an error of process occurred; and/or
 - (b) an error of fact was made.
- (3) An Applicant may make a complaint to the Stolen Wages Reparation Scheme WA Complaints Manager who will manage the complaint according to the Stolen Wages Reparation Scheme Complaints Internal Policy and Procedures Guidelines. All complaints should be mailed to:

Complaints Manager
Stolen Wages Reparation Scheme WA
PO Box 7770, Cloisters Square
Perth WA 6850

- (4) If the complaint is found to have merit under Subsections 21(2) then the Application will be remitted to a Review Panel for further review. A determination shall be made by the Review Panel to either dismiss the complaint or substitute their own decision.
- (5) If an Applicant is not satisfied with the outcome of their complaint under Subsection 21(4) then they have available to them a complaints process with the Western Australian State Ombudsman's office under the provisions of the *Parliamentary Commissioners Act 1971*.

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA**22. Access to Records**

- (1) Applications and supporting documentation relating to the Application once received by the Department, become a state record and the keeping of the records, or archiving of the records, is subject to the *State Records Act 2000 (WA)* and the record keeping plan of the Department.
- (2) In the event that records provided to the Stolen Wages Reparation Scheme WA are required by law to be produced to a court or tribunal, or to any other agency, to comply with a legal obligation, then the Stolen Wages Reparation Scheme WA shall at all times act subject to the provisions of the *Freedom of Information Act 1992 (WA)* and any other relevant Commonwealth or State legislation.
- (3) Subject to Subsection 22(2) an Applicant upon written request will be provided with a copy of the Application they have lodged with the Stolen Wages Reparation Scheme WA.

Part 5 – Miscellaneous**23. Effect on Legal Rights**

Nothing in these Guidelines shall affect the legal rights that a person may otherwise have.

24. Confidentiality

All information and documentation provided by the Applicant to the Stolen Wages Reparation Scheme WA for the purposes of assessing and determining an Application under these Guidelines shall remain confidential, except to the extent that it is required to be disclosed to locate the Applicant's records or otherwise progress the Application, provided always that the Applicant has agreed in writing to authorise the Stolen Wages Reparation Scheme WA to disclose such information to other persons, government departments or agencies.

25. Costs

All costs incurred by an Applicant in connection with his or her Application are to be borne by the Applicant. The Department does not provide funding to assist with making Applications nor will the Department reimburse any costs incurred by an Applicant in association with his or her Applications.

GUIDELINES - STOLEN WAGES REPARATION SCHEME WA**26. Effect of Giving False Information**

(1) In this section:

"Information" means any information given:

(a) in an Application;

(b) in a written or verbal response to a request made, or a notice given, to the Applicant, persons authorised to assist, personal representative or attorney.

(2) Where the Project Director is satisfied that an Applicant has provided information to the Stolen Wages Reparation Scheme WA that is false, the Application may be rejected.

27. Applicants with Incomplete Application who cannot be located

(1) If reasonable attempts have been made to contact the Applicant but the Applicant cannot be located then the assessment of the Application shall cease.

(2) The Project Director may consider that special circumstances apply to make approval of a payment where the Applicant has been located and the missing information provided at a later date.

(3) If the Applicant cannot be located before the Closing Date then their Application shall not be considered a valid Application and no Ex gratia Payment shall be paid.

28. Amendments of Guidelines

These Guidelines may be amended from time to time with the approval of the Project Director.



APPLICATION

Stolen Wages Reparation Scheme WA

Includes:

- Schedule 1** – Application Form
- Schedule 2** – List of Suitable Witnesses to the Application
- Schedule 3** – Instructions for Witnesses
- Schedule 4** – Referee Statutory Declarations
- Schedule 5** – Checklist

Office Use Only
Ref No:

SCHEDULE 1

APPLICATION AND DECLARATION FOR STOLEN WAGES REPARATION SCHEME WA

The Closing Date for lodging the Application is 5:00pm (Perth, Western Australia), 6 September 2012.

APPLICANT DETAILS

I (full Name of Applicant) _____

of (current street address) _____

Suburb / Town _____ State _____ Post Code _____

Occupation _____
(compulsory requirement under the Oaths, Affidavits and Statutory Declarations Act 2005)

Phone _____

Email _____

Mobile _____

do sincerely declare as follows:

1. I have also been known by the following names:

_____ / _____ / _____
(name) (from day/month/year)

_____ / _____ / _____
(name) (from day/month/year)

2. I am an Aboriginal or Torres Strait Islander person born before 1958.

3. My date of birth is _____ / _____ / _____
(day/month/year)

(Signature of Person Making Declaration)

(Signature of Authorised Witness)

(Name of Authorised Witness)

(Qualification as Witness)

4. From the age of 14 years or older, I was a resident at:

_____ from ____/____/____ to ____/____/____
 (place) (day/month/year) (day/month/year)

_____ from ____/____/____ to ____/____/____
 (place) (day/month/year) (day/month/year)

_____ from ____/____/____ to ____/____/____
 (place) (day/month/year) (day/month/year)

5. While resident at one or more of the institutions set out in Section 4 of this Application, I experienced direct Western Australian Government control over my income and all or part of my income was withheld from me.

6. I have never received the outstanding monies owed to me by the Western Australian Government.

IDENTIFICATION

7. As proof of my identity, I attach at Schedule 2, two (2) certified copies of at least two (2) of the following documents:

- Birth Certificate
- Birth Extract
- Current Drivers License
- Passport
- Medicare Card
- Centrelink Card
- Credit Card or Bank Account Card
- Utilities Bills

OR

8. I am unable to provide proof of identification as set out in Section 7 of this Application. I attach at Schedule 4, two (2) Statutory Declarations from two (2) independent referees declaring my identification.

 (Signature of Person Making Declaration)

 (Signature of Authorised Witness)

 (Name of Authorised Witness)

 (Qualification as Witness)

AUTHORISATION OF PERSONS TO ASSIST – OPTIONAL

9. I authorise the following person/s to assist me in processing and completing my Application for the Stolen Wages Reparation Scheme WA Ex gratia payment. This person may contact, discuss and provide any supporting documentation to the Department of Indigenous Affairs in relation to any aspect of my Application.

Name _____

Address _____

Phone _____

Email _____

Mobile _____

10. If Section 9 of this Application applies, I authorise the Department of Indigenous Affairs to contact, discuss, provide or request any information or any supporting documentation in relation to any aspect of my Application from the person or persons authorised to assist me as set out in Section 9 of this Application.

(Signature of Person Making Declaration)

(Signature of Authorised Witness)

(Name of Authorised Witness)

(Qualification as Witness)

PAYMENT AUTHORISATION

11. Should my Application for an Ex gratia payment be approved pursuant to the Stolen Wages Reparation Scheme WA, I authorise the Department of Indigenous Affairs to deposit the payment via electronic funds transfer into my bank account as follows:

Name of Account

Bank

BSB No.

Bank Account No.

Should you wish to submit supporting information with your Application, this may assist with the assessment process.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

at _____
(place)

on _____
(date)

In the presence of –

(Signature of Authorised Witness)

(Name of Witness)

(Qualification as Witness)

by _____
(Signature of person making the declaration)

Applications should be mailed to:

**Stolen Wages Reparation Scheme WA
PO Box 7770, Cloisters Square
Perth WA 6850**

SCHEDULE 2

**LIST OF SUITABLE WITNESSES to the APPLICATION AND DECLARATION
OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005**

The Application and Declaration must be made before any of the following persons:

Item	Formal description	Informal description
1.	A member of the academic staff of an institution established under any of the following Acts — <ul style="list-style-type: none"> • <i>Curtin University of Technology Act 1966</i>; • <i>Edith Cowan University Act 1984</i>; • <i>Murdoch University Act 1973</i>; • <i>University of Notre Dame Australia Act 1989</i>; • <i>University of Western Australia Act 1911</i>; • <i>Vocational Education and Training Act 1996</i>. 	Academic (post-secondary institution)
2.	A member of any of the following bodies — <ul style="list-style-type: none"> • Association of Taxation and Management Accountants (ACN 002 876 208); • CPA Australia (ACN 008 392 452); • The Institute of Chartered Accountants in Australia (ARBN 084 642 571); • Institute of Public Accountants (ACN 004 130 643); • National Tax & Accountants' Association Limited (ACN 057 551 854). 	Accountant
3.	A person who is registered under the <i>Architects Act 2004</i> .	Architect
4.	An Australian Consular Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Consular Officer
5.	An Australian Diplomatic Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Diplomatic Officer
6.	A bailiff appointed under the <i>Civil Judgments Enforcement Act 2004</i> .	Bailiff
7.	A person appointed to be in charge of the head office or any branch office of an authorised deposit-taking institution carrying on business in the State under the <i>Banking Act 1959</i> of the Commonwealth.	Bank manager
8.	A member of Chartered Secretaries Australia Limited (ACN 008 615 950).	Chartered secretary
9.	A person who is registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the pharmacy profession.	Chemist
10.	A person who is registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the chiropractic profession.	Chiropractor
11.	A person registered as an auditor or a liquidator under the <i>Corporations Act 2001</i> of the Commonwealth.	Company auditor or liquidator
12.	A judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court of the State or the Commonwealth.	Court officer

Item	Formal description	Informal description
13.	A member of the Australian Defence Force who is — <ul style="list-style-type: none"> • an officer within the meaning of the <i>Defence Force Discipline Act 1982</i> of the Commonwealth; • a non-commissioned officer within the meaning of that Act with 5 or more years of continuous service; or • a warrant officer within the meaning of that Act. 	Defence force officer
14.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law.	Dentist
15.	A person who is registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the medical profession.	Doctor
15A.	A person appointed under the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i> section 4(1)(b)(i) or (2)(b)(i)	Electorate officer of a member of State Parliament
16.	A member of the Institution of Engineers, Australia, other than at the grade of student.	Engineer
17.	The secretary of an organisation of employees or employers that is registered under one of the following Acts — <ul style="list-style-type: none"> • <i>Industrial Relations Act 1979</i>; • <i>Workplace Relations Act 1996</i> of the Commonwealth. 	Industrial organisation secretary
18.	A member of the National Insurance Brokers Association of Australia (ACN 006 093 849).	Insurance broker
19.	A Justice of the Peace.	Justice of the Peace
19A.	A person who is a member of the Authority's staff within the meaning given to that term by the <i>Land Information Authority Act 2006</i> section 3.	Landgate officer
20.	An Australian lawyer within the meaning of that term in the <i>Legal Profession Act 2008</i> section 3.	Lawyer
21.	The chief executive officer or deputy chief executive officer of a local government.	Local government CEO or deputy CEO
22.	A member of the council of a local government within the meaning of the <i>Local Government Act 1995</i> .	Local government councillor
23.	A member of the Australasian Institute of Chartered Loss Adjusters (ACN 074 804 167).	Loss adjuster
24.	An authorised celebrant within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth.	Marriage celebrant
25.	A member of either House of Parliament of the State or of the Commonwealth.	Member of Parliament
26.	A minister of religion registered under Part IV Division 1 of the <i>Marriage Act 1961</i> of the Commonwealth.	Minister of religion
27.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the nursing and midwifery profession.	Nurse
28.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the optometry profession.	Optometrist
29.	A registered patent attorney under the <i>Patents Act 1990</i> of the Commonwealth.	Patent attorney

Item	Formal description	Informal description
30.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the physiotherapy profession.	Physiotherapist
31.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the podiatry profession.	Podiatrist
32.	A police officer.	Police officer
33.	The person in charge of an office established by, or conducted by an agent of, Australia Post within the meaning of the <i>Australian Postal Corporation Act 1989</i> of the Commonwealth.	Post office manager
34.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the psychology profession.	Psychologist
35.	A public notary within the meaning of the <i>Public Notaries Act 1979</i> .	Public notary
36.	An officer of the Commonwealth public service.	Public servant (Commonwealth)
37.	A person who is employed under the <i>Public Sector Management Act 1994</i> Part 3.	Public servant (State)
38.	The holder of a licence under the <i>Real Estate and Business Agents Act 1978</i> .	Real estate agent
39.	The holder of a licence under the <i>Settlement Agents Act 1981</i> .	Settlement agent
40.	The Sheriff of Western Australia and any deputy sheriff appointed by the Sheriff of Western Australia.	Sheriff or deputy sheriff
41.	A licensed surveyor within the meaning of the <i>Licensed Surveyors Act 1909</i> .	Surveyor
42.	A person employed as a member of the teaching staff within the meaning of the <i>School Education Act 1999</i> or as a teacher of a non-government school within the meaning of that Act.	Teacher
43.	A member, registrar or clerk, or the chief executive officer, of any tribunal of the State or the Commonwealth.	Tribunal officer
44.	A registered veterinary surgeon within the meaning of the <i>Veterinary Surgeons Act 1960</i> .	Veterinary surgeon

SCHEDULE 3

INSTRUCTIONS FOR WITNESSES**WHO CAN BE A WITNESS TO A STATUTORY DECLARATION AND WHO CAN CERTIFY DOCUMENTS?**

A list of persons authorised to witness Statutory Declarations and certify identification documents is set out in Schedule 2.

HOW DO I WITNESS A STATUTORY DECLARATION?

1. The **Applicant** making the Statutory Declaration must-
 - (a) sign or personally mark the Statutory Declaration where indicated at the bottom of each page of the Application and on the last page of the Application;
 - (b) sign or initial any alteration, such as an insertion or erasure, that has been made to the Statutory Declaration;
 - (c) In the presence of an authorised witness declare orally –
 - (i) that he or she is the person named as the maker of the Statutory Declaration;
 - (ii) that the contents of the Statutory Declaration are true;
 - (iii) that the signature or mark is the Applicants.
2. After the above has been completed, the **witness** must:
 - (a) sign the Statutory Declaration where indicated at the bottom of each page of the Application and on the last page of the Application where indicated;
 - (b) sign or initial any alteration in the Statutory Declaration that has been signed or initialled by the person making the Statutory Declaration; and
 - (c) clearly write his or her name, signature, qualification as an authorised witness and date.

HOW DO I CERTIFY A COPY OF AN ORIGINAL DOCUMENT?

1. Before certifying a document, you must ensure that the copy to be certified is an identical copy of the original.
2. The person certifying the document is stating in their opinion that the document is a true copy, not that the original document is authentic.

3. The witness must write on each document copy the following:

***"I certify this appears to be a true copy of
the document produced to me on (date)"
Signature
Name
Qualification as authorised witness***

4. If the original is a multiple page document, each page must be checked against the copy to ensure that it is correct. The witness can then proceed as follows:

- Sign or initial each page;
- Number each page of the copy as 'page 1 of 20', 'page 2 of 20' and so on;
- Write on the last page as follows:

***"I certify this appears to be a true copy of
the document produced to me on (date)"
Signature
Name
Qualification as authorised witness***

SCHEDULE 4

Do not fill in this section unless you were unable to provide proof of identification, as set out in Section 7 of this Application.

REFEREE STATUTORY DECLARATION 1 for STOLEN WAGES REPARATION SCHEME WA

I (full name of Referee) _____

of (current street address) _____

Suburb / Town _____ State _____ Post Code _____

Occupation _____
(compulsory requirement under the Oaths, Affidavits and Statutory Declarations Act 2005)

Phone _____

Email _____

Mobile _____

do sincerely declare as follows:

1. I am not related by birth or marriage to the Applicant _____
(name of Applicant)
of (address) _____
2. I have known the Applicant for at least 12 months.
3. To the best of my knowledge, information and belief, the Applicant is the person he/she declares to be.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

at _____
(place)

on _____
(date)

In the presence of –

(Signature of Authorised Witness)

(Name of Witness)

(Qualification as Witness)

by -----
(Signature of person making the declaration)

SCHEDULE 4

Do not fill in this section unless you were unable to provide proof of identification, as set out in Section 7 of this Application.

REFEREE STATUTORY DECLARATION 2 for STOLEN WAGES REPARATION SCHEME WA

I (full name of Referee) _____

of (current street address) _____

Suburb / Town _____ State _____ Post Code _____

Occupation _____
(compulsory requirement under the Oaths, Affidavits and Statutory Declarations Act 2005)

Phone _____

Email _____

Mobile _____

do sincerely declare as follows:

4. I am not related by birth or marriage to the Applicant _____
(name of Applicant)
of (address) _____
5. I have known the Applicant for at least 12 months.
1. To the best of my knowledge, information and belief, the Applicant is the person he/she declares to be.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

at _____
(place)

on _____
(date)

In the presence of –

(Signature of Authorised Witness)

(Name of Witness)

(Qualification as Witness)

by _____
(Signature of person making the declaration)

SCHEDULE 5

CHECKLIST**STOLEN WAGES REPARATION SCHEME WA APPLICATION**

Before you lodge your Application please read through the following checklist, tick off the boxes and make sure you have completed all requirements.

- You have received and read your Application Pack, which includes:
 - Stolen Wages Reparation Scheme WA Guidelines;
 - Application Form (Schedule 1);
 - List of suitable witnesses (Schedule 2);
 - Instructions for witnesses (Schedule 3);
 - Referee's Statutory Declaration (Schedule 4); and
 - Checklist (Schedule 5).

- You have completed each section in the Application correctly. Double check dates and numbers.

- You have two (2) forms of proof of identity and you have two (2) copies of each of these documents.

- The witness has certified all four (4) identification documents, in accordance with the instructions for the witnesses and cited the original two (2) identification documents.

- If you have no formal proof of identification, that you have attached two (2) Statutory Declarations of two (2) independent referees, which have been witnessed in accordance with the Instructions for Witnesses.

- You have signed, in the presence of a witness, the bottom of each page of the Application and the last page, where indicated.

- You have kept a complete copy of your Application and supporting documentation for your records.

If you have any questions please call 1800 441 570 (free call) or email stolen.wages@dia.wa.gov.au.



ABU DHABI

Herbert Smith Freehills LLP
 T +971 2 813 5000
 F +971 2 813 5100

BANGKOK

Herbert Smith Freehills (Thailand) Ltd
 T +66 2657 3888
 F +66 2636 0657

BEIJING

Herbert Smith Freehills LLP
 T +86 10 6535 5000
 F +86 10 6535 5055

BELFAST

Herbert Smith Freehills LLP
 T +44 28 9025 8200
 F +44 28 9025 8201

BRISBANE

Herbert Smith Freehills
 T +61 7 3258 6666
 F +61 7 3258 6444

BRUSSELS

Herbert Smith Freehills LLP
 T +32 2 511 7450
 F +32 2 511 7772

DAMMAM

Al-Ghazzawi Professional Association
 Herbert Smith Freehills LLP
 associated firm
 T +966 3 8331611
 F +966 3 8331981

DOHA

Herbert Smith Freehills Middle East LLP
 T +974 4429 4000
 F +974 4429 4001

DUBAI

Herbert Smith Freehills LLP
 T +971 4 428 6300
 F +971 4 365 3171

HONG KONG

Herbert Smith Freehills
 T +852 2845 6639
 F +852 2845 9099

JAKARTA

Hiswara Bunjamin and Tandjung
 Herbert Smith Freehills LLP
 associated firm
 T +62 21 574 4010
 F +62 21 574 4670

JEDDAH

Al-Ghazzawi Professional Association
 Herbert Smith Freehills LLP
 associated firm
 T +966 2 6531576
 F +966 2 6532612

LONDON

Herbert Smith Freehills LLP
 T +44 20 7374 8000
 F +44 20 7374 0888

MADRID

Herbert Smith Freehills Spain LLP
 T +34 91 423 4000
 F +34 91 423 4001

MELBOURNE

Herbert Smith Freehills
 T +61 3 9288 1234
 F +61 3 9288 1567

MOSCOW

Herbert Smith Freehills CIS LLP
 T +7 495 363 6500
 F +7 495 363 6501

NEW YORK

Herbert Smith Freehills New York LLP
 T +1 212 519 9855
 F +1 212 519 9856

PARIS

Herbert Smith Freehills Paris LLP
 T +33 1 53 57 70 70
 F +33 1 53 57 70 80

PERTH

Herbert Smith Freehills
 T +61 8 9211 7777
 F +61 8 9211 7878

RIYADH

Al-Ghazzawi Professional Association
 Herbert Smith Freehills LLP
 associated firm
 T +966 1 4632374
 F +966 1 4627566

SHANGHAI

Herbert Smith Freehills LLP
 T +86 21 2322 2000
 F +86 21 2322 2322

SINGAPORE

Herbert Smith Freehills LLP
 T +65 6868 8000
 F +65 6868 8001

SYDNEY

Herbert Smith Freehills
 T +61 2 9225 5000
 F +61 2 9322 4000

TOKYO

Herbert Smith Freehills
 T +81 3 5412 5412
 F +81 3 5412 5413