



**Guidelines for the Administration of the**

**NSW Aboriginal Trust Fund Repayment Scheme**

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## 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.

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## **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.

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- 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.

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- 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 descendent 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

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- (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.

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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.



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- 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.

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- (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.

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- 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

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- (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”).

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- 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.

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## 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.

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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.

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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 oversee 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*.

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**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]*.

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**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

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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:

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## **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.

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## **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.

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- (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.