



**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.