

THE UNITING CHURCH IN AUSTRALIA
QUEENSLAND SYNOD

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Mr Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
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Parliament House
Canberra ACT 2600
Australia

Email: legcon.sen@aph.gov.au

Thursday, 27 July 2006

Dear Mr Curtis,

RE: Inquiry into Stolen Wages

This submission is from the Uniting Church in Australia – Queensland Synod. It contains a broad outline of the work we have done in relation to this issue based on our consultation with various stakeholders. It also outlines the Uniting Church's position on reconciliation and justice in employment relationships. In light of this work it makes three broad recommendations on a way forward.

We are primarily concerned with the issues of injustice and ongoing disadvantage associated with the government control of Indigenous people's wages now commonly known as "stolen wages". We believe this is an issue of national importance which requires a national response co-ordinated with all governments across Australia

We would welcome the opportunity to discuss our submission with the Committee. I can be contacted on the details above in order arrange a suitable time

Yours faithfully,

Rev Dr David Pitman
Moderator
Queensland Synod
Uniting Church in Australia

Submission to the Inquiry into Stolen Wages

Introduction

The Uniting Church and its uniting denominations have had a long relationship with the Indigenous peoples of Australia. The Uniting Church, through its relationship with the Uniting Aboriginal and Islander Christian Congress (UAICC) and our ecumenical partners has advocated on behalf of Indigenous people. The Uniting Church has long called on the government of the day to right the wrongs of previous generations and previous governments. Our record on native title and the Stolen Generation is well known and the Uniting Church in Australia will continue in that role to seek justice and reconciliation for the Aboriginal and Islander people who had their wages controlled by the Government.

The Queensland Synod of the Uniting Church was involved in seeking changes to the offer made to those affected by the control of their wages by the Queensland Government (“the Government”).

We believe the offer made to the Indigenous people was inadequate, involved procedural injustices, and was poorly promoted and explained. However, our recommendations were not accepted by the Government. Therefore we appreciate this opportunity to make submissions to this Senate inquiry.

The ability for Senate committees to investigate matters of national importance which may not form part of the Federal Government’s legislative agenda is a vital role to provide for an effective examination of viewpoints.

While there is substantial evidence that every State and Territory in Australia engaged in some form of control over the pay of Indigenous workers, our research and advocacy work has focused on the situation in Queensland. Therefore, this submission will deal almost exclusively with that work, although it will explore the experience and example of other jurisdictions in dealing with the reparation of Stolen Wages.

Terms of Reference

Term of Reference (a)

There has been a significant amount of research undertaken by Dr Rosalind Kidd¹ and the Queensland Aboriginal and Islander Legal Services (QAILS) into those affected by the control of wages. Even giving an approximate value is difficult to establish. In Queensland, this practice occurred in various forms from the 1890s up to the 1980s. Therefore, while the work Dr Kidd has done is quite extensive even she has great difficulty accurately quantifying the extent of the practice although clearly at least tens of thousands of people were affected. Dr Kidd's research indicates that records maintained by the Government demonstrate significant irregularities and a large number of the records no longer exist. This is a serious concern and demonstrates the practical difficulties associated with this issue.

Term of Reference (b)

Dr Kidd has done significant work in exploring the way in which wages were dealt with. In Queensland from 1897 with the passing of the *Aboriginal Protection Act*, virtually every aspect of Aboriginal people's lives was controlled by the Government. This control manifested itself in many ways including:

- a. Forcibly moving people to reserves or missions;
- b. Choosing marriage partners;
- c. Forcibly removing children from their parents; and
- d. From 1904 controlling all the wages and savings.

All wages for Indigenous people were retained by the police protector except for "pocket money", which the employer retained and distributed.

¹ Kidd, Rosalind, *The way we civilise: Aboriginal affairs – the untold story*, University of Queensland Press, St Lucia, Qld, 1997.

There is evidence that in 1919 Aboriginal people were required to work for 66% of the award wage, and additionally Aboriginal people on reserves were required to work for rations and shelter.

Apart from the compulsory saving of Aboriginal people's money, the way in which the money was then used raises further issues. There is evidence of serious mismanagement and fraud of the monies which were held in the *Queensland Aboriginals Account*. From 1943 the *Aboriginal Welfare Fund* received the wages, levies and profits from the reserves and this was used for "development" of the reserves and other state infrastructure.

From 1968 a gradual move began towards a fairer economy. In 1968 all workers were paid, but only at 50% of the minimum wage. In 1971 forced confinement ended. In 1972 forced control over wages and savings ceased. From then on Aboriginal people could request that their wages and savings to not be controlled by the Government, but this was only on an individual basis. The wage paid to Aboriginal people was gradually increased but was not 100% of the minimum wage until the 1980s. Action was then begun under the *Anti-Discrimination Act* for compensation. After a successful case in the Human Rights and Equal Opportunity Commission, the Government started to settle cases of under-award payment from 1975 onwards.

Term of Reference (c)

The *Queensland Aboriginals Account* was closed in the early 1990s and any remaining money was distributed. Nevertheless, Dr Kidd cites evidence from a number of inquiries and reports which indicate that the money paid into this fund was the subject of "fraud, negligence and

official misappropriation”.² The Government also acknowledges that “surplus interest” from this fund was paid into the *Aborigines Welfare Fund*.

The *Aborigines Welfare Fund* was intended for use by the government for the benefit of Indigenous people. Dr. Kidd has identified \$93 million of the spending from that fund which is of “doubtful legitimacy” or “was not recouped”. Therefore this calls into question whether the fund was indeed used for the benefit of Indigenous people.

Despite the Government’s claim that “This means that Aboriginal people were contributing to their own welfare”³, it is clear that such levies were compulsory. Indigenous people were also paying income tax. Therefore, if it was not to contribute to the common welfare of the community, there is a serious question regarding the purpose of the payment of income tax by Aboriginal people

The money which was not taken in income tax, levied or compulsorily saved, was meant to be paid to Indigenous people as “pocket money” , however both written and oral evidence exists which suggests that often was not paid. Indeed a number of changes to the administration of this system (i.e. the introduction of thumbprints) were as a direct result of fraud. It appears that this system was never properly audited by the Government.⁴

This incomplete and general history demonstrates the large and complex task in Queensland alone of establishing many of the facts dealt with in terms of reference (a) to (d). While Dr Ross Kidd’s work is by far the most extensive work done in Queensland, it is far from complete,

² *Much more than money: the fight to recover the Stolen Wages*, <http://www.linksdisk.com/roskidd/site/Speech28.htm>, Last visited 27 July 2006.

³ *Wages and Savings of Indigenous Queenslanders History Sheet*, <http://www.datsip.qld.gov.au/pdf/reparations/WHS.pdf>, Last visited 27 July 2006.

⁴ See footnote 2.

not least because of the incompleteness of Government records. The work which QAILLS has done in collecting oral evidence suggests that Government records will be insufficient in establishing all of the policies and practices of governments, employers and police protectorates in dealing with the wages of Indigenous people.

Term of Reference (e), (f) and (g)

The Government has done very little investigation into the management of Indigenous monies. As mentioned above, the Government had been warned throughout the 1940s, 1960s and 1970s about various problems with the system, but there is little evidence of the government investigating those warnings.⁵ The Government also seems to have done very little work subsequently investigating this issue. However, some work must have been done by the Government in trying to quantify the number of those affected when calculating the expected cost of the Wages and Savings Reparations payments. The estimates were ostensibly based on a figure of 16,500 people. There was no evidence provided for that estimate and because of the limited scope of the payments it is submitted that this figure should not be used as a guide.

8763 people applied for this payment and 5519 were assessed as eligible.⁶ The reasons for such a lower than expected result are diverse and unclear but include:

- a. The reluctance of people to sign away all of their legal rights;
- b. The perceived inadequacy of the payment; and
- c. The inability to understand the nature of the payment or people's potential eligibility.

These issues were identified by the Australian Human Rights and Equal Opportunity Commission. The Commissioner also identified that the scope of the indemnity was quite broad and could potentially include people signing away their rights to sue under other provisions of

⁵ See footnote 2.

⁶ *Indigenous wages and savings reparations process*, http://www.datsip.qld.gov.au/datsip/reparations_process.cfm, Last visited 27 July 2006

the *Aboriginal Protection Act*.⁷ Others have also raised concerns about the way in which legal advice was provided, pointing to the conflict of interest of the Government paying for legal advice about indemnities against them.

The Government also provided no basis for the figures of \$4000 and \$2000, or on what basis the relevant cut-off dates were chosen. The independent evidence suggests that neither of those figures is close to adequate. Given the apparent arbitrariness and inadequacy it suggests that the Government has done very little investigation. The Government also acknowledges that “legal actions are likely to be extremely complex...”⁸ and this solution is “simple and speedy”⁹. This seems to recognise the inherent complexity in investigating matters such as these.

Unfortunately this has left the work of investigating this matter to individuals and community groups. Many of these are under-resourced and do not necessarily possess the expertise required. Independent groups have generally been able to produce more accurate and complete data, mostly from the Government’s own records, than the Government itself. It is also unclear what will be done with the money left from the Reparations fund now the offer has expired.

Term of Reference (h) and (i)

In view of these issues, what should the Federal Government and the governments of the States and Territories do?

The Uniting Church has affirmed “its commitment to ongoing reconciliation between indigenous and non-indigenous Australians”.¹⁰ It also believes “that every person is precious

⁷ *Statement by Dr William Jonas AM on the Qld ‘stolen wages’ issue*, www.hreoc.gov.au/social_justice/stolen_wages.html, Last visited 27 July 2006.

⁸ See note 3.

⁹ *Ibid.*

¹⁰ Queensland Synod Minute 96.153 (a).

and entitled to live with dignity”.¹¹ The church also “affirms that all people are entitled to just remuneration and equitable conditions of employment”.¹² Finally, it affirms “support for the human rights standards recognised by the United Nations”.

Recommendations

In the light of these affirmations, we believe the governments of Australia have three responsibilities:

1. To provide a public forum in which Indigenous people can tell their story.

“Stolen wages is a serious issue close to the hearts of many Indigenous people”.¹³

Throughout the world, there are many examples of truth and reconciliation commissions which have brought about significant healing, not least the Stolen Generation report *Bringing Them Home*. Many Indigenous people have indicated that they would be satisfied to know that their story had been heard and their pain acknowledged. Therefore, the Federal Government should move immediately to facilitate such a commission, providing it with broad terms of reference and resources to travel to every state and territory to hear the story of those whose wages were controlled by the government.

2. To provide adequate resources to systematically and comprehensively investigate and report on the available records.

As we outlined above, the Government has not made any significant attempt to investigate the records relating to the control of wages and savings. While there has been some work done by the government of New South Wales, this has also been limited in scope due to a

¹¹ Unconfirmed Assembly Minute, *Dignity in Humanity: Recognising Christ in Every Person* section 1, http://assembly.uca.org.au/unitingjustice/resourcearchive/assemblyresolutions/HRstatementUnconfirmed_0706.pdf.

¹² Unconfirmed Assembly Minute, *Integrity and Justice in Employment Relationships* section 1, http://assembly.uca.org.au/unitingjustice/resourcearchive/assemblyresolutions/ERstatementUnconfirmed_0706.pdf.

¹³ *Uniting Church rejects stolen wages deadline*, Uniting Church in Australia National Assembly Media Release, 9 November 2005.

lack of resources.¹⁴ While this task may be difficult, in the light of the injustices Indigenous people have suffered the Government cannot afford to ignore this important work. It is time for the Government to engage specialist research teams who have the expertise and resources to produce a comprehensive report. A lot of the difficulty in such research is as a result of the inadequacy of the Governments own record keeping. Therefore, the responsibility remains with the Government to correct this injustice. While other jurisdictions (including NSW) have investigated individual cases by request, more comprehensive work needs to be done to uncover the truth about the extent of this practice. As an act of reconciliation the state governments of Australia should make a concerted effort to establish:

- a. The nature and extent of the control of wages;
- b. The nature and extent of any mismanagement or fraud which occurred in the payment or compulsory saving of wages;
- c. The appropriateness or otherwise of the use of the funds; and
- d. The value of any income the Government received from the control of wages.

This work is not only vital to the individuals involved and their families but also the community as a whole. It is important that the truth about this issue is brought into the light of day in the same way that other systemic injustices have been.

3. Based on both the public forum and the investigation, provide just and fair compensation to those whose wages were controlled by a succession of Governments.

While many Indigenous people are primarily looking for acknowledgement and an apology, the compulsory saving of wages has contributed to the social disadvantage many Indigenous people currently experience. Therefore, a fair and generous compensation system needs to be set up. Any system needs to address and compensate for the inadequacies of the

¹⁴ McGrath, Ann, *Reconciling the Historical Accounts: Trust Funds Reparations & New South Wales Aborigines*, Australian Centre for Indigenous History, Australian National University, 8 July 2004, page 8.

Government's previous offer. While the Government claims legal action will be long and complex there is no need to resort to legal avenues. An independent, inquiry based, tribunal with dedicated, specialist staff could deal with individuals on a case by case basis and investigate their claim through seeking the relevant written evidence.

As we outlined above, some evidence is incomplete and this will continue to pose a problem, although previous cases have created adequate protocols for dealing with oral evidence. The Palm Island Cases, for example would provide an excellent model for this situation.¹⁵ Also, a formula for use in situations where no evidence is available would provide a more adequate and accurate way on quantifying the loss.

Language and cultural differences mean that the Government has a responsibility to actively promote such a scheme. The Government should also not unnecessarily deprive Indigenous people of their legal rights in such a process. Openness and transparency should be the hallmark of this system in contrast to the lack of transparency which was so often associated with the control of wages.

Finally, the disadvantage which Indigenous people continue to suffer can be directly linked to deprivation of adequate wages. Any compensation scheme should take into account the resulting disadvantage many Indigenous workers and their families suffered. Therefore the system should include the descendants of those whose wages were controlled. The mechanism for calculating the wages should also take into account the continuing disadvantage and in some way quantify the impact.

¹⁵ See note 13, page 10.

It is also critical that this should be in addition to the work currently being done in Indigenous health, housing, education and other essential services.

Conclusion

The effects of injustices which the Indigenous people of Australia have experienced continue to be felt throughout the community. The Uniting Church believes that Indigenous people have a unique contribution to make to Australia as the first peoples of this land. The injustices which the rest of the Australia has perpetrated upon Indigenous people have failed to recognise that unique contribution and led to the ongoing disadvantage suffered by the Indigenous community.

The control of the wages of Indigenous people was one of a number of injustices which they have suffered. We believe that in order to create true and lasting reconciliation in Australia the truth about these past injustices must be told and as far as possible redressed. The Australian community continue to need to hear the story of the Indigenous people and seek to understand the effect of government policies upon their lives.