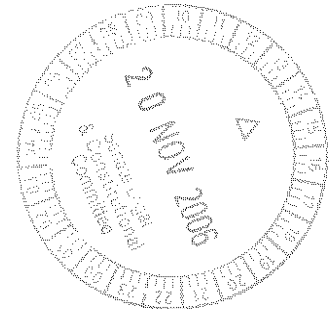




16 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Secretary

I refer to the appearance before the Committee for its inquiry into the stolen wages on Friday 27 October 2006 by Commission staff, Mr Darren Dick and Mr Jonathon Hunyor.

We would like to correct a statement made to the Committee, as well as provide further information regarding the Queensland reparations offer for the stolen wages (in response to the invitation to do so extended by yourself).

On page 4 of the proof Hansard transcript Mr Dick states:

Yes, and I am sure you were told in great depth that the initial costing that QAILSS had done was closer to \$150 million.

There are two corrections to this statement. First, the proposed settlement figure for the stolen wages issue was proposed by the National Aboriginal and Torres Strait Islanders Legal Services Secretariat (NAILSS) rather than by its subsidiary the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (QAILSS). Second, the figure cited by NAILSS was in fact \$180 million, not \$150 million as stated in the transcript by Mr Dick.

This figure, including a breakdown of how it should be paid, was included in a letter dated 9 February 2001 to the Premier of Queensland (a copy of which is included in the QAILSS report referred to below). The quantum of individual reparations proposed by NAILSS was for payments of \$25,000 for persons who had worked five years or less ranging up to \$45,000 per person who had worked in excess of 20 years.

We also refer to your invitation for further information on page 3 of the transcript:

CHAIR I would be interested in your having a look at the *Hansard* of Wednesday's hearings in Brisbane on the question of consultation. I must say that after considering the material which has been given to the committee and evidence which was provided to the committee on Wednesday and then the affirmation which was put on the *Hansard* record of Wednesday by the

representative of the Queensland government, the Assistant Director-General of the Department of Communities, Mr Hogan, I am slightly bemused by the claims and counterclaims on the level of consultation, its adequacy or otherwise, on how the Queensland government claims that 94 per cent of those consulted thought that the package was a good plan.

In that quote from Dr Jonas's media release there is also a reference to the question of independent legal advice. Any information that you could provide the committee with in relation to Dr Jonas's experience in that regard would also be of interest. We were trying to get to the bottom of that question as well and the role played by both QAILSS and NAILSS in particular in that process, so that would be helpful.

Please find enclosed a copy of the report submitted by QAILSS to the Queensland government on the consultations conducted by QAILSS to gauge the support for the Queensland government's offer.

This report contains the following factual information which will be of interest to the Committee:

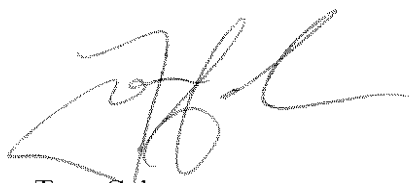
- Para 5.16 notes that many communities and individuals expressed the view that the original proposal of NAILSS, totalling \$180million, was 'far more indicative of a closer level of reconciliation to the amounts lost or unaccounted for over the years'.
- Para 7.4 notes that 'the level of acceptances (of the offer) is not necessarily an indication of any perception of fairness or reasonableness in the level of the offer made' and that the decision to indicate acceptance of the offer was motivated by a range of factors. Para 7.5 notes that 'a common motivation or reason for acceptance communicated by some individuals... was that the claimants were now so elderly as to believe they may not be capable of surviving long enough to see the end of any legal or political battle to obtain the balance outstanding'.
- Paras 8.2 and 8.3 address the statistics relating to the number of people who accepted the offer. Para 8.2 notes that 'it is obvious from the figures contained in this report that a large number of person who may be eligible to claim... did not attend the consultation meetings'. Para 8.3 notes that the estimate of eligible claimants was 16,400 people. Schedule 2 of the report then notes that 3489 people had returned forms. The report states further at para 8.3 that given the number of potential claimants, 'the number of persons responding to the invitations to attend the meetings were disappointingly low'. This is in contrast to the high level of support for the offer which the Queensland government stated exists.
- Schedule 1 of the report contains a page titled 'Advice to claimants if offer is rejected (what can happen if you say no)'. This was the advice provided to potential claimants at consultation meetings at which people were invited to indicate their support for the offer.

- Schedule 1 also includes the letter from NAILSS to the Premier of Queensland setting out the original proposal for settlement of this issue of a package of \$180 million.

These facts relate to questions that Committee members asked Commission staff during their appearance before the Inquiry. We provide them to supplement the answers given on the day.

We hope that this information is of assistance to the Inquiry,

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Calma', with a stylized flourish extending to the right.

Tom Calma
Aboriginal and Torres Strait Islander Social Justice Commissioner

Queensland Aboriginal and Torres Strait Islander Legal
Services Secretariat Limited

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CONSULTATION TEAMS REPORT

Aboriginal and Torres Strait Islanders Wages and Savings Negotiation Team

REPORT ON CONSULTATIONS
WITH ABORIGINAL PEOPLES AND TORRES STRAIT
ISLANDERS OF QUEENSLAND REGARDING
QUEENSLAND GOVERNMENT OFFER OF REPARATIONS

June 13 to August 9, 2002

Offer made by Premier Beattie: May 9, 2002.

To: The Chairperson,
Aboriginal and Torres Strait Islander Wages and Savings
Negotiations Team
(Wages and Savings Team)
Queensland

From: The Chairperson,
Queensland Aboriginal and Torres Strait Islander Legal Services
Secretariat Limited (QAILSS).

I have the honour to submit to the Aboriginal and Torres Strait Islander Wages and Savings Negotiations Team the report of the consultation teams deployed by QAILSS across the length and breadth of the State of Queensland. This process commenced on 13th June 2002 and has continued until the date of this report.

1. DOCUMENTS PUBLISHED AND PROVIDED TO THE INDIVIDUALS
AND COMMUNITIES VISITED BY THE CONSULTATION TEAMS

Attached and marked as "Schedule One" is one set of coloured documents (there being two sets under the red cover page messages from the principal team leaders – Mr. Bert Button and Ms. Cheryl Buchanan).

The documents headed "Without Prejudice" on the orange and pink pages are the documents containing the exact text of the Queensland Government offer made on May 9, 2002 ("the Reparations Offer").

All of the documents provided to the individuals and communities and contained in schedule 1 were approved by the Queensland Government through the Department of Aboriginal and Torres Strait Islander Policy (DATSIP).

2. MANDATE OF THE CONSULTATION TEAMS

- 2.1 QAILSS understood the consultation teams to be required to consult with as many Aboriginal peoples and Torres Strait islanders in as many communities across Queensland as could be reasonably and practically visited by the available teams within the short space of time available between June 13 and August 9, 2002.
- 2.2 QAILSS considered that the primary responsibility of each of the consultation teams was to consult with and to provide information to individuals and communities on as neutral and as objective a basis as was possible in the circumstances.
- 2.3 QAILSS also requested each of the consultation teams to consult with Aboriginal persons and communities (especially those over the age of 18 years) regarding the concerns and desires for the eventual distribution or eventual use on a general charitable basis of the frozen Aboriginal Welfare Fund trust monies ("the AWF") amounting to some \$8.6 M.

After consultation with DATSIP, this aspect of the consultation was dispensed with in the Torres Strait Islander communities.
- 2.4 QAILSS provided each of the consultation teams with a clear protocol by which none of the consultation teams was to knowingly or deliberately sway or influence by threats or demands any persons or communities in regard to the manner or process by which persons or communities considered or made any decisions on the matters of the Reparations Offer or the AWF.
- 2.5 QAILSS noted the problems likely to be encountered by each of the consultation teams in having to distinguish between the Reparations Offer made by the Queensland Government in regard to reparations for wages and savings lost as against the previous settlement made by the Queensland Government with the Foundation for Aboriginal and Islander Research Action (FAIRA) for the under-award wages anti-discrimination payments (which amounted to about \$ 7,000 per eligible person).

- 2.6 QAILSS also noted the potential problems and stress likely to be encountered by members of the consultations teams in regard to the politicization of the matter by various groups and individuals in or around Queensland seeking to highlight their own profiles or the profiles of their own organizations for various reasons.
- 2.7 Unfortunately, such politicization of the matter led to public criticisms or at times utterly false accusations being made against QAILSS itself or against the consultation team members – such attacks only leading to additional confusion in the minds of persons and communities being consulted with such that extra time was required to be expended in very short time lines to overcome and explain properly and reasonably the Reparations Offer and the opportunities available to individuals and communities to independently consult or to independently obtain legal advice on the rights being surrendered at the request of the Government in return for the payment of funds under the Reparations Offer.
- 2.8 The consultation teams sought to avoid wherever possible (as did QAILSS) any public or media comment or public response during the consultation process proper to the various attacks or the false accusations made in an effort to ensure that the consultations were conducted in a calm and objective manner within short time constraints.
- 2.9 At no time did QAILSS ever claim or seek to assert in any way any authority to speak on behalf of any person or community – it was considered that the consultations themselves were evidence that QAILSS believed that only the affected individuals and communities had a right to speak for themselves and about themselves.
- 2.10 QAILSS instructed the consultation teams to avoid wherever possible any comment upon or any involvement in issues surrounding local or regional community politics wherever that might be raised to or in front of any of the consultation teams.
- 2.11 QAILSS instructed the consultation teams to assure all individuals and communities that they were free to consider and deliberate upon the Government offer in whatever way or by whatever process was appropriate to them in each separate locality and that there was no requirement upon any individual or community to make any decision whatsoever upon the Reparations Offer in the presence of any consultation team or in the presence of any member of any of the consultation team.
- 2.12 QAILSS required that the consultation teams were to place no pressure upon any person or community in regard to the decision-making process used by such person or community.

- 2.13 Persons and communities were advised that they were at all times free to either return the forms duly executed to the consultation team before it departed the locality or they could if they so wished keep the forms and discuss them with their families or communities or their own legal advisers after the consultation teams had departed without any pressure or duress.
- 2.14 Comments and concerns of each individual or community in regard to the Government Offer or the Welfare Trust Fund or both were recorded as far as possible in meeting minutes taken by each consultation team (a draft copy of which was available upon request to the individual or community being consulted upon request).
- 2.15 Consultation teams were clearly instructed that they were not agents or servants of the Queensland Government and were not authorized at any time to make any promise or to offer any interpretation or to communicate any decision as being made by the Queensland Government at any time whatsoever.
- 2.16 Consultation teams were warned that they might encounter a range of emotions in individuals and communities visited ranging from sadness to outright anger or hostility regarding the Reparations Offer or the AWF distribution proposal and that every effort was to be made by consultation teams to avoid as far as possible any confrontation with any individual or community during the consultation process.
3. STRUCTURE OF THE CONSULTATION TEAMS
- 3.1 To ensure that the desire of the Wages and Savings Team to consult with those affected and to give those affected an opportunity to speak for themselves was carried into effect, QAILSS established at most 5 consultation teams to travel to and to visit a number of individuals and communities across the whole of Queensland.
- 3.2 Each team was established as far as possible along the following lines: -
- a. Indigenous team leader
 - b. Qualified legal practitioner
 - c. Indigenous drivers acting as team members / workers
 - d. Indigenous team worker acting as team secretary / minute taker
- 3.3 The team structures varied depending on the travel itinerary required to be undertaken and the funding available for that particular team to meet accommodation and transport and fuel / communication expense needs.

- 3.4 To take account of occupational health and safety needs of each of the teams, arrangements were made to enable teams to have at least 1 day off for rest in regard to the larger or longer itinerary programs and at least one of the teams had access to a satellite phone for emergency purposes.
 - 3.5 In some instances, court and other legal commitments required the rotation by urgent air travel of some of the legal practitioners allocated to some of the consultation teams to ensure the continuity of the consultation itinerary for that particular team.
 - 3.6 The remote location of some individuals or communities to be visited necessitated the hire of chartered aircraft and helicopter (for which quotations were sought from a number of firms to achieve economy for the limited funding available) to reach such locations within the time constraints.
 - 3.7 Wherever possible, consultation meetings were arranged to be hosted by local or regional Indigenous community organizations or by ATSIC representatives to provide ownership and control of the consultation process and decision-making to the local individuals or communities being consulted.
4. CONSULTATIONS UNDERTAKEN
- 4.1 Below in this report is a list of the communities and locations visited by each of the consultation teams within the time span of June 13 to August 9, 2002 inclusive.
 - 4.2 Following the conduct of each consultation meeting (where meetings were able to be held), surplus consultation document sets were left with the host Indigenous organization or meeting convenor to enable those not able to be present for the meeting to have access to the consultation documents afterwards.
 - 4.3 In some instances, persons were absent from meetings due to obligations to attend funerals of respected elders or due to family commitments or due to other customary law obligations.
 - 4.4 Some Elders or the meeting convenors in such instances undertook to explain to those absent the consultation documents or to refer absent persons inquiring about the forms to the QAILSS office in Brisbane.
 - 4.5 Those individuals and communities wishing to take documents away for independent assessment and decision-making were informed that they were perfectly free to do so and the Government deadline of August 9,

2002 was noted as being a deadline for the provision of a QAILSS report on the consultation held to date.

- 4.6 Communities and individuals were encouraged by the consultation teams to respect each others decisions and that those accepting the offer were asked to respect the decision of others to reject the offer and vice versa as it was important to QAILSS that communities and families should not be divided among themselves while trying to consider their position on the Reparations Offer or on the distribution of the AWF.
- 4.7 Each of the consultation meetings involved an acknowledgement to the Traditional owners and the Elders of the areas or locations where the meetings were being held.
- 4.8 Those consultation teams which had access to a camera asked permission of Elders and those present at meetings (time and circumstances permitting) to obtain a photographic record of the meeting or at least a picture of those present at the meeting for historical purposes.

Most individuals and communities gave permission for photographs to be taken.

- 4.9 The consultations took place with the clear statement that the consultation teams did not speak for the Government and were not employees of the Government and therefore could not explain the thinking or agenda or motivations behind the terms and conditions of the Reparations Offer.

5. COMMENTS AND CONCERNS OF CLAIMANTS AND COMMUNITIES CONSULTED.

- 5.1 Most of the individuals and communities expressed concern at the level of the Government offer (\$ 4,000 and \$ 2,000) with the concerns ranging from dismay through to outright anger.
- 5.2 A number of individuals and communities referred to the Reparations Offer as a "pittance" or a "lousy pittance" while some individuals and communities sought an explanation from the Government as to why the FAIRA settlement was fixed at \$ 7,000 per person in comparison to the \$ 4,000 and \$ 2,000 – far less compensation for a far greater period of wages withheld.

SPECIFIC

Included below is a selection of representative comments made by persons in attendance at meetings who are eligible to claim. Many people

spoke about their own stories, and similar feelings concerning the nature and the structure of the offer were voiced in every location.

"I think it very rude of government to offer that \$4000. I lost my teenage years and worked like a dog, and I got whipped and everything all over. I worked so hard, it was no holiday. This is a rip off, you go back and tell them what I said. Many of these people have died now. \$4000 is not good enough. Our women were raped by white men and we were all ripped off." Yarrabah

"\$2000?! Some politicians get more than that in a week! This my entire life!" Yarrabah

"This is criminal, discriminating. This offer is blackmail, they don't care. It's not enough. It is bloody sickening, discriminating. We're sitting on our land and it is controlled by government, they think it is theirs" Wujal Wujal

"Is this offer going to happen? We are tired of waiting. Our old people have gone on already. Are we going to have to wait for another group to come here and tell us more? We are tired of messages. How long is it going to take to get this money? I don't want government to keep giving us another little lolly, every time we get a lolly we get grief, is this the only money we are going to get?" Umagico

"It is hard to know that you worked so hard for all those years for nothing, and this is nothing. I will take it but it is nothing" Seisia

"Does government know how we worked? That we worked really hard and got nothing? We used to go out mustering for months and I was only a kid, and government should really know this. That's what I want to tell them" Pompuraaw

"Government took all our money! All of it! It is hard for us, all our parents working and now nothing for them or their children or grandchildren" Pompuraaw

"They're calling this reconciliation?! This is nothing. I think it is a capital crime to take Aboriginal money and put it into government coffers... everyone worked hard and our mothers, they never got child endowment though they were entitled to it. It all went to the missions and settlements..." Mornington Island

"\$4000, it's too small. If the Department can pay \$7000 for under award wages they can offer us more than \$4000 for all the wages we

earned and never saw. I think the government should be fair with us, we have been struggling all the time and look at our old people...we are human beings! We know how hard we worked and how long it was. We know how it worked, if you ran away you could be sent back. This is taking our rights away." Kowanyama

"I think about this, deep in my heart, that pain. Every time we step forward we go back down, since we were young fellas. I think about what happened to us from the beginning" Kowanyama

"It's all very well for government to say what they are going to pay, they don't realise what we did and all for nothing!" Doomadgee

"The government has to be answerable for this! Shame! They are forcing us to accept this, they have not come clean, they are guilty. We are very angry. I'm an old woman, I can see what is going on! This is wicked in God's sight." Doomadgee

"They used our people for free labour and they know it, we built this community, we worked hard and no-way are we going to settle on this, the pain will be in our heads until the day we die!" Doomadgee

"That's not reconciliation! We deserve this! We are owed this! It is our right! They should look at this, they are robbing us again, we never had justice, we never got anything. It is written here "without prejudice" I don't believe that! The government never asked us, we just had to go and work. There is no option here, no choice. How long until they are answerable to us? We were not allowed to even see what was written in our own passbooks!" Doomadgee

"I will never heal from this" Doomadgee

"You can't say sorry with money, we cannot be bought" Doomadgee



"The people who perpetrated these acts should be accountable. If we sign the government indemnity section, will they be held accountable? And the Police sergeants who took our money, they are responsible too" Cairns

"It seems to me that we've got no option" Bamaga

"This is the closure? You can't go anywhere with this, and we are forced to take it!" Bamaga

- 5.3 Strong sentiment was expressed by Elders in the Torres Strait islands that a third category of eligibility should be set up for persons of 65 years of age and over who should be granted the sum of \$7,000 per person.
- 5.4 A number of persons expressed the view that the Reparations Offer of May 9, 2002 was the first time that any State or Territory government has made an offer to make reparations for the wrongs done in regard to the misuse or loss of wages and savings withheld and that it may be the last time that such an offer might be available especially in the event that a more conservative or an anti-Aboriginal government were to be elected into power in the future.
- 5.5 A number of persons expressed the concern that the Government has not explained properly the meaning or interpretation of the term "*are alive at a date to be agreed*" and such persons asked that they should be recorded as asking that the government urgently indicate publicly the exact date at which people must be alive to be considered as an "*Eligible Claimant*".
- 5.6 A number of persons, particularly in the Torres Strait islands, expressed the view that since the offer was not available to deceased persons and their next of kin, "*the date to be agreed*" should at least be the date when bona fide negotiations commenced between the Wages and Savings team and the Queensland Government, namely 1 September 2000. The point was made that DATSIP had sent brochures around the communities in 2000, which raised the expectations that the Queensland Government would make reparations at an early date. Since that time, many people had died.
- 5.7 Others expressed the view that the date on which Elders should have been eligible to claim the reparations payment was or should be the date on which ATSIC first asked QAILSS to commence investigations into the Wages and Savings Accounts and the AWF, namely 1996.
- 5.8 A number of persons and communities noted (facetiously) that a person must have to be alive at least on the date on which they sign the Letter of Acceptance or Rejection.
- 5.9 Many persons and communities asked that it be noted that they were seriously alarmed and even disgusted that the monies to which their parents and grandparents would have been entitled will now still be withheld by the Queensland Government without explanation simply because such parents or grandparents have since died before the Reparations Offer was made.
- 5.10 A number of communities expressed concerns at the indication by the Queensland Government that the indemnity would be required to release

the Queensland Government from all claims available because of living under the Acts.

- 5.11 Such communities expressed the view that the indemnity should be strictly "limited only to release from liability for any claim relating to non-payment of any wages or savings withheld and not be allowed to extend to claims for pain and suffering or for personal injury or for deprivation of liberty/false imprisonment and the like suffered under the various "protection Acts".
- 5.12 A number of communities and individuals noted that many persons moved away from Queensland to flee or escape from the harsh regime under those Acts such that there were likely to be a number of persons still alive who may be now living in States and Territories outside of Queensland and who may still be eligible to claim under the Reparations Offer. 
- 5.13 In light of the above information, the QAILSS consultation teams arranged for the consultation document sets to be sent to each of the Aboriginal and Torres Strait Islander Legal Services (ATSILS) across Australia with a view to enabling eligible persons to have an opportunity to obtain information about the Reparations Offer and to provide an indication of whether such interstate persons wish to accept or reject the Reparations Offer.
- 5.14 Several communities and individuals noted that the Government "Without Prejudice" documents failed to state clearly or at all what was to happen in the event that the number of eligible persons available to accept the reparations offers was discovered or found to be less than the estimate made by the Queensland Government in the beginning (original estimate being 11,400 eligible for the \$4,000 and 5,000 for the \$2,000). 
- 5.15 Bearing that in mind, a number of communities and individuals expressed concern that the Queensland Government should not ever seek to reduce the total amount allocated down to a figure less than the \$55.4 M publicly referred to as being allocated for the Reparations Offer otherwise such communities and individuals expressed the view that they may have been or would be the victims of a serious misrepresentation on the part of the Queensland Government. It was said that such persons or communities relied on the total figure of \$55.4 M being made available by the Government and their decision to accept was influenced accordingly.
- 5.16 Many communities and individuals noted the original offer or proposals for settlement made by the Wages and Savings Team as well as the offer set out in the NAILSS letter to the Premier dated 9th February 2001. Most communities and groups considered the scale of payments for \$20,000 to

\$45,000 to be far more indicative of a closer level of reconciliation to the amounts lost or unaccounted for over the years.

- 5.17 The consultation teams reminded most communities and individuals that the consultation teams were not in a position to explain the thinking or decision-making undertaken by the Queensland Government and that the Reparations Offer was now the only offer able to be consulted upon at the present time.
- 5.18 Despite criticisms and at times potential threats towards the consultation teams published in various media during the consultation period (especially in regard to proposals for the consultation teams to visit Aboriginal or Torres Strait remote autonomous communities), the consultation teams found themselves made extremely welcome by the individual peoples of the remote communities and by most representatives of Indigenous community councils or authorities.
- 5.19 Most communities and individuals visited (especially in remote regions) were willing and even anxious to show the visiting consultation teams the extent to which the needs and infrastructure of the communities far outstripped the available funding from government and other sources.
- 5.20 Many communities and individuals indicated that a serious and positive difference could be made to such communities and individuals when and if payouts in regard to reparations could be urgently obtained.
- 5.21 Most, if not all, of the communities and individuals welcomed the commitment of the Queensland Government to the prioritization of payments to the elder claimants first and the common desire among those consulted was that payments to those who accepted the offer should commence immediately to avoid the pain and stress of any delay or to avoid the potential risk of further disputes arising from the occurrence of deaths of any of those who have already indicated their acceptance of the Reparations Offer in writing.

6. COMMUNITIES AND CLAIMANTS CONSULTED

- 6.1 The consultation teams travelled to and consulted with the following communities and claimants:-

Kubin Island	St. Paul Island	Badu Island
Mabuiag Island	Boigu Island	Saibai Island
Dauan Island	Yam Island	Coconut Island

Yorke Island	Darnley Island	Stephen Island
Murray Island	Sue Island	Hammond Island
Thursday Island	Toowoomba	Dalby
Chinchilla	Miles	Roma
St. George	Cunnamulla	Charleville
Quilpie	Blackall	Barcaldine
Longreach	Winton	Boulia
Bedourie	Dajarra	Urandangi
Mt. Isa	Camooweal	Cloncurry
Cherbourg	Gympie	Maryborough
Hervey Bay	Bundaberg	Rockhampton C. C.
Gayndah	Biloela	Gladstone
Kingaroy	Rockhampton	Mackay
Proserpine	Bowen	Ayr
Townsville	Charters Towers	Hughenden
Richmond	Julia Creek	Ingham
Cardwell	Kennedy	Innisfail
Gordonvale	Cairns	Mossman
Mareeba	Atherton	Ravenshoe
Mareeba CC.	Townsville CC.	Tully
Normanton	Burketown	Doomadgee
Mornington Island	Kowanyama	Pormpuraaw
Aurukun	Napranum	Lockhart River

Mapoon	Bamaga	Injunoo
Seisia	Umagiro	New Mapoon
Coen	Laura	Cooktown
Wujal Wujal	Hopevale	Wooroobinda
Eidsvold	Yarrabah	Brisbane
Logan	Inala	Caboolture
Tweed Heads	Ipswich	Stradbroke Island
Beenleigh	Beaudesert	Palm Island
Herberton	Mitchell	

- 6.2 In addition, a number of aged persons homes and care centres as well as hospitals where potential claimants were identified as being residents were visited by at least one of the consultation teams.
- 6.3 Accordingly, well in excess of 100 locations and communities will have been visited or travelled to or consulted with by the consultation teams deployed by QAILSS in compliance with the instructions of the Wages and Savings Team within the funding supplied by the Queensland Government to QAILSS.
7. ASSESSMENT OF LEVEL OF ACCEPTANCES AND REJECTIONS OF THE QUEENSLAND GOVERNMENT REPARATIONS OFFER BY CLAIMANTS AND COMMUNITIES
- 7.1 Attached to this report and marked "Schedule Two" is an analysis of the level of acceptances and rejections returned in writing to QAILSS by claimants and by community organizations on behalf of claimants.
- 7.2 The Reparations Offer did not specify the Government's level of acceptance by the peoples to the Reparations Offer before it would make the decision to implement the scheme of distribution of monies and other associated offers.
- 7.3 The consultation teams have indicated that most, if not all, of the communities and individuals consulted so far appear to have provided Letters of Acceptance for the Reparations Offer on a level which might be reasonably assessed as being an overwhelming vote in favour of acceptance.

- 7.4 It is considered that the level of acceptances is not necessarily an indication of any perception of fairness or reasonableness in the level of the offer made and, as indicated previously in this report, a number of individuals and communities made it very clear to the consultation teams that there were a variety of reasons behind each of the decisions to accept the current Government reparations offer.
- 7.5 A common motivation or reason for acceptance communicated by some individuals or some communities to the consultation teams was that the claimants were now so elderly as to believe that they may not be capable of surviving long enough to see the end of any legal or political battle to obtain the balance outstanding of any wages or savings to which they as individuals may have been fully entitled.
- 7.6 Great care was taken by the consultation teams to point out that the Letters of Acceptance or Rejection were not in themselves legally binding documents in any way and that it was only the actual Queensland Government document which may be subsequently submitted for signature which will be legally binding.
- 7.7 Accordingly, the QAILSS consultation teams report that the level of acceptances is about on average around 95.92 percent of the documents returned to QAILSS.
- 7.8 The level of forms found to be incorrectly filled in or returned without an indication of acceptance or rejection so as to be assessed as being invalid or informal in nature is about or around 1 to 2 percent of the total forms returned to QAILSS.
- 7.9 It was not considered that it was part of any role of the consultation teams nor of QAILSS to formally reject or declare invalid any particular claim even though a particular claimant may later be ruled by DATSIP to be ineligible. The consultation teams accepted as *prima facie* evidence the correctness of the date of birth and the fact that the person completing the form was "Under the Acts."
- 7.10 Letters of Acceptance or Rejection which were potentially likely to be valid except for a failure to complete one or two details in the form were considered by the consultation teams or by QAILSS as invalid until the relevant details were supplied. Accordingly they did not form part of the count.
- 7.11 The level of rejections is therefore around less than 2 to 3 percent as stated above.

7.12 QAILSS anticipates that at the rate at which Letters of Acceptance or Rejection are being sent/faxed to this office will continue well beyond the 9th August deadline. It is however confidently predicted that the level of rejection will not be greater than that mentioned above.

8. STATISTICAL IMPLICATIONS OF CONSULTATIONS CONDUCTED TO DATE

8.1 The communities were told that if the eligible persons filled in the forms rejecting the offer, such rejection did not preclude those persons claiming at a later date should the State Government implement the Reparations Scheme.

8.2 It is obvious from the figures contained in this report that a large number of persons who may be eligible to claim under either category did not attend the consultation meetings.

8.3 If the persons eligible in Categories A and B are in the order of 16,400 (as estimated in the Without Prejudice offer), the number of persons responding to the invitations to attend the meetings were disappointingly low. This is in spite of widespread advertising in the print and electronic media.

8.4 It may be possible to infer that the Government's estimates are exceedingly high and that therefore the persons who are potential claimants will exhaust far less than the \$55.4 M allocated. In such circumstances it is submitted that because the representation on the Letter of Acceptance was "I accept the Government's Offer of \$55.4M" then if the sum actually paid to the claimants is less than that sum, the claimants will feel cheated and with good reason.

8.5 It is therefore submitted that if this subsequently comes to pass, the Government will be requested to either:-

- a. "Top – Up" the sums paid to the eligible claimants by paying a further amount so as to exhaust the "surplus" or;
- b. Add a portion of those funds to the existing Aboriginal Welfare Fund (AWF) and;
- c. Create a new fund termed "The Torres Strait Islander Welfare Fund (TSIWF) and use a portion of the "surplus" monies for the purpose or purposes for which the majority suggested should be the means of distribution of the AWF.

The portions for the addition to the AWF and the creation of TSIWF should be in proportion to the populations of those peoples.

9. SUMMARY AND CONCLUSION.

- 9.1 There was an overwhelming vote by the Aboriginal and Torres Strait Islander people in favour of accepting the State Government's Offer of Reparation (96% in round figures).
- 9.2 This support however, is based upon the fact that the amount to be made available to these peoples is to be at least \$55.4 M in actual terms.
- 9.3 Whilst the support is extremely high it is not indicative of the view that it is considered that the sums offered to persons falling in Category A (\$4,000.00) and Category B (\$2,000.00) are adequate.
- 9.4 The peoples appreciated the fact that the Queensland State Government was the first Government in Australia to have made any offer at all in a spirit of reconciliation. They were also encouraged by the statement that any process would give priority to the elderly.
- 9.5 There was widespread disappointment that the offer (depending on the date of eligibility) is one made only to those living.
- 9.6 The date of eligibility should be as early as 1996 and no later than 1st September 2000.

10. ABORIGINAL WELFARE FUND TRUST MONIES.

The consultation team also reminded all individuals and communities visited in the mainland about the green form relevant to the receipt of suggestions from Aboriginal people for the utilization and distribution of Aboriginal Welfare Fund monies.

It was noted by the consultation teams that Aboriginal persons over the age of 18 years were individually entitled to respond to the suggestions set out as dot points.

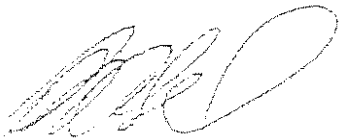
The results are contained in Schedule Three.

11. ACKNOWLEDGEMENTS.

- 11.1 In support of the consultation teams I say that the process of consultation was carried out in a most efficient and professional manner.
- 11.2 The Team presented the Reparations Offer in a fair and impartial manner. Emphasis was placed on the fact that the teams did not either advocate the acceptance or urge the rejection of the Reparations Offer.

- 11.3 No adverse reports as to the manner in which the meetings were held have been received by this Office.
- 11.4 Finally, QAILSS wishes to acknowledge the support afforded by DATSIP and its personnel particularly in the remote regions of the mainland and in the Torres Strait islands. Some of the difficulties encountered with the consultation process were overcome by their intervention.

With compliments,



Russell Bellear,
Chairperson,
QAILSS Ltd.

8th August 2002.

SCHEDULE ONE

URGENT!

ATTN: Chairpersons, Community Councillors and Community Members

Queensland Government Offer on Wages and Savings Accounts

Hello. This is Cheryl Buchanan. I am one of the Team Leaders for the consultations in relation to the Queensland Government offer of \$55.4 million reparation of Aboriginal and Torres Strait Islander peoples who lived under 'the Acts', and had their wages and savings managed by Government Officers.

The Queensland Government gave QAILSS (Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat) until the 9th August 2002 to consult with the Aboriginal and Torres Strait Islander peoples of Queensland on whether they want to ACCEPT or REJECT the Government offer. So we do not have much time.

It is important to have as many people from your community attend the meetings, particularly the elders, so that they have the opportunity to look at the offer on paper.

You are in the best position to know your community, and we are asking if you could assist with the meeting process, especially in finding a place for the meeting to take place. I would much appreciate your help as it is important for all our people who were affected to have a say. In the end, it will be up to each individual to know what is best for them and their family.

I need to say that the individuals in each of the teams involved in the consultations are **not** there to sway an opinion either way. We **do not** want to tell any person what to think or what to say. We are having the meetings to let you:

1. look at the offer
2. let you know what it means to accept the offer
3. what it means to reject the offer
4. for each individual to tell us what you want to do

The solicitor on the team is there to inform you of your rights.

These meetings are **not** being held to take away the political rights of your councils or elected bodies. The meetings are to determine one thing only- whether individual Aboriginal or Torres Strait Islander persons who worked under 'the Acts', and had their wages, savings and/or labour controlled by the government, want to ACCEPT or to REJECT the Government's offer.

If you have any ideas on a place to meet in your community, and a community member who would like to assist in the process or anything else, please phone QAILSS on 07 3223 5700. If you wish to speak with me, phone 0417 726 882.

I look forward to your response and to meeting with you soon.

Thanking you,

Cheryl Buchanan.

Time:

Date:

Without Prejudice

Queensland Government Offer

The Queensland Government acknowledges the controls exercised under a series of Acts known as "the Protection Acts" over the wages and savings of Aboriginal and Torres Strait Islanders peoples. This Government is committed to reaching a resolution of these long standing issues and wishes to make an offer for this purpose.

The Offer Is:

1. **Monetary Amount**
The total amount offered is \$55.4m and is a once only offer and a capped amount.
2. **Apology**
A written apology from the Government to all living persons who had their wages and savings controlled and who are eligible to make a claim.
3. **Parliamentary Acknowledgement**
Upon agreement, the Premier will make a Statement in the House on behalf of the Government. This Statement will place a public recognition of past injustices on the basis of race on the Parliamentary record. The Premier will host a major function to commemorate the occasion at Parliament House.
4. **Government Protocol to Acknowledge Traditional Owners**
A protocol for commencement of all official Government business will be adopted requiring acknowledgment of traditional owners.
5. **Aborigines Welfare Fund**
The distribution of the Aborigines Welfare Fund (currently \$8.6M) to be progressed as a separate issue. This distribution to include, but not be limited to, the development of an oral histories collection relating to this matter, and appropriate signage which recognises the tribal boundaries around country. Other projects may include, for example, a history kit for schools.

Basis for Reparation:

In making this reparations offer the Queensland Government acknowledges that the monetary offer may not meet the expectations of many potential claimants.

The current Government negotiating position is that the reparation offer is being made, not based upon any admission of legal liability, but in the spirit of reconciliation.

Distribution

The Government's formula for distribution is detailed over the page. Other options for distributing the total amount are open to consideration. Proposals regarding distribution should be provided in writing by Friday 9 August 2002 to the Honourable Judy Spence MP Minister for Families, Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services.

Fixed Principles

Agreement on this offer must be consistent with the following principles:

- * The reparation funds will be administered by the Department of Aboriginal and Torres Strait Islander Policy;
- * Any formula for distribution must:
 - > Give priority to older people;
 - > Ensure equitable access by potential claimants;
 - > Be transparent and accountable; and
 - > Be simple and timely.
- * The Government requires that any compensation process be completed within three years of an agreement.

Without Prejudice

Reparation Amounts

The total amount of the package is capped at \$55.4m.

The Government formula and rationale is detailed below. Other options for distribution will be considered.

Categories of Eligible Claimants

Group A Claimants

- Eligible claimants will be people who were:
 - Born up to the end of 1951 and are aged 50 or older in 2002;
 - Lived under the 1897 and/or 1939 Acts; and
 - Are alive at a date to be agreed.
- The proposed reparation payment for these claimants is \$4,000 per person.
- Population estimates indicate there are approximately 11,400 people alive today who may be in this group.

Group B Claimants

- Eligible claimants will be people who were:
 - Born up to the end of 1956 are aged between 45 and 49 in 2002;
 - Lived under the 1939 and/or 1965 acts;
 - Are alive at a date to be agreed; and
 - Are not included in the group above.
- The proposed reparation payment for these claimants is \$2,000 per person.
- Population estimates indicate there are approximately 5,000 people in addition to those in Group A who are alive today who may be in this group.

NOTE: The above estimates were prepared by the Office of Economic and Statistical Research. They include a 6% undercount in census numbers and an assumption that all Aboriginal and Torres Strait Islander people were under the Act.

Indemnity

Payment of the reparation amount will be subject to each person signing an agreement which indemnifies the Government against any common law or other legal actions which may otherwise be available under the *Aboriginals Protection and Restriction of the Sale of Opium Acts 1897*, the *Aboriginals Preservation and Protection Act 1939*, the *Torres Strait Islanders Act 1939*, *Aborigines and Torres Strait Islander's Affairs Act 1965*, the *Aborigines Act 1971*, the *Torres Strait Islander Act 1971*, *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*.

Advice to Claimants if offer is REJECTED (What can happen if you say NO)

Claimants who say NO to the government's offer should be aware of the following matters:

The government has said that this is the final offer and the offer will not be increased and will not be repeated

People who say no to the offer are entitled to take the government to court if they have enough evidence to prove a case against the government

But a court case can take many years and the government has money to oppose the case, and to delay it. Remember the Mabo case took 12 years to resolve

Even if a person has documentary evidence, a court case will be difficult to win. The government has said that it has legal advice that it would win any such action

Funding a court case will depend on whether ATSIC will give a special grant, and that may depend on legal advice as to whether the case is 'winnable'. Court cases can be extremely expensive and if the case is lost, the costs of the case may be awarded against the person bringing the case to court.

Advice to Claimants if the offer is ACCEPTED (What can happen if you say YES)

Claimants who say YES to the government's offer should be aware of the following matters:

Your claim will be checked by the government to see if you belong to either Group A or to Group B

You will be requested to sign a form stating that you will give up any future rights to sue the government about anything to do with being 'under the Acts'. This is a condition of the government's offer.

The government will publicly apologise for the wrongs that occurred and each claimant will receive an individual written apology

The government will adopt a protocol to acknowledge Traditional Owners at the beginning of all official government business

Letter of ACCEPTANCE / REJECTION
Queensland State Government Offer of Payment for Unpaid Salaries and Wages

The STATE GOVERNMENT OFFER of \$55.4 MILLION has been explained to me by the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat Consultation Team who have explained to me what is being offered; what the conditions are and who is being included.

I have read / had read to me (delete section which does not apply) the document "Without Prejudice" which outlines the Government offer and which sets out the two categories of eligible claimants:

GROUP A CLAIMANTS

Aboriginal or Torres Strait Islander people who:

- Were born up to the end of 1951 and are aged 50 years or older in 2002;
- Lived under the *Aboriginals Protection and Restriction of the Sale of Opium Acts 1897*, and/or the *Aboriginals Preservation and Protection Act 1939*, and/or the *Torres Strait Islanders Act 1939*;
- Are alive at a date to be set by Proclamation
- Had their wages/savings/labour controlled by the government

The proposed reparation payment for these claimants is \$4,000 per person

GROUP B CLAIMANTS

Aboriginal or Torres Strait Islander people who:

- Were born up to the end of 1956 and are aged between 45 years and 49 years in 2002;
- Lived under the *Aboriginals Preservation and Protection Act 1939*, and/or the *Torres Strait Islanders Act 1939* and/or the *Aborigines and Torres Strait Islander's Affairs Act 1965*;
- Are alive at a date to be set by Proclamation
- Are not included in GROUP A claimants (above)
- Had their wages/savings/labour controlled by the government

The proposed reparation payment for these claimants is \$2,000 per person

I (print your name).....

ACCEPT the offer of \$55.4 million made by the Queensland Government

I (print your name).....

REJECT the offer of \$55.4 million made by the Queensland Government

DATE OF BIRTH...../...../19..... PLACE OF BIRTH.....

CURRENT ADDRESS.....

.....STATE.....

COMMENTS.....

SIGNED..... DATED...../...../20.....

BEFORE ME:.....

Print Name:.....

The Aboriginal Welfare Fund

The wages and savings offer of \$55.4 million is SEPARATE to the sum of \$8.6 million in the Aborigines Welfare Fund

The law related to the Aborigines Welfare Fund does not allow for the money to be given to any individual person or group. The money must be used only for the general benefit of ALL Aboriginal peoples in Queensland.

The Government is asking QAILSS to consult with Aboriginal people about what to do with the Welfare Fund money.

Set out below are four suggestions for how this money could be used. If you agree with any of the suggestions please place a tick (✓) next to that suggestion. If you have any other ideas about how the money might be used, please write them under the suggestions.

- Develop an oral histories collection from the Elders and other persons about their lives
 - Display signs in towns and communities around the State which recognise the Traditional Owners of the land in that area
 - Provide scholarships for Aboriginal students who want to get higher education (TAFE or University)
 - Develop a school history which talks about the struggle of Aboriginal people in Australia.
- Other suggestions:

SEND To: QAILSS

PO Box 12298, George St. Post Shop, BRISBANE 4003

Name:

Date of Birth:

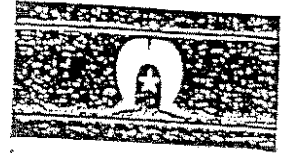
Address:

Signature:

Date:



NAILSS
Australia



*National Aboriginal and Torres Strait Islanders Legal Services Secretariat
Limited*

A.C.N. 083 694 606

Level 25, MLC Centre
239 George Street
Brisbane Qld Australia
Email: nailss@powerup.com.au
Web: www.powerup.com.au/~nailss

PO Box 12278
Elizabeth Street PO
Brisbane Qld 4002
Tel: 07 3211 3522
Fax: 07 3211 3234

The Honourable Peter Beattie MP,
Member for Brisbane Central &
Premier of the State of Queensland,
PO Box 185,
ALBERT STREET PO,
BRISBANE Qld 4002

(Fax: 07 – 3221 3631)

Friday, 9 February 2001

NOT FOR MEDIA PUBLICATION NOR GENERAL RELEASE

Dear Mr. Premier,

The National Coordinator, Mr. John Leslie instructs me, to convey to you and to Mr. Damien McGreevy of your office our appreciation for your efforts to arrange an urgent meeting with Minister Judy Spence next Tuesday at 1:30pm at her office in Brisbane.

I am instructed that the Aboriginal Negotiation team involved in the Aboriginal Welfare Fund project would desire you to convey to Minister Spence the following information for urgent consideration by both Minister Spence and you prior to next Tuesday's meeting: -

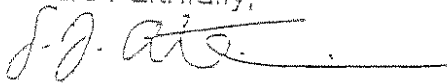
1. That the Queensland State Government give urgent consideration to the allocation of an amount of One Hundred and Eighty Million dollars (\$ 180,000 AUD) for payment over a period of Three state budgets in full and final settlement of any present and future claims concerning the Aboriginal Welfare Fund and the legislative regime under which it operated in Queensland;
2. As apart from the above, that the Queensland State Government give urgent consideration to the possibility that a transfer be undertaken of all housing in respect of which funding is now or has in the past been allocated for the housing of Aboriginal and the Torres Strait Islander peoples in the State of Queensland with such transfer being made to the various Regional Housing Authorities established by ATSIC across the State of Queensland;

It is hoped, Mr. Premier, that you will be able through your leadership to provide the Minister and her staff with positive instructions to respond to the points raised above as a means of demonstrating the practical continuation of negotiations on a clear timeline with practical and meaningful outcomes for the benefit of the claimants and their families now and in their future.

~~It is hoped~~ by the negotiating team to be able to call a press conference next Thursday to assure the Aboriginal peoples of Queensland that the efforts at resolution of the AWF regime are well and truly on track to a genuine resolution in the lifetime of the remaining claimants.

Above all, Mr. Premier, I am instructed to again express the firm view of the Aboriginal Negotiating team that your direct insight into the wider political aspects of the Queensland governmental system would be most helpful and constructive to such a meeting with Minister Spence and that you would be most welcome to attend that meeting next Tuesday if you are at all able to do so despite your clearly busy schedule.

Yours Faithfully,



Geoffrey Atkinson LLB, JP
National Solicitor,
Office of the National Solicitor, NAILSS Australia

National Secretariat for
Aboriginal and Torres Strait Islander Legal Services
In Australia

A Consultative NGO of the UNITED NATIONS
(accredited to the Economic and Social Council – EcoSoc, New York)
(accredited to the UN Commission on Human Rights – UNCHR, Geneva)
(accredited to the UN Commission on Crime Prevention & Criminal Justice-
UNCCPJ, Vienna)
(accredited to the World Intellectual Property Organisation – WIPO, Geneva)
(accredited to the UN CHR Working Group on the elaboration of a text for a Draft declaration
on the Rights of Indigenous peoples-Geneva)
(accredited to the UN Working Group on a Permanent Forum for Indigenous Peoples-
Geneva)
(accredited to the UN Secretariat for the Convention on Biological Diversity-
UNSIODIV, Montreal)
(accredited to the UN Working Group on Indigenous Populations-UNWGIP, Geneva)
(accredited to the UN World Criminal Justice Information Network-UNWCJIN, Washington)

UNITED NATIONS



QUANTUM

Individual Reparations

Payment of reparations to individual Claimants by way of compensation for the injustices imposed under the *protection regime* is proposed as follows:-

Persons who worked 5 years or less	\$25,000.00
Persons who worked more than 5 years but less than 10 years	\$30,000.00
Persons who worked more than 10 years but less than 15 years	\$35,000.00
Persons who worked more than 15 years but less than 20 years	\$40,000.00
Persons who worked more than 20 years	\$45,000.00

These figures take into account the need to balance the interests of Claimants with Government budgetary constraints. Given that the average wage in Queensland in 1999 was \$30,000 the figures proposed for compensation are very conservative.

It is important to keep in mind that many Claimants worked under the *Protection Act* for many years. The work often involved carrying out laborious tasks for long hours with minimal, if any, pay. The compensation is for the blatant exploitation and control by the Queensland Government in relation to Indigenous labour, over many years.

In order for justice to be done and to 'be seen to be done' in the communities, it is important that persons who served for many years under the Act receive larger sums of compensation than those who worked for shorter periods. In terms of justice, it is only fair that someone who worked many years be paid a greater amount than a person who worked perhaps just one year.

QAILSS suggest that payments be made along with a formal letter of apology to each Eligible Claimant.

SCHEDULE TWO

SCHEDULE TWO

STATISTICS REGARDING ACCEPT OR REJECTION OF QUEENSLAND
GOVERNMENT REPARATIONS OFFER OF MAY 9, 2002.

At the date of this report, this Office is continuing to receive approximately 50 blue forms on a daily basis. It is anticipated that for about the next 8 weeks approximately an additional 2000 forms will be received.

Total Blue form: 3,489

Total rejections: 79

Total invalid or informal: 63

Total acceptances: 3347

Rate of acceptance: 95.93%

Rate for Rejection: 2.27%

Rate of invalid or informal forms: 1.80%

*compare to no. of potential
people in para. 8.3 / 8.2*

SCHEDULE THREE

SCHEDULE THREE

Suggestions and statement of wishes of Aboriginal peoples regarding proposals for distribution of the frozen Aboriginal Welfare Fund Account ("AWF").

1. The following suggestions were contained as Dot Points on the green forms distributed for consideration by the individuals and communities consulted by the QAILSS consultation teams:-
 - a. Develop an oral histories collection from the Elders and other persons about their lives;
 - b. Display signs in towns and communities around the State which recognize the Traditional Owners of the land in the area;
 - c. Provide scholarships for Aboriginal students who want to get higher education (TAFE or University);
 - d. Develop a school history, which talks about the struggle of Aboriginal people in Australia.
 - e. Other suggestions
2. The "other suggestions" box was to be filled in by Aboriginal persons over the age of 18 years and it was subsequently determined in consultations with the Department of Aboriginal and Torres Strait Islander Policy (DATSIP) that the AWF was not strictly applicable to Torres Strait Islanders.
3. The suggestions in order of the majority of acceptances from highest to lowest is as follows:-

a.	Provide scholarships	562
b.	develop school histories	385
c.	Aboriginal Bank	339
d.	Oral histories collection	326
e.	Display signs in towns & communities	263
f.	Tombstones & graves	82

g.	Housing	24
h.	Employment	22
i.	Funeral Funds	20
j.	Community projects	19
k.	Sports	14
l.	Culture Centre	13
m.	Youth programs	13
n.	Help for Prisoners	9
o.	Bus	9
p.	Aboriginal school	8
q.	Health	7
r.	Drug & Alcohol	5
s.	Language school	4
t.	Arts and Craft	3
u.	Films and Documentaries	3
v.	Community Hall	2
w.	Land ownership	2
x.	Agriculture bank	2
y.	Nursing Homes	1

4. It is strongly recommended that an independent group of Aboriginal persons or representatives be involved in the decision-making process regarding the distribution and utilization of the AWF. It is important that because the funds are to be used for all Aboriginal people that there be no bias in favour of urban people.

5. Total green forms received as at date of this report: 1185

Total suggestions received:	2137
Invalid or informal forms:	136

6. A number of persons and communities indicated that there remained a substantial number of persons over the age of 18 years to be consulted in relation to the suggestions to the AWF.
7. It is therefore anticipated that a significant number of further green forms will be received by QAILSS over the next 8 weeks. Should those forms alter the above figures in any substantial manner, DATSIP will be notified accordingly.