

Kedron. Qld.

29 September, 2006.

The Committee Secretary,
Senate Legal & Constitutional Committee,
Department of the Senate,
PO Box 6100,
Parliament House,
Canberra. ACT

Dear M/s Morris,

Please find enclosed an unfortunately necessarily short submission to the Committee on a subject of great historical and contemporary significance.

I like many others will follow the Inquiry with considerable interest.

Yours faithfully,

Robert Haebich

SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL COMMITTEE INQUIRY INTO STOLEN WAGES

General

Through my work as a solicitor employed 1994 to 1996 by the Foundation for Aboriginal and Islander Research Action (FAIRA), I first became involved in working to assist Indigenous people who had suffered “consequential poverty” as a result of the Queensland Government’s legislation and administration for the “protection of Indigenous people” from the late Nineteenth Century through to late Nineteen Seventies of the Twentieth Century.

“Consequential poverty” was a term I coined and was readily adopted in what became known as the Palm Island Wages Case. That case was based on the refusal of the Queensland Government after the passage of the Racial Discrimination Act, to pay equal wages to its Indigenous employees on account of their race. The term has since been extended to encapsulate something of the variety and extent of the damages suffered not just by the direct victims of the government’s “protection scheme” of which the “Stolen Wages” is part, but also suffered by their families, descendants and communities. The damaging effects of institutionalization, attempts to impose western cultural norms in an apartheid environment and to assimilate into a capitalist market system individuals deprived or substantially deprived of the fruits of their labor and of their legal rights, were deep and in many ways remain current.

The “Stolen Wages” for many Indigenous Queensland people are for many, symbolic of an all encompassing government regime that was at best misinformed and misguided and at its worst racist and exploitative.

The wrong conveyed by ‘Stolen Wages’ is easily comprehended by the general community and one with which direct and indirect victims easily identify. Many victims have made it clear that “stolen wages” is for them to this day a cause of very personal pain and is the injustice they feel most keenly. Certainly “Stolen Wages” is a current, multi-faceted and very live issue for Indigenous people. Should the general public come to understand the injustices of the era and its damaging effects, not only is it more likely that there would develop strong support for recognition of the wrongs done and for appropriate compensation but also that there would be giant leaps towards reconciliation.

The settlement of the Palm Island Wages case involved a cash payment of \$7000 to each claimant worker for the discrimination on account of his/her race, while each of them was a state government employee together with an apology for that discrimination by the responsible Minister. The vast majority recognized the money as belated personal recognition of the work each of them did as an employee of the Queensland Government and of the wrong done to each worker. Many claimants returned to see me and other

advisers to ask that the apology which was to be part of any worker's settlement, be re-read to them. The satisfaction they showed was very moving.

The 7 Elders who were the successful complainants in the Palm Island Wages case became heroes on Palm Island because of their fight for justice. I have been told on numerous occasions that for Indigenous people, the monetary compensation necessarily accompanied by an apology on behalf of the Government, improved the creditability of the legal system to address injustice. This I'm told was a singularly important step in lessening the impact of one of the important barriers to reconciliation. The effects of the "Stolen Wages" era are far more pernicious and pervasive.

Wage justice and certainly a worker's entitlement to receive his/her wages is something the general community and most definitely, the Indigenous community understand. Reconciliation could be greatly assisted if the general public came to understand the effects of the consequential poverty caused by the taking of those wages by government.

Specific Terms of Reference

I will not deal with items: b,c,d and h and only briefly with items a and b. I have also limited my contribution to other terms of reference to personal experience rather than academic research because I am aware of the research undertaken and the information that can be made available by Dr Ros Kidd who was the expert witness called for the Complainants in the Palm Island Wages case.

Item a

I have interviewed many persons who were mistreated as workers during the "Stolen Wages" era. The abuse reported to me included sexual assault, physical violence, excessive hours, inappropriately heavy work, failure to allow leave entitlements and failure to provide adequate accommodation. Examples of some insidious abuses include: no contact with any other person of similar age or with any Indigenous person, having to eat meals at the wood heap or in a shed and being required to use separate and poor quality eating utensils, absence of toilet facilities.

By way of example: a woman reported to me that as a young woman she slept in a shed. Her day began before dawn when she commenced to prepare the employer's family's breakfast, then attended to the invalid grand mother, had breakfast on enamel utensils specially set apart for her, cleaned up the kitchen, did some house work then did ploughing or fencing with the farmer, returned at dusk to make the meals, cleaned up and put the grand mother and then herself to bed. This woman had no other company, was not taken on or given outings and had no means to travel, had no holidays, was paid no money and chose no item of clothing for herself until after she ran away when she was about 30 years old.

There was no effective supervision and protection by bureaucrats notwithstanding a system where the worker was in many ways very akin to a ward of the state. In many instances the place of work was isolated and access was controlled by the employer. At

one stage wages were controlled by the local police and accounts for a period of 60 years were not audited.

Many workers had been reared in institutions. All reported feeling powerless and that they knew of instances where the authorities knew of abuses but nothing was done. Authority was seen as the enemy and the ally of the employer. On a number of occasions I was asked: "To whom should we go?" even if they could get away.

Certainly knowledge of rights and the capacity to pursue or enforce such rights whether civil or criminal were lacking.

Item e

In the instance of Queensland my experience and information to date is that the investigations have been undertaken in the adversarial context of litigation. This is expensive, time consuming, not necessarily helpful to litigants and unnecessarily stressful to Indigenous litigants. Bearing in mind that the Indigenous people affected by the regime were in some senses like wards of the state and that certainly their wages were under the control of the government, it does seem inequitable that the body responsible for keeping the records could escape its responsibilities to produce records or make just payment because its records are inadequate or destroyed, deliberately or through neglect.

This is especially so bearing in mind that at one stage such Indigenous people were denied even the right to see their financial records.

The government took unto itself the power to "protect" such Indigenous workers on the basis it had a special obligation to control the assets of such vulnerable persons.

Certainly in Queensland there is no doubt that the government took wages of Indigenous people and has not returned all of the money taken nor the interest earned. The only issues are whose monies were taken and how much is due to be repaid to those persons or to their estates. It is submitted that justice is unlikely to be done through the usual litigation process. The problems could be sorted through the use of an appropriate formula with proof of employment being at a relatively low level justified on the grounds of the failure of the state to keep or maintain adequate records.

Item f

In my view, Indigenous people should control the records, family should control access except for the purposes of litigation and the relevant state should fund the keeping place. The government having inflicted those injustices should pay.

Item g

As indicated government may well not have the capacity to identify and quantify all the money taken plus interest and who is now the rightful owner of the money. This does not entitle government to shift the onus of doing so to any claimant.

Certainly, the consequences of retaining the assets of Indigenous people, failure to protect their rights and the failure to pursue available remedies on their behalf, had reasonably foreseeable and damaging consequences. That consequential damage should be compensated and apologized for.

Item I

The “Stolen Children Inquiry” was much criticized. However, it had the virtue of allowing Indigenous people to have a forum where the issues could be aired. To that extent it was effective.

The victims of the “Stolen Wages” era should be heard and the issues aired. From my experience in the Palm Island Wages case and as I have indicated in the General part of this submission, I believe that it would be a very healing and appropriate course provided this was tied to practical outcomes. I am somewhat inclined to think that stolen wages and the consequences, could be something of a conduit for the general public to come to comprehend some of the issues confronting Indigenous people today.

Author: Robert Haebich
29 September 2006.