

CHAPTER 2

LIFE UNDER THE PROTECTION ACTS

Everything that related to a concentration camp was there in [Cherbourg]. You could not move without getting a permit. Cherbourg is built right on Bramble Creek. About 100 metres or so away from the river was the farmer's house. We had to get a permit to go down and fish there. We had to get a permit to go to Murgon, which was four miles away – six kilometres – and it had a time set on it. If you came back five to ten minutes after that time expired, you would be put in jail for, maybe, a weekend. And they brought the curfew in. All lights had to be out at nine o'clock. If you were found out after dark or after the lights had gone out, you were put in jail. They even put searchlights on the vehicles – the police, the superintendent – and chased black fellas everywhere, hither and thither, throughout the night hours.

During the mid-forties, they took away our corroborees, they took away our culture. Our ancestors were not allowed to teach us our language; most of us know nothing of our language.¹

Introduction

2.1 In the late 19th and early 20th centuries, the governments of mainland states and the Northern Territory introduced legislation to regulate the lives of many Indigenous people.² This legislation is commonly referred to as 'protection Acts' because its stated intention was to 'protect' Indigenous people. These Acts were used, in some cases until the 1980s, as a means of implementing policies of protection, separation, absorption and assimilation of Indigenous populations, depending on the prevailing philosophy of governments at the time.

2.2 While the policy underlying the protection Acts changed over time, in effect, these regimes gave governments a means of controlling the lives of many Indigenous Australians. This chapter outlines some of the common features of the protection Act regimes, before discussing in greater detail the controls that were placed on Indigenous workers and their wages.

2.3 The committee understands that there were other measures in place before the introduction of protectionist legislation which aimed to control the lives of Indigenous people. However, the committee focuses on the protection Acts as they represent the introduction of systematic controls over employment and wages.

1 Mr Peter Bird, *Committee Hansard*, Brisbane, 25 October 2006, p. 47.

2 From 1863 to 1911, the Northern Territory was administered by South Australia. The Commonwealth Government administered the Northern Territory for the period 1911 to 1978, see Northern Territory Government, *Submission 110*, pp 1-2.

Common features of the protectionist regimes³

2.4 By 1911 the Northern Territory and every state except Tasmania had a protection Act, giving the Chief Protector or Protection Board extensive power to control Indigenous people. In some states and in the Northern Territory, the Chief Protector was made the legal guardian of all Aboriginal children, displacing the rights of parents.⁴

2.5 Many protection Acts included powers to direct Indigenous people to live on reserves. The management of the reserves was delegated to government appointed managers or missionaries in receipt of government subsidies. Enforcement of the protectionist legislation at the local level was the responsibility of 'protectors' who were usually police officers.

2.6 In the name of protection, Indigenous people were subject to near-total control. Their entry to, and exit from, reserves was regulated as was their everyday life on the reserves, their right to marry and their employment. With a view to encouraging the conversion of the children to Christianity and distancing them from their Indigenous lifestyle, children were housed in dormitories and contact with their families was strictly limited.

Governmental control of employment, conditions and wages

2.7 Each state and territory varied in the way it controlled the employment, working conditions and wages of Indigenous workers. This section of the report provides an overview of the governmental controls on employment and wages that existed in each of the states and territories. The section begins with Queensland, which has been the most studied of the regimes of controls, and then discusses controls that were used in other states and territories.

2.8 The focus will be the legislative and administrative controls that were put in place in relation to Aboriginal workers. The practical applications and implications of these policies are discussed in Chapters 4 and 5.

Queensland

2.9 Queensland implemented employment and wages controls on Aboriginal and Torres Strait Islander people from 1897. The committee received a number of

3 The following section is taken from the Human Rights and Equal Opportunity Commission (HREOC) 1997, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Human Rights and Equal Opportunity Commission, Sydney, pp 28 – 29. (*Bringing them home Report*). Part 2 of the *Bringing them home Report* gives a comprehensive overview of the laws, practices and policies for the forcible removal of Indigenous children from their families. These laws, practices and policies are also relevant to the issue of stolen wages.

4 Boards were later replaced by Departmental organisations, and the role of Chief Protector was taken over by the Director of the Department.

submissions setting out in detail the controls that the Queensland Government had put in place over time.⁵

Employment controls

2.10 In 1897, the Queensland Government introduced a system of employment agreements and permits for the employment of Indigenous workers under the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld) (the 1897 Queensland Act). Torres Strait Islanders were subject to a similar scheme of wages control as that experienced by Aboriginal people. Prior to 1939, the Queensland protection legislation covered both Aboriginal people and Torres Strait Islanders. After 1939, separate legislation applied to Aboriginal people and Torres Strait Islanders, however, similar elements of control existed for both groups of people. From 1965, the *Aborigines' and Torres Strait Islanders' Affairs Act 1965* (Qld) (the 1965 Queensland Act) applied to both groups, however the Act was split into sections which applied rules separately to Aboriginal people and Torres Strait Islanders. From 1971, the two groups were again subject to separate legislation.⁶

2.11 The committee understands that there were differences in the schemes which applied to Aboriginal people and Torres Strait Islanders, but the committee accepts that the fundamental element of control of wages existed in both schemes.⁷

2.12 The legislation imposing employment controls was amended and replaced over time, however, controls continued in place for more than 85 years.⁸

2.13 The 1897 Queensland Act set out many controls including the requirement that an Aboriginal worker could only be employed under a permit granted by a protector.⁹ Permits remained in force for 12 months, or up to 12 months in later forms of the legislation.¹⁰ Employers were also required to enter into an agreement with their

5 See Dr Ros Kidd, *Submission 49*; Queensland Public Law Clearing House (QPILCH), *Submission 50*; and the Queensland Government, *Submission 116A*, The Consultancy Bureau Report, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991 (The Consultancy Bureau Report).

6 Ms Lin Morrow and Mr Andrew Dunstone, *Submission 26B*, Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS), *Document prepared for the purposes of negotiations containing the demands of claimants in relation to the Aboriginal Welfare Fund, associated accounts and issues*, 26 June 2000, p. 10 (The QAILSS Proposal).

7 The QAILSS Proposal, p. 10; see also Queensland Government, *Submission 116*, p. 3.

8 The Consultancy Bureau Report, Attachment A.

9 See section 12 of the 1897 Queensland Act, and subsection 14(1) of the *Aboriginals Preservation and Protection Act 1939* (the 1939 Queensland Act).

10 See sections 12 and 13 of the 1897 Queensland Act; and subsections 14(1) and (4) of the 1939 Queensland Act.

Aboriginal employees for a period of not more than 12 months.¹¹ Agreements were to be witnessed by a Justice of the Peace or member of the police force and were to outline:

- the nature of the services to be provided by the employee;
- the period of employment;
- the wages to be paid; and
- the nature of the accommodation to be provided to the employee.¹²

2.14 From 1934, amendments to the 1897 Queensland Act gave protectors the power to:

- cancel any employment agreement;
- investigate complaints by an employer or employee; and
- investigate employee complaints of ill-treatment.¹³

2.15 The 1897 Queensland Act was replaced in 1939 by the *Aboriginals Preservation and Protection Act 1939* (the 1939 Queensland Act). The 1939 Queensland Act continued the employment controls put in place by the 1897 Queensland Act.

2.16 Dr Ros Kidd noted in her submission that, from 1897 to approximately 1970, children were indentured¹⁴ to work from government settlements:

Boys were sent to farm work and pastoral stations, and girls to fill the insatiable demand for domestic servants, often in remote areas. As in the Northern Territory and Western Australia, however, the government frequently left 'full-blood' boys on the stations, many less than ten years of age, reasoning that they were already instructed in labouring and the stations would suffer without their input.¹⁵

2.17 The 1965 Queensland Act did not have provisions explicitly dealing with the conditions of employment for Indigenous workers. However, regulations introduced

11 Section 15 of the 1897 Queensland Act; and subsection 14(3) of the 1939 Queensland Act. The 1897 Queensland Act did not require male 'half-caste' workers to have employment contracts, however, amendments to the legislation in 1934 introduced this requirement; see subsection 15(4) of the *Aboriginals Protection and Restriction of the Sale of Opium Acts Amendment Act of 1934* (Qld).

12 Section 15 of the 1897 Queensland Act; and subsection 14(3) of the 1939 Queensland Act.

13 QPILCH, *Submission 50*, p. 4. The 1934 amending legislation was the *Aboriginals Protection and Restriction of the Sale of Opium Acts Amendment Act of 1934* (Qld).

14 'Indenture' means a contract by which a person, as an apprentice, is bound to service.

15 *Submission 49*, p. 9.

under the 1965 Queensland Act still permitted the employment of 'assisted' Indigenous persons under an agreement.¹⁶

Control of wages, savings and property

2.18 In 1901, the 1897 Queensland Act was amended and a minimum wage was legislated for Indigenous workers who were working under permit.¹⁷ For workers in the marine industry (predominantly those employed in the pearling industry), who were covered by the legislation, the wage was set at 10 shillings. For all other workers covered by the 1897 Queensland Act the wage was set at five shillings (\$24 today), less than one-eighth of the 'white wage'.¹⁸

2.19 Under the amendments introduced in 1901, protectors could instruct employers to pay the wages of some Indigenous workers directly to the protector.¹⁹ Protectors who received wages on behalf of workers were only allowed to spend the wages on behalf of the employee for whom they were held. The protector was required to keep an account of money spent on behalf of these employees. Protectors were also required to take general care, protection and management of the property of Aboriginal people in their district, and to keep proper records and accounts of all monies and other property dealt with under this power.²⁰

2.20 In 1904, regulations made under the 1897 Queensland Act were put in place providing for the wages of Aboriginal people to be paid directly to protectors. All money held by a protector on behalf of a worker was to be deposited in the workers' name in the Government Bank Account. An account of expenditure from these accounts was to be kept.²¹ These savings accounts are discussed further in Chapter 4.

2.21 In 1919, further regulations continued the compulsory savings regime, providing for a large percentage of the wages of Aboriginal workers to be directed to the protector for banking. Employees were then given the remaining wages as 'pocket

16 The Consultancy Bureau Report, Attachment A. The term 'assisted Aborigine' and 'assisted Islander' were introduced in the 1965 Queensland Act and included those Indigenous Australians living on reserves for Aboriginal or Islander people; and those people declared by the Director of Aboriginal and Islander Affairs or the Magistrates Court to be an 'assisted' person.

17 QPILCH, *Submission 50*, p. 4. The amending legislation was the *Aboriginals Protection and Restriction of the Sale of Opium Act 1901* (Qld).

18 Dr Ros Kidd, *Submission 49*, p. 2.

19 See subsection 12(2) of the *Aboriginals Protection and Restriction of the Sale of Opium Act 1901* (Qld). Protectors did not have the discretion to make directions about the payment of the wages of male mixed race workers.

20 QPILCH, *Submission 50*, p. 4.

21 The Consultancy Bureau Report, Attachment A.

money'.²² The regulations also put in place a requirement for 'pocket money books' to be kept and scrutinised regularly by local protectors.²³

2.22 The 1919 regulations specified more detailed minimum pay rates and conditions of employment, but permitted local protectors to insist on award rates or higher rates in appropriate cases.²⁴ The Department of Native Affairs (and its successors) was responsible for fixing minimum wages for all workers until the Second World War and, for workers in the pastoral industry and workers not covered by Awards, until 1965 when the 1965 Queensland Act was passed.²⁵

2.23 The 1919 regulations also provided for deductions from the wages of Indigenous workers for contribution to the 'Aboriginal Provident Fund', a fund which was established for the 'relief of natives'.²⁶ The Aboriginal Provident Fund is discussed further in Chapter 3.

2.24 The 1939 Queensland Act continued the financial management controls for Aboriginal workers. Protectors retained the power to direct employers to pay the whole or part of a worker's wages to the protector. Protectors also continued to be responsible for the protection and management of the property of all Aboriginal people in their district, and were obliged to keep a proper record and account of all monies dealt with.²⁷ Regulations under the 1939 Queensland Act also provided that trust funds be established with the Commonwealth Savings Bank for the wages, property and savings of Aboriginal people. The person on whose behalf the money was held could, with the authorisation of a protector, withdraw from the fund money necessary to pay their debts. A complete record and account of monies in their accounts was required to be kept.²⁸ These savings accounts are discussed further in Chapter 4.

2.25 The 1939 Queensland Act also provided for the establishment of 'a welfare fund for the general benefit of Aboriginals'.²⁹ Regulations made under the 1939 Queensland Act required Aboriginal workers employed under that Act to make a contribution from their earnings to this fund, called the 'Aborigines Welfare Fund'.³⁰

22 QPILCH, *Submission 50*, p. 5, quoting from a statement on 2 August 1990 by the Hon A.M. Warner, the then Minister for Family Services and Aboriginal and Islander Affairs.

23 The Consultancy Bureau Report, Attachment A; see also QPILCH, *Submission 50*, p. 8 for the regulations under the 1939 Act which set out the requirements for the keeping of pocket money books.

24 The Consultancy Bureau Report, Attachment A.

25 The Consultancy Bureau Report, p. 6.

26 QPILCH, *Submission 50*, p. 5; and The Consultancy Bureau Report, Attachment A.

27 The Consultancy Bureau Report, Attachment A.

28 QPILCH, *Submission 50*, p. 7.

29 Subsection 12(9) of the 1939 Queensland Act.

30 QPILCH, *Submission 50*, pp 6-7.

The Aborigines Welfare Fund, and the contributions made to it by Indigenous workers, is discussed further in Chapter 4.

2.26 Following the introduction of the 1965 Queensland Act, protectors (or district officers as they were known by then) could only manage the property of an 'assisted' Indigenous person:

- who requested that the property be managed; or
- where the protector was satisfied it was in the best interests of the person to require management of the property.³¹

2.27 Where a person ceased to be an 'assisted' person, as soon as practical all money being held in trust for that person was to be paid to them.³²

2.28 Legislation in 1971 and 1984 still retained provisions in respect of the management of property of some Indigenous people.³³ The Consultancy Bureau noted in its report that, until 1969, workers in Indigenous communities did not receive wages but instead were issued with rations and pocket money. Workers were also paid 'training allowances' in lieu of wages. Minimum wages were phased into these communities in 1983.³⁴

The extent of government control

2.29 Dr Ros Kidd gave the committee the following information in relation to numbers of workers in Queensland whose labour was controlled by the government:

...between 4000 – 5500 pastoral workers annually [between the] 1920s-1960s; around 2500 waged workers on missions and settlements in 1979 [which] reduced to 765 in 1986; over 600 girls and women domestics in 1915, around 588 in the late 1930s.³⁵

2.30 At the public hearing in Brisbane, Dr Kidd noted that these figures were only a 'guesstimate', and, if anything, 'hugely understated' the number of people under government control.³⁶

31 QPILCH, *Submission 50*, p. 9.

32 QPILCH, *Submission 50*, p. 9.

33 QPILCH, *Submission 50*, pp 10-11. The legislation was the *Aborigines Act 1971*, the *Torres Strait Islanders Act 1971*, the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*.

34 The Consultancy Bureau Report, p. 6.

35 *Submission 49*, p. 33.

36 *Committee Hansard*, Brisbane, 25 October 2006, p. 8.

New South Wales

2.31 Like Queensland, legislation in New South Wales (NSW) gave the government broad powers of control over the lives of Aboriginal people in that state. Although there was legislation providing for the control of wages of all Aboriginal workers in NSW, the controls over employment focussed on the apprenticing (also known as indenture) of Aboriginal children.

2.32 A number of submissions provided the committee with a comprehensive overview of the employment, wages and savings controls in NSW.³⁷

Employment controls

2.33 The Board for the Protection of Aborigines (the NSW Board) was established in 1883. The stated objectives of the NSW Board were to 'provide asylum for the aged and sick, who are dependent on others for help and support; but also, and of at least equal importance to train and teach the young, to fit them to take their places amongst the rest of the community'.³⁸ Although not explicit in the stated intention, the Public Interest Advocacy Centre (PIAC) notes the NSW Board 'initially had a policy...of removing Aboriginal children from their communities and families'.³⁹

2.34 In 1909, the *Aborigines Protection Act 1909* (NSW) (the 1909 NSW Act) was introduced which formally set out the duties of the NSW Board, including:

- to provide for the custody, maintenance and education to the children of Aborigines; and
- to exercise a general supervision and care over all matters affecting the interests and welfare of Aborigines, and to protect them against injustice, imposition, and fraud.⁴⁰

2.35 The NSW Board was able to contract children out as apprentices, subject to the provisions of the *Apprentices Act 1901* (NSW) (the Apprentices Act).⁴¹ From 1915 the apprenticing of Aboriginal children was no longer subject to the Apprentices Act,

37 See Dr Susan Greer, *Submission 42*; Dr Ros Kidd, *Submission 49*; the NSW Stolen Wages Working Group, *Submission 91*; Indigenous Law Centre (ILC), *Submission 98*.

38 As quoted in the State Records of New South Wales, *A guide to New South Wales State Archives relating to Aboriginal people*, Appendix 1, available at: <http://www.records.nsw.gov.au/publications/aboriginalguide/aboriginalguidetoc.htm>, accessed 24 November 2006.

39 PIAC Submission to the Panel on the Aboriginal Trust Fund Reparation Scheme, September 2004, p. 9, available at: <http://www.piac.asn.au/publications/pubs/0409-FinalSubmission.doc>, accessed 24 November 2006.

40 See subsections 7(c) and (e), *Aborigines Protection Act 1909* (NSW).

41 See subsection 11(1) of the *Aborigines Protection Act 1909* (NSW). The *Apprentices Act 1901* (NSW) provided that the minimum age for apprentices was 14 years old and provided the terms and conditions for apprenticeships.

and the NSW Board could apprentice children 'on such terms and conditions as it may think under the circumstances of the case to be desirable'.⁴²

2.36 The committee received submissions commenting about the institutions established by the NSW Board to train apprentices:

In 1893 the Board had opened a dormitory for girls on Warangesda Station and late in 1911 it established the Cootamundra Training Home for girls. In institutions like this, children not yet old enough to be indentured were 'trained' for domestic or other work as future child apprentices. On some Stations, dormitories were also established as separate residences where children would be 'clothed and fed' and, as the manager of Brewarrina Aborigines Station told the parliamentary inquiry into the [Board] in 1938, 'when a nice position is available for them, they accept it'.⁴³

2.37 The power of the NSW Board to apprentice Aboriginal children continued until 1969, although over time the extent and scope of children to whom the legislation applied changed.⁴⁴

2.38 Outside of the apprenticeship scheme, there were limited legislative controls over the employment of Aboriginal people in NSW. From 1936, the NSW Board could terminate the employment of an Aboriginal person where the NSW Board had reason to believe the employee was:

...not receiving fair and proper treatment, and [was] not being paid a reasonable wage, or the Board [was] of the opinion that his moral or physical well-being is likely to be impaired by continuance in such employment, or that he is being influenced to continue in such employment.⁴⁵

2.39 The 1909 NSW Act which introduced the apprenticeship scheme for Aboriginal children was repealed in 1969, and, in theory, Aboriginal children now came under the same child welfare legislation as non-Indigenous children.⁴⁶

Wages, savings and property control

2.40 Although NSW legislation dealt primarily with the employment controls for apprentices, wages and savings controls in the legislation extended to include the wages of adult Aborigines.

42 Paragraph 2(1)(a) of the *Aborigines Protection Amending Act 1915* (NSW).

43 ILC, *Submission 98*, Attachment A, p. 10.

44 ILC, *Submission 98*, p. 4.

45 See subsection 2(i) of the *Aborigines Protection (Amendment) Act 1936* (NSW), which inserted a new section 13B into the *Aborigines Protection Act 1909*.

46 *Bringing them home Report*, p. 49.

2.41 Regulations set out the wages payable to Aboriginal apprentices, and directed employers to pay a small percentage to the apprentice each week as 'pocket money'. The remainder of the wage was to go into a trust account. Trust accounts were supposed to be paid out to the apprentice at the end of their apprenticeship, or at another time approved by the NSW Board.⁴⁷

2.42 In 1910, regulations provided for wages for apprentices ranging from 1 shilling and 6 pence for first year apprentices, to 5 shillings for fourth year apprentices. These wage rates were increased periodically by regulations. However, until 1941, employers were able to contract out of the statutory apprentice wage rates, which only applied where no other agreement existed.⁴⁸

2.43 With amendments to the 1909 NSW Act in 1936, the NSW Board was given the power to direct employers to pay the wages of an adult Aboriginal employee to the Secretary or other officer, where it appeared to the NSW Board it would be in the best interests of the employee for this to occur. Wages were to be collected and expended solely on behalf of the employee and an account was to be kept of the expenditure.⁴⁹ The NSW Stolen Wages Working Group stated that it is their understanding that there is little evidence to indicate that this extension of power was used before being revoked in 1963.⁵⁰

The extent of government control

2.44 The Indigenous Law Centre (ILC) in its submission stated that the numbers of Aboriginal children apprenticed through the NSW system can not be determined with any certainty:

...in part because of the patchy state of government records. The work of historians like Heather Goodall and Victoria Haskins suggests there were many hundreds and perhaps thousands of children put into the apprenticeship system in NSW over the course of the 20th Century.⁵¹

2.45 Dr Ros Kidd provided the committee with the following figures on various aspects of the NSW apprenticeship scheme:

...300 children sent to work from Warangesda by 1909; 570 girls sent to work between 1916-1928; 400 boys sent to work from Kinchela to the 1970s.⁵²

47 Dr Susan Greer, *Submission 42*, p. 4; ILC, *Submission 98*, Attachment A, p. 9.

48 Dr Ros Kidd, *Submission 49*, p. 20; ILC, *Submission 98*, Attachment A, p. 9.

49 Subsection 2(i) of the *Aborigines Protection (Amendment) Act 1936* (NSW), which inserted a new section 13C into the 1909 NSW Act.

50 *Submission 91*, p. 10.

51 *Submission 98*, p. 4.

52 *Submission 49*, p. 33.

2.46 In 2004, a panel established by the NSW Government to consult on the framework for a scheme to repay withheld wages, savings and entitlements stated that it was unlikely that the number of people for whom trust accounts existed would exceed 3,500.⁵³

Western Australia

2.47 In relation to Western Australia (WA), the committee received a number of submissions giving a detailed overview of the relevant legislative and policy regimes.⁵⁴

Employment controls

2.48 The *Aborigines Protection Act 1886* (WA) (the 1886 WA Act) introduced employment contracts between employers and Aboriginal workers over the age of 14. As in Queensland, the contracts were to be in writing, explained to the employee and witnessed by a Justice of the Peace or a protector.⁵⁵ In 1905, under the *Aborigines Act 1905* (WA) (the 1905 WA Act), a permit system was also introduced, allowing employers to take out permits to employ Aboriginal workers. Permits could be either for a single worker, or a 'general' permit, which covered a number of workers.⁵⁶

2.49 The requirement for contracts and permits between employers and Aboriginal workers continued until 1954, although the workers to which the controls applied varied over time.⁵⁷

2.50 From 1874, Aboriginal children were also subject to the provisions of mainstream legislation which provided for institutionalisation and indenture to service.⁵⁸ The 1886 WA Act provided a Resident Magistrate with the power to

53 Brian Gilligan, Terri Janke, Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, October 2004, available at <http://www.premiers.nsw.gov.au/NR/rdonlyres/A1F8674E-2742-457C-825B-9C74413E89A3/0/ATFfinalreportDec05.doc>, accessed 19 November 2006. This is the first Aboriginal Trust Fund Repayment Scheme Panel. The work of this panel and the repayment of wages in NSW is further discussed in Chapter 7.

54 See Professor Anna Haebich, *Submission 19*; Aboriginal Legal Service of Western Australia (ALSWA), *Submission 30, 30A and 30B*; Dr Ros Kidd, *Submission 49*.

55 ALSWA, *Submission 30*, p. 11.

56 ALSWA, *Submission 30B*, p. 5; Dr Ros Kidd, *Submission 49*, p. 3.

57 The *Aborigines Protection Act 1886* (WA) required a contract between employers and workers that were 14 years or older. The *Aborigines Act 1905* (WA) provided that an Aboriginal worker, a male 'half-caste' under 14, or a female 'half-caste' could not be employed except under a permit or a permit and agreement. See Professor Anna Haebich, *Submission 19*, p. 1; ALSWA, *Submission 30*, pp 12-13.

58 Dr Ros Kidd, *Submission 49*, p. 8.

indenture 'half-caste' and Aboriginal children, from a suitable age, until they turned 21.⁵⁹

Wages, savings and property control

2.51 There was no provision in the 1886 WA Act for contracts to include wages. However, employees were to be provided with 'substantial, good and sufficient rations', clothing and blankets.⁶⁰

2.52 Legislation did not provide the Aborigines Department or the protector with the power to direct Aboriginal people to hand over their wages and property to be held in trust. Nonetheless, this practice became widespread.⁶¹ As Dr Ros Kidd noted in her submission, from 1909 people contracted through the Aborigines Department (and its successors) and those indentured from children's homes and missions were pressured into putting part of their wages into trust accounts supervised by the Aborigines Department.⁶²

2.53 The Aboriginal Legal Service of Western Australia (ALSWA) set out in its submission some of the wage rates for Aboriginal domestic servants in the 1930s and through to the early 1940s:

...the weekly wage for Aboriginal domestic servants in their first year was 7/6 per week, of which they received 2/6 as pocket money with the rest going to the Department. The wages increased to 12/6 after a year, but still the majority of this went to the Department with the domestic servant allowed 5/- pocket money. Domestic servants could earn up to 25/- per week, most of which was deposited in their trust account, and from the trust accounts the young workers were 'permitted' to purchase clothes and shoes, and 'to receive advances for holiday purposes'.⁶³

2.54 Dr Ros Kidd noted that limited wages and conditions were introduced in 1944 under the State Farmworkers Award, although this only applied to workers in the south-west of WA.⁶⁴

2.55 From 1954, although the permit and contract system had been removed, station managers were still required, under the *Native Welfare Act 1954* (WA), to keep records of goods sold in lieu of wages.⁶⁵

59 ALSWA, *Submission 30*, p. 11.

60 ALSWA, *Submission 30*, p. 11.

61 ALSWA, *Submission 30*, p. 12.

62 *Submission 49*, p. 23.

63 *Submission 30B*, pp 32-33.

64 Dr Ros Kidd, *Submission 49*, p. 7.

65 Dr Ros Kidd, *Submission 49*, p. 7.

Extent of government control

2.56 In its first submission, the ALSWA stated that the number of Aboriginal people who had their labour controlled by the government would have been 'substantial, certainly more than 20,000'.⁶⁶ The ALSWA noted, in a later submission, that this was a theoretical figure, and acknowledged that many people were employed outside of the controls.⁶⁷

2.57 Professor Anna Haebich also noted the preference of employers to employ workers outside of legislative controls. Professor Haebich informed the committee that in 1913 there were 59 Aboriginal people employed under permits in the south of WA.⁶⁸ By 1917, 500 employment permits had been issued, covering the employment of approximately 4,500 Aboriginal workers.⁶⁹ Dr Ros Kidd estimated that in 1918 the Aboriginal workforce in the Kimberley region numbered almost 2,300.⁷⁰

Northern Territory

2.58 The Northern Territory was initially under the governance of South Australia, and subsequently under the Commonwealth. In 1910 the Northern Territory had legislation, the *Northern Territory Aboriginals Act 1910* (SA) (the 1910 NT Act), controlling the employment and wages of Aboriginal people. Controls applied to both child and adult workers. Between 1911 and 1978, the Northern Territory was the responsibility of the Commonwealth Government.

2.59 Information on the Northern Territory's employment, wages and savings controls as well as the number of Northern Territory Aboriginal people under the government's control is based on a number of detailed submissions received by the committee which outlined the controls in the Northern Territory.⁷¹

Employment controls

2.60 The 1910 NT Act and its successor, the *Aboriginals Ordinance 1911* (Cth), implemented a system of employment licences for Aboriginal workers in the Northern Territory. In order to get a licence an employer applied to the protector, setting out the nature of the employment, the conditions of employment and the proposed wages.⁷²

66 ALSWA, *Submission 30*, p. 11.

67 ALSWA, *Submission 30B*, p. 4.

68 *Submission 19*, pp 1-2.

69 ALSWA, *Submission 30B*, p. 5.

70 *Submission 49*, p. 6.

71 See Castan Centre, *Submission 11*; Dr Thalia Anthony, *Submission 17*; and Dr Ros Kidd, *Submission 49*.

72 Castan Centre, *Submission 11*, p. 13.

2.61 From the early 20th century, the administration in the Northern Territory also pursued a policy of removing children of mixed race from their parents and 'indenturing' them to white families. Dr Ros Kidd stated in her submission that, from 1912, the Kahlin compound (a compound situated outside Darwin which housed Aboriginal people) started supplying servants to Darwin families and, in 1914, 'The Bungalow' was opened in Alice Springs to provide training for children prior to sending them out to work.⁷³

2.62 From 1918, under the *Aboriginals Ordinance 1918* (Cth) (the 1918 Commonwealth Ordinance), a person wanting to employ an Aboriginal worker in a town district needed to enter into an employment agreement as well as obtain a licence. Employers in country districts were only required to obtain a licence to employ Aboriginal workers.⁷⁴

2.63 From 1953, the employment of Aboriginal workers was controlled through the *Welfare Ordinance 1953* (Cth) (the Welfare Ordinance) and the *Wards Employment Ordinance 1953* (Cth) (the Wards Employment Ordinance). Although these ordinances were applicable to people who were declared 'wards', the requirements for declaring a person to be a ward were such that, at a practical level, only Aboriginal people could be declared wards.⁷⁵

2.64 Like earlier legislation, the Wards Employment Ordinance required that an employer hold a licence to employ an Aboriginal worker. Furthermore, Aboriginal workers could only be employed in accordance with the prescribed conditions of employment and wages.

Wages, savings and property control

2.65 The Castan Centre for Human Rights Law (Castan Centre) noted in its submission that, although the 1910 NT Act provided that the amount of proposed wages be specified in an application for an employment licence for Aboriginal workers, there was no provision in the legislation that actually required wages to be paid.⁷⁶ Under the 1910 NT Act, a protector also had the power to take possession of, retain, sell or dispose of the property of an Aboriginal or 'half-caste' person.⁷⁷

2.66 The regulations under the 1918 Commonwealth Ordinance set out the wages for Aboriginals and 'half-caste' apprentices in town districts. Part of these wages were

73 *Submission 49*, p. 9.

74 Castan Centre for Human Rights Law (Castan Centre), *Submission 11*, p. 13.

75 Castan Centre, *Submission 11*, pp 17-18.

76 *Submission 11*, p. 13.

77 *Submission 11*, p. 13.

to be paid directly to the worker with the remainder to be paid to a trust account held in the Chief Protector's Office in Darwin.⁷⁸

2.67 Licence applications for Aboriginal employees in the country districts required that the worker be paid wages at a rate of five shillings a week, and be provided with food, clothing and tobacco. At the request of a protector, a proportion of a worker's wages were to be held in trust for the worker.⁷⁹

2.68 From 1933, the *Aboriginals Ordinance 1933* (Cth) provided the Chief Protector with the power to authorise protectors to direct an employer to pay a portion of Aboriginal workers' wages to the Chief Protector, who would subsequently hold the wages in a trust account.⁸⁰ These legislative amendments in 1933 also allowed for employers of Aboriginal workers in country districts to be exempt from the payment of wages where the Chief Protector was satisfied that the employer was maintaining the relatives and dependants of his Aboriginal employees.⁸¹

2.69 Under the provisions of the Welfare Ordinance, the Director of Welfare held the property of wards as trustee and could pay debts, judgements, payments, allowances or other costs from the ward's property.⁸²

2.70 The 1953 legislation also provided for minimum wages and conditions for Northern Territory pastoral workers. However, the wages were one-fifth the 'white rate', and the rations were less than 35 per cent of the minimum requirements for white workers.⁸³ Further, the Wards Employment Ordinance allowed for an employer to pay a ward less than prescribed wages where it was demonstrated that the ward was 'slow, aged or infirm'.⁸⁴

2.71 Following the Equal Wages decision⁸⁵ in 1966, new regulations were introduced providing that employers were required to pay wards' 'wages and other monies payable to the ward at the time and in the manner specified in an award or industrial agreement applicable in respect of the calling or industry in which the ward

78 Castan Centre, *Submission 11*, p. 14.

79 Castan Centre, *Submission 11*, p. 14.

80 Castan Centre, *Submission 11*, p. 14.

81 Castan Centre, *Submission 11*, p. 15.

82 Castan Centre, *Submission 11*, p. 18.

83 Dr Ros Kidd, *Submission 49*, p. 6.

84 Castan Centre, *Submission 11*, p. 19.

85 *In the matter of the Conciliation and Arbitration Act 1904-1965, and of the Cattle Station (Northern Territory) Award 1951* (Equal Wages decision) C no. 830 of 1965, (1966) 113 C.A.R. 651. This decision applied the Cattle Station (Northern Territory) Award 1951 to Aboriginal pastoral workers in the Northern Territory.

is employed'.⁸⁶ However the 'slow worker' clause continued to allow employers to underpay Aboriginal workers.⁸⁷

The extent of government control

2.72 Dr Ros Kidd estimated that, in 1919, there were 2,500 licensed Aboriginal workers in the Northern Territory and 1,500 dependants.⁸⁸ Dr Thalia Anthony provided the following information about the number of Northern Territory Aboriginal people registered under the Welfare Ordinance:

The *Welfare Ordinance 1953* registered all but six of the NT's 15,700 'full blood' Aboriginal people in the NT as wards. However, many Aboriginal people on remote stations were not registered as they did not come under the official purview.⁸⁹

South Australia

2.73 The committee received some information on the legislative regimes in South Australia.⁹⁰

Employment controls

2.74 South Australia was one of the first states to put in place legislation to control the employment of some Aboriginal children. From 1884 legislation enabled a protector to be declared the guardian of any child of Aboriginal descent whose parents were deceased or unknown. A protector could apply to indenture the child until they were 21. Evidence provided to the committee suggests that the practice of children being sent into service continued until at least the 1970s.⁹¹

2.75 In South Australia, there appears to have been little regulation of the employment of adult Aboriginal workers. As Dr Cameron Raynes advised the committee:

Generally speaking, the South Australian Government did not control the labour of Aboriginal workers in South Australia. There was no regulation of their employment conditions or rates of pay, and only a few sections of the

86 Castan Centre, *Submission 11*, p. 20.

87 Dr Ros Kidd, *Submission 49*, p. 6.

88 *Submission 49*, p. 33.

89 *Submission 17*, p. 7.

90 Dr Cameron Raynes, *Submission 8*; Ms Joanna Richardson, *Submission 14*; and The Graham Family, *Submission 113*.

91 See Dr Ros Kidd, *Submission 49*, pp 8 and 10, which talk about the number of girls being trained at the Colebrook home in South Australia up until 1972. See also the *Aboriginals Ordinance 1844* (SA).

Aborigines Act 1911 [SA], and subsequent legislation, touched on the question of labour at all.⁹²

2.76 Dr Ros Kidd noted that, in South Australia, the *Aborigines Act 1911* (SA) (the 1911 SA Act) did not include provisions for the licensing of employers of Aboriginal workers, or for the direct payment of wages to protectors.⁹³

2.77 It appears that on the government-run stations employment controls were exercised through other means. For example, the Graham family provided the committee with the rules for the management and government of the Point Pearce Station (Mission Station rules)⁹⁴, which included that:

Work will be provided on the Station for as many of the inmates as practicable preference being given to married men. All able-bodied men, and youths and girls over 14 not required for work on the station, will be required to seek work elsewhere.

Wages, savings and property control

2.78 The 1911 SA Act provided for the Chief Protector to take control of the property and finances of any Aboriginal or 'half-caste' and to receive property and wages owed to any deceased person.⁹⁵ Under the provisions of the *Aborigines Act 1934-1939*, the Aboriginal Protections Board had the power to undertake the 'general care, protection and management of the property of any Aborigine'.⁹⁶

2.79 The Mission Station rules, detailed in the Graham family submission, demonstrate the wages controls that were at work within the Point Pearce station:

The wages to be paid shall be at a rate to be fixed from time to time by the Trustees, and shall be paid monthly.

All rations, stores, provisions, rent, firewood, medical attendance, medicines, paddocking, and all other supplies and benefits, shall be paid for, or deducted from wages, at the end of each month, and shall be charged for at the following rates...

No credit will be allowed to any inmate employed by the Mission beyond the amount accruing due on each month's wages...

No inmate who obtains employment outside the Station will be allowed any credit unless and until he shall sign an order on his employer for payment to

92 *Submission 8*, p. 1.

93 *Submission 49*, p. 3.

94 *Submission 113*, p. 6. These rules are from 1915.

95 Dr Ros Kidd, *Submission 49*, p. 24.

96 Dr Cameron Raynes, *Submission 8*, p. 3.

the Mission out of his wages of the amount named in such an order, and such employer shall have agreed in writing to accept such an order...⁹⁷

2.80 The Mission Station rules specified the amount of wages to be paid, and indicated that the amount was dependent on the age of the worker and their marital status.⁹⁸

The extent of government control

2.81 Dr Cameron Raynes estimated that the number of people working on the Point Pearce and Point McLeay Stations from 1915 until the 1960s was between 400 and 800.⁹⁹ Dr Ros Kidd noted that, in the period 1943-1972, 350 girls were processed through Colebrook Home and into domestic service.¹⁰⁰

Victoria

2.82 The committee received very little information in relation to the control of employment and wages in Victoria.

2.83 The committee notes the view of the Victorian Stolen Wages Working Group (Wampan Wages) that further research is required in order to ascertain the extent of the impact of the stolen wages issue in Victoria.¹⁰¹

Employment controls

2.84 From 1869 under the *Aboriginal Protection Act 1869* (Vic) (the 1869 Victorian Act), the Victorian Government implemented a system of employment control of Aboriginal workers through work certificates and contracts.¹⁰² The Governor had the power to make orders prescribing the terms of any employment contract entered into by an Aboriginal person. Each contract had to be approved by the Board for the Protection of Aborigines (the Board), the local guardian or an authorised agent of the Board. Approval of the contract was in the form of a work certificate.¹⁰³

2.85 The Victorian employment controls continued largely in place until 1957, when new legislation, the *Aborigines Act 1957*, was introduced. The power to prescribe employment conditions was subject to applicable industrial awards and determinations. However, from 1958, the approval of the Aboriginal Welfare Board

97 *Submission 113*, p. 6.

98 The Graham Family, *Submission 113*, p. 7.

99 *Submission 8*, p. 3.

100 *Submission 49*, p. 10.

101 *Submission 84*, p. 6.

102 Dr Ros Kidd, *Submission 49*, p. 2; see also *Aboriginal Protection Act 1869* (Vic).

103 Wampan Wages, *Submission 84*, p. 4.

(as it was known at that stage) was required in order to employ a male Aboriginal worker under 18 years of age or any female Aboriginal worker.¹⁰⁴

2.86 In terms of the indenture or apprenticing of children, the *Aborigines Protection Act 1886* (Vic) and the regulations introduced pursuant to this Act provided that, from the age of 13 years, 'half-caste' boys were to be apprenticed or sent to work on farms and girls were to work as servants.¹⁰⁵

Wages, savings and property control

2.87 From 1871, regulations made under the 1869 Victorian Act provided for the wages of Aboriginal workers to be paid directly to the local 'guardian'. The money could then be used for the benefit of the worker or any member of their family, and had to be accounted for to the Board.¹⁰⁶

2.88 From 1890 the wages of every 'half-caste' child who was licensed, and of all apprentices, was to be paid quarterly by the employer to the general Inspector of the Board, who in turn was to place the money in the child's credit into a bank. Half of the wages were to be paid to the child quarterly, and the remainder at the end of the service or apprenticeship.¹⁰⁷

2.89 From 1931, the Board could direct that monies payable to an Aboriginal person could be paid to the Secretary of the Board, and subsequently paid into a trust fund set up in the worker's name.¹⁰⁸

The extent of government control

2.90 The committee did not receive any information about the number of Indigenous people who may have had their employment and wages controlled by the Victorian Government. However, the committee understands that the effect of the *Aborigines Protection Act 1886* was to remove 'part-Aborigines' from the government reserves and, subsequently, from the control of the Board.¹⁰⁹

2.91 During the period 1886 to 1923, the number of Aboriginal stations reduced from six to one, namely Lake Tyers. By 1957 there were fewer than 299 Aboriginal people under the control of the Board at Lake Tyers.¹¹⁰

104 Wampan Wages, *Submission 84*, p. 5.

105 *Bringing them home Report*, p. 58; Dr Ros Kidd, *Submission 49*, p. 9.

106 Dr Ros Kidd, *Submission 49*, p. 2; Wampan Wages, *Submission 84*, p. 4; see also *Aborigines Protection Regulations 1871*.

107 Wampan Wages, *Submission 84*, p. 4.

108 Wampan Wages, *Submission 84*, p. 5.

109 *Bringing them home Report*, p. 58.

110 *Bringing them home Report*, p. 59.

2.92 Those Indigenous people not living on the Aboriginal stations competed in the labour force against non-Indigenous workers.¹¹¹ However, the committee notes that it is suggested that, once off the stations, Indigenous people faced a hostile society and employment discrimination.¹¹²

Australian Capital Territory and Tasmania

2.93 The committee received limited information on the government controls on Aborigines living in the Australian Capital Territory (ACT) and Tasmania. These controls mostly related to the apprenticing of Aboriginal children.

2.94 As noted in the introduction to this Chapter, Tasmania did not enact a protection Act. However, evidence provided in submissions noted that, in Tasmania, Aboriginal children could be apprenticed under general child welfare legislation.¹¹³ The committee notes that there is a need for further research and investigation into what happened to the wages and savings of these children:

The income of working child wards and reserve inmates was likely to have been controlled as it was in mainland states and territories. Those trust funds, and government transactions upon Aboriginal money including workers compensation and inheritances, should be investigated.¹¹⁴

2.95 From the time the ACT was established in 1911, until 1954, the 1909 NSW Act¹¹⁵ (as amended from time to time) applied in the ACT.¹¹⁶ In 1954, the *Aborigines Welfare Ordinance 1954* (Cth) was introduced and this allowed for the control of wages of Indigenous workers by providing that the worker's wages could be paid to a person other than the worker.

2.96 The ILC commented that, until 1968, when the responsibility for placing Aboriginal children in the ACT was transferred to the Commonwealth Department of Interior, Aboriginal children in the ACT were removed under the *Child Welfare Ordinance 1954* (Cth) and were placed in foster homes or NSW institutions under the supervision of the NSW Board.¹¹⁷ The committee was also told that NSW Aboriginal apprentices were also sent to work as domestic servants in the ACT.¹¹⁸

111 Dr Ros Kidd, *Submission 49*, p. 3.

112 *Bringing them home Report*, p. 59.

113 Australian Catholic Social Justice Council, *Submission 13*, ACSJC Background Paper, *Stolen Wages – an opportunity for justice?* p. 2, which refers to the *Industrial Schools Act 1867* (Tas); Dr Ros Kidd, *Submission 49*, p. 25, referring to the *Industrial Schools Act 1867* (Tas) and the *Children of the State Act 1918* (Tas).

114 Dr Ros Kidd, *Submission 49*, p. 25.

115 *Aborigines Protection Act 1909* (NSW).

116 See *Bringing them home Report*, p. 608.

117 *Submission 98*, Attachment A, p. 13.

118 Professor Ann McGrath, *Submission 9*, p. 27; Dr Ros Kidd, *Submission 49*, p. 10.

2.97 Professor Ann McGrath described the ACT as 'unique', as the ACT was previously part of NSW and Aboriginal people from around the district often lived in both the ACT and NSW at different times of their lives. The committee notes the suggestion of Professor McGrath that the ACT Government might wish to work with the NSW Government in addressing the issue of stolen wages.¹¹⁹

2.98 Given the extremely limited evidence and information provided to the committee on the stolen wages issue in Tasmania and the ACT, the committee has not considered these jurisdictions further in its deliberations.

119 *Submission 9*, p. 27.

