

The Senate

Standing Committee on
Legal and Constitutional Affairs

Unfinished business: Indigenous stolen wages

December 2006

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ABBREVIATIONS

ACT	Australian Capital Territory
ALSWA	Aboriginal Legal Service of Western Australia
ANTaR	Australians for Native Title and Reconciliation
ATFR Scheme	Aboriginal Trust Fund Repayment Scheme
ATFRS Unit	Aboriginal Trust Fund Repayment Scheme Unit
ATSIC	Aboriginal and Torres Strait Islander Commission
<i>Baird case</i>	<i>Baird v State of Queensland</i> [2006] FCAFC 162
Board	Aborigines Protection Board or the Aborigines Welfare Board
<i>Bringing them home Report</i>	<i>Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families</i> , Human Rights and Equal Opportunity Commission, Sydney
Castan Centre	Castan Centre for Human Rights Law
CEO	Chief Executive Officer
DAA	Department of Aboriginal Affairs (NSW)
DIA	Department of Indigenous Affairs (WA)
Equal Wages decision	<i>In the matter of the Conciliation and Arbitration Act 1904-1965, and of the Cattle Station (Northern Territory) Award 1951</i>
FaCSIA	Commonwealth Department of Families, Community Services and Indigenous Affairs
first Panel	ATFRS Panel (2004)
HREOC	Human Rights and Equal Opportunity Commission
ILC	Indigenous Law Centre
NAILSS	National Aboriginal and Torres Strait Islander Legal Services Secretariat

NSW	New South Wales
NT	Northern Territory
<i>Palm Island Wages case</i>	<i>Bligh & Ors v State of Queensland</i> [1996] HREOCA 28
PIAC	Public Interest Advocacy Centre
QAILSS	Queensland Aboriginal and Islander Legal Services Secretariat
Qld	Queensland
QPILCH	Queensland Public Interest Law Clearing House
Report on QAILSS Consultations	Report on Consultations with Aboriginal Peoples and Torres Strait Islanders of Queensland Regarding Queensland Government offer of Reparations
second Panel	ATFRS Panel (2005)
SA	South Australia
Synar report	M. Synar, <i>Misplaced Trust: The Bureau of Indian Affairs Mismanagement of the Indian Trust Fund</i> , Seventeenth Report by Committee on Government Operations, April 1992
The Consultancy Bureau Report	The Consultancy Bureau Report, <i>Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts</i> , March 1991
the GRG52/1 records	<i>the correspondence of the Aborigines Department, 1868-1962</i> (SA)
The NSW Board	Board for the Protection of Aborigines (NSW)
the Property Account	Aboriginal Protection of Property Account (Qld)
the Provident Fund	Aboriginal Provident Fund (Qld)
The QAILSS Proposal	Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS), <i>Document prepared for the purposes of negotiations containing the demands of claimants in relation to the Aboriginal Welfare Fund, associated accounts and issues</i> , 26 June 2000
the 1886 WA Act	<i>Aborigines Protection Act 1886</i> (WA)

the 1897 Qld Act	<i>Aboriginals Protection and Restriction of the Sale of Opium Act 1897 (Qld)</i>
the 1905 WA Act	<i>Aborigines Act 1905 (WA)</i>
the 1909 NSW Act	<i>Aborigines Protection Act 1909 (NSW)</i>
the 1910 NT Act	<i>Northern Territory Aboriginals Act 1910 (SA)</i>
the 1911 SA Act	<i>Aborigines Act 1911 (SA)</i>
the 1918 Commonwealth Ordinance	<i>Aboriginals Ordinance 1918 (Cth)</i>
the 1939 Qld Act	<i>Aboriginals Preservation and Protection Act 1939 (Qld)</i>
the 1942 Act	<i>Maternity Allowance Act 1942 (Cth)</i>
the 1947 Act	<i>Social Services Consolidation Act 1947 (Cth)</i>
the 1965 Qld Act	<i>Aborigines' and Torres Strait Islanders' Affairs Act 1965 (Qld)</i>
UAM	United Aborigines Mission
UAWP	Underpayment of Award Wages Process
WA	Western Australia
Wampan Wages	Victorian Stolen Wages Working Group
WJRO	World Jewish Restitution Organization

RECOMMENDATIONS

Recommendation 1

8.23 The committee recommends that the Commonwealth Government and state governments facilitate unhindered access to their archives for Indigenous people and their representatives for the purposes of researching the Indigenous stolen wages issue as a matter of urgency.

Recommendation 2

8.24 The committee recommends that the Ministerial Council on Aboriginal and Torres Strait Islander Affairs agree on joint funding arrangements for:

- (a) an education and awareness campaign in Indigenous communities in relation to stolen wages issues; and
- (b) preliminary legal research on Indigenous stolen wages matters.

Recommendation 3

8.25 The committee recommends that the Commonwealth Government provide funding in the next budget to the Australian Institute of Aboriginal and Torres Strait Islander Studies to conduct a national oral history and archival project in relation to Indigenous stolen wages.

Recommendation 4

8.26 The committee recommends that:

- (a) the Western Australian Government:
 - (i) urgently consult with Indigenous people in relation to the stolen wages issue; and
 - (ii) establish a compensation scheme in relation to withholding, underpayment and non-payment of Indigenous wages and welfare entitlements using the New South Wales scheme as a model, and
- (b) the Commonwealth Government conduct preliminary research of its archival material in relation to the stolen wages issues in Western Australia.

Recommendation 5

8.27 The committee recommends that the Commonwealth Government in relation to the Northern Territory and the Australian Capital Territory, and the state governments of South Australia, Tasmania and Victoria:

- (a) urgently consult with Indigenous people in relation to the stolen wages issue;
- (b) conduct preliminary research of their archival material; and
- (c) if this consultation and research reveals that similar practices operated in relation to the withholding, underpayment or non-

payment of Indigenous wages and welfare entitlements in these states, then establish compensation schemes using the New South Wales scheme as a model.

Recommendation 6

8.28 The committee recommends that the Queensland Government revise the terms of its reparations offer so that:

- (a) Indigenous claimants are fully compensated for monies withheld from them;**
- (b) further time is provided for the lodgement of claims;**
- (c) claimants are able to rely on oral and other circumstantial evidence where the records held by the state are incomplete or are allegedly affected by fraud or forgery;**
- (d) new or further payments do not require claimants to indemnify the Queensland Government; and**
- (e) the descendants of claimants who died before 9 May 2002 are included within the terms of the offer.**

CHAPTER 1

INTRODUCTION

1.1 On 13 June 2006, the Senate agreed to a motion moved by the Australian Democrats and referred the following matters to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by the last sitting day of 2006:

With regard to Indigenous workers whose paid labour was controlled by Government:

- (a) the approximate number of Indigenous workers in each state and territory whose paid labour was controlled by government; what measures were taken to safeguard them from physical, sexual and employment abuses and in response to reported abuses;
- (b) all financial arrangements regarding their wages, including amounts withheld under government control, access by workers to their savings and evidence provided to workers of transactions on their accounts; evidence of fraud or negligence on Indigenous monies and measures implemented to secure them; imposition of levies and taxes in addition to federal income tax;
- (c) what trust funds were established from Indigenous earnings, entitlements and enterprise; government transactions on these funds and how were they secured from fraud, negligence or misappropriation;
- (d) all controls, disbursement and security of federal benefits including maternity allowances, child endowment and pensions, and entitlements such as workers compensation and inheritances;
- (e) previous investigations by states and territories into official management of Indigenous monies;
- (f) current measures to disclose evidence of historical financial controls to affected Indigenous families; the extent of current databases and resources applied to make this information publicly available; whether all financial records should be controlled by a qualified neutral body to ensure security of the data and equity of access;
- (g) commitments by state and territory governments to quantify wages, savings and entitlements missing or misappropriated under official management; the responsibility of governments to repay or compensate those who suffered physically or financially under 'protection' regimes;
- (h) what mechanisms have been implemented in other jurisdictions with similar histories of Indigenous protection strategies to redress injustices suffered by wards; and
- (i) whether there is a need to 'set the record straight' through a national forum to publicly air the complexity and the consequences of mandatory controls over Indigenous labour and finances during most of the 20th century.

Conduct of the inquiry

1.2 The committee advertised the inquiry in *The Australian* newspaper on 21 and 27 June 2006; 5 and 19 July 2006; 16 and 30 August 2006; 13, 19 and 27 September 2006; 11 and 25 October 2006; and 8 November 2006. The inquiry was also advertised in the *Courier Mail* on 1 July 2006, the *Koori Mail* on 5 July 2006, and the *National Indigenous Times* on 13 July 2006.

1.3 The committee also wrote to over 100 organisations and individuals inviting submissions. Initially, submissions were invited by 28 July 2006 and this was later extended to 29 September 2006. However, the committee continued to accept public submissions after this date. Details of the inquiry were placed on the committee's website.

1.4 The committee received 129 submissions from various individuals and organisations, as well as several supplementary submissions, and these are listed at Appendix 1. Submissions were placed on the committee's website.

1.5 The committee held public hearings in Brisbane on 25 October 2006; in Sydney on 27 October 2006; in Perth on 16 November 2006; and in Canberra on 28 November 2006. A list of witnesses who appeared at the hearings is at Appendix 2, and copies of the Hansard transcript are available through the Internet at <http://www.aph.gov.au/hansard>.

Acknowledgements

1.6 The committee thanks those organisations and individuals who made submissions and gave evidence at public hearings, especially those individuals who shared their personal experiences with the committee.

1.7 The committee also acknowledges the submissions provided by the Queensland and New South Wales (NSW) Governments, and the appearance by a Queensland Government representative at the public hearing in Brisbane.

1.8 The committee did not receive submissions from the Western Australian, South Australian, Tasmanian or Victorian Governments.¹ The committee believes that state governments would have been able to provide valuable assistance to the inquiry and is disappointed that these governments did not participate.

1.9 The committee received a submission from the Chief Minister of the Northern Territory which outlined the administrative history of the Northern Territory. Between

1 The committee received correspondence from the Victorian Premier and the Acting Tasmanian Premier indicating that those states would not be participating in the inquiry: correspondence from The Hon. Steve Bracks MP, Victorian Premier to Committee Secretary, 23 August 2006; and correspondence from Mr David Llewellyn MHA, Acting Tasmanian Premier to Senator Trish Crossin, Committee Chair, 24 August 2006.

1911 and 1978 the Northern Territory was the responsibility of the Commonwealth Government and any records relating to this period would be held in Commonwealth Archives. Prior to 1911, the Northern Territory was administered under a variety of different arrangements. For this reason, the Chief Minister believed that there was little that the Northern Territory Government could contribute to the inquiry by way of factual material.² The committee therefore pursued issues in relation to the Northern Territory with the Commonwealth Department of Families, Community Services and Indigenous Affairs (FaCSIA). The committee notes that FaCSIA did not provide a formal submission to the committee. However, FaCSIA did provide limited information on Commonwealth legislation. The committee acknowledges that representatives from FaCSIA did appear before the committee. Nonetheless, the committee is disappointed that FaCSIA has not pursued the issue of stolen wages, instead adopting a more reactive approach.

1.10 In the absence of submissions and evidence from a number of state governments, the committee would like to thank the witnesses and submitters who shared their research and specialist knowledge on the management of Indigenous monies and government archives. The information and evidence provided have been invaluable to the committee in addressing the inquiry's terms of reference.

Scope of the inquiry

1.11 The terms of reference for this inquiry relate to 'Indigenous workers whose paid labour was controlled by Government'. Throughout the 19th and 20th centuries, governments put in place extensive controls over the employment, working conditions and wages of Indigenous workers. These controls permitted, both explicitly and implicitly, the non-payment of wages to some Indigenous workers, as well as the underpayment of wages, and the diversion of wages into trust and savings accounts.

1.12 Due to the wide-ranging implications of governmental control of wages, the committee has taken an expansive view of the terms of reference as it considers that where controls permitted the non-payment of wages, this was, in turn, a form of control of workers' opportunities and their ability to undertake paid employment.

1.13 The committee also notes that this inquiry has come to be known as the 'Stolen Wages' inquiry. The committee notes that the term 'stolen wages' is an ambiguous term which may mean different things to different people. In the context of this inquiry, it refers to all wages, savings, entitlements and other monies due to Indigenous people during the periods where governments sought to control the lives of Indigenous people.

1.14 The committee acknowledges that much of the evidence and discussion in this report is centred on the experiences of Queensland and NSW. The committee feels that this reflects the fact that this issue has received widespread recognition in those

2 *Submission 110*, p. 2.

states, particularly within the Indigenous communities. In other states and the Northern Territory, there has been some research undertaken and awareness of the issue is gradually increasing. The committee hopes that its report and recommendations assist in raising awareness in all states and territories about this issue.

1.15 The committee has received compelling evidence that governments systematically withheld and mismanaged Indigenous wages and entitlements over decades. In addition, there is evidence of Indigenous people being underpaid or not paid at all for their work. These practices were implemented from the late 19th century onwards and, in some cases, were still in place in the 1980s. Indigenous people have been seriously disadvantaged by these practices across generations. Many of those affected are now elderly and in poor health. It is therefore imperative that governments take immediate action to address these injustices. It would be an abrogation of moral responsibility to delay any further, particularly with the knowledge that the age and infirmity of the Indigenous people affected by these practices limit their capacity to pursue claims.

Structure of the report

1.16 The committee's report is structured in the following way:

- Chapter 2 provides an overview of government controls on employment, wages and social security entitlements applied to Indigenous people through the 19th and 20th centuries;
- Chapter 3 reviews the controls on the payment of Commonwealth social security entitlements to Indigenous people;
- Chapter 4 considers the evidence relating to trust funds and savings accounts established on behalf of Indigenous people, and also the misappropriation and mishandling of Indigenous money;
- Chapter 5 examines the impact of employment and wages control on Indigenous people;
- Chapter 6 measures the effort undertaken by governments to disclose evidence of the financial control and also reviews the ability of Indigenous people to access their financial records and documents;
- Chapter 7 provides an overview of the Queensland and NSW reparations and repayment schemes that have been developed and implemented; and
- Chapter 8 presents the committee's summary and conclusions.

Note on references

1.17 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

Terminology and warning

1.18 The legislation cited in this report contains specific terms and definitions for Indigenous people which today are considered offensive. The committee has endeavoured to avoid using such terms in this report; however, these terms were included in the technical detail of the legislation at that time. The committee wishes to emphasise that where these terms have been included in the report, they are not intended to cause offence.

1.19 Indigenous readers are warned that the report also contains the names of some Indigenous people who are deceased.

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.

CHAPTER 3

ACCESS TO COMMONWEALTH ENTITLEMENTS

3.1 The Commonwealth Government also played a role in controlling the finances of Indigenous people through its regulation of, access to, and payment of social security payments. This part of the report outlines some of the restrictions on various social security payments.

3.2 For the most part, Aboriginal people were prohibited from receiving allowances, such as the child endowment payment, maternity allowance and old-age pension, when they were first introduced. Subsequent amendments to legislation meant that, although an Aboriginal person may have been entitled to a payment, there was provision for the allowance to be paid 'indirectly' to a third party, such as a mission or a government authority, on their behalf.

3.3 In some cases, evidence suggests that social security entitlements were re-directed into trust accounts administered by state government Aboriginal welfare authorities. In relation to other social security benefits, relevant legislation consisted of provisions containing at least the legal potential to intercept and divert Commonwealth pensions and benefits (whether by specific reference to race or not).¹

Child endowment

3.4 In 1941, the Commonwealth Government introduced the child endowment payment, a non-means tested benefit of five shillings per week, paid directly to mothers for each child under 16 years (excluding the first child).

3.5 The *Child Endowment Act 1941* (Cth) (the Child Endowment Act) provided that the child endowment payment would not be made to 'Aboriginal natives of Australia' who were nomadic, or where the child was wholly or mainly dependent on the Commonwealth or a state for support.² Payment of child endowment to a third party was authorised where it was 'expedient' having regard to the 'age, infirmity, ill-health, insanity, or improvidence or other reasonable case of disqualification...or any special circumstances' of the applicant or the child.³

3.6 Amendments to the Child Endowment Act in 1942 provided that Aboriginal missions that were an 'institution'⁴ could directly receive the child endowment payment of five shillings a week for the children of an 'Aboriginal native of Australia'

1 ILC, *Submission 98*, Attachment A, p. 14.

2 Section 15.

3 Subsection 22(1).

4 An 'institution' was defined as a charitable institution approved by the Minister.

who were supervised or assisted, although not mainly maintained, by the mission for six months or more in any year.⁵

3.7 The *Social Services Consolidation Act 1947* (Cth) (the 1947 Act) provided for the child endowment payment where the child was not nomadic and not wholly or mainly dependent on the Commonwealth or a state for support.⁶ The 1947 Act also provided that the child endowment payment could be paid directly to an institution which supervised or assisted children, one or both of whose parents were Aboriginal.⁷

3.8 Although there were some technical changes to the wording of the legislation in 1959, being deemed 'nomadic' remained a bar to entitlement for child endowment. The provision denying child endowment where the child was wholly or mainly dependent on the Commonwealth or a state for support was also maintained but both these restrictions were removed in 1966.⁸

3.9 The submission from the Indigenous Law Centre (ILC) provided the committee with a comprehensive analysis of the main social security benefits available from either the Commonwealth Government or the NSW Government up until 1969. With respect to child endowment payments, and in the context of NSW, the ILC provided evidence suggesting that the Commonwealth was willing to divert child endowment payments away from Aboriginal parents towards state Aboriginal welfare authorities, and to defer to the judgement of state authorities in relation to this issue.⁹

3.10 The ILC noted that this continued 'well beyond the first few months of Commonwealth administration in the early 1940s'; it provided evidence of correspondence from 1956 (obtained from the National Archives of Australia) showing that the Commonwealth at that time was still instructing staff to deal with applications for child endowment from Aboriginal mothers in this way.¹⁰ By the mid-to late 1950s, the number of endowment payments diverted to the Aboriginal Welfare Board had diminished, '(p)resumably because of a shift to direct payment of endowees'.¹¹

3.11 Dr Ros Kidd also provided a detailed analysis of Commonwealth entitlements and the ways in which they were intercepted and diverted in different states and territories. Dr Kidd suggested that Commonwealth child endowment was diverted to revenue in Queensland, NSW, Western Australia and the Northern Territory: 'in part

5 Subsection 6(b) of the *Child Endowment Act 1942*.

6 Section 97.

7 Subsection 95(4).

8 ILC, *Submission 98*, Attachment A, p. 31.

9 *Submission 98*, Attachment A, p. 36.

10 *Submission 98*, Attachment A, p. 36.

11 *Submission 98*, Attachment A, p. 36.

by distributing only a small amount to endowees, and also by cutting state outlays on rations and support'.¹² Further:

Records for Queensland and Western Australia suggest Commonwealth authorities knew of the misapplication of endowment and pensions but did not introduce procedures to prevent misuse nor to ensure endowees and pensioners received their entitlement as mandated under federal legislation.¹³

3.12 In relation to Queensland, Dr Kidd submitted that by 1942 the Queensland Government had successfully applied to have its settlements defined as 'institutions' so it could receive bulk quarterly endowment payments on behalf of settlement mothers. Dr Kidd also stated that the government 'profited by immediately cutting grants to missions by the same amount as incoming endowment revenue'.¹⁴ According to Dr Kidd, by early 1949, the government held over £7,000 (\$239,600)¹⁵ in child endowment for mothers on the three government settlements and was using it as general revenue:

Superintendents were directed to use the endowment for fruit, milk and better clothing, but also for books and equipment for indoor and out door games, which allegedly remained 'the property of the endowed child'. No child or adult was ever informed of such possession. According to the deputy director of Native Affairs endowment was used for radios and refrigerators for dormitories, and he anticipated spending it on playgrounds, recreation halls, parks and swimming pools; in 1951 Cabinet approved £2000 (\$51,280) be used from the child endowment of Cherbourg mothers for construction of a child welfare clinic. In 1952 the director admitted reduced government grants placed missions in such a 'desperate position' they were using child endowment to feed and maintain inmates.¹⁶

3.13 Dr Kidd also noted that individual accounts operated for mothers not living on reserves; these were controlled through head office or by rural protectors. Knowledge of endowment balances and access to withdrawals from accounts by individuals 'depended on the discretion of protectors'. Dr Kidd also explained that:

By 1950 rural endowment accounts totalled almost £18,500 (almost \$564,000), with many individual balances over £100 (\$3350). At no time did the department implement any checks of the thumb-printing or signing of withdrawals from Brisbane-based child endowment accounts. Contrary

12 *Submission 49*, p. 34.

13 *Submission 49*, p. 34.

14 *Submission 49*, p. 26.

15 The figure in brackets is Dr Kidd's calculation of the current value of this amount.

16 *Submission 49*, p. 26. The figure in brackets is Dr Kidd's calculation of the current value of this amount.

to 'the expressed policy of the Commonwealth government' the Queensland government withheld bank interest due on private endowment accounts.¹⁷

3.14 The Aboriginal Legal Service of Western Australia (ALSWA) provided the committee with evidence pertinent to Western Australia, particularly in relation to missions, stations and reserves in the Kimberley region:

For eligible Aboriginal recipients, these various Commonwealth benefits could be paid to an approved authority or 'approved institution', and in the case of child endowment it seemed that individuals such as station managers could be appointed as trustees for the payments... (T)here is every possibility that abuses were perpetrated by trustees. Aboriginal people at Kimberley Downs station in 1968 complained of not receiving their age pension or child endowment payments. On the Emanuel Bros stations in the Kimberley, it was the practice to receive child endowment payments on behalf of their Aboriginal employee's children 'on a group basis', presumably going into the company account, before being distributed to Aboriginal families. The Emanuel Bros' policy changed in 1968 so that child endowment payments were 'made direct'. More research needs to be undertaken to assess what actually happened with child endowment payments for Aboriginal people on pastoral stations, and to what extent these Commonwealth entitlements were regarded, like age pension payments for Aboriginal people, as a 'form of station subsidy' by some stations warrantees.¹⁸

3.15 ALSWA noted that church-run missions and government institutions to which children were forcibly removed were also recipients of child endowment payments.¹⁹ Professor Anna Haebich noted that the payment of child endowment to institutions caring for Aboriginal children 'greatly assisted the expansion of such facilities during this period, often to the detriment of the children's diet, schooling, and living conditions that should have been vastly improved by this new source of funding.'²⁰

3.16 Dr Cameron Raynes gave the committee some insight into the situation in South Australia with respect to child endowment entitlements. While acknowledging that the South Australian Government 'had only a very small role in withholding Commonwealth payments to Aboriginal people, they turned a blind eye when certain religious organisations did the same'.²¹ For example, the Koonibba Mission, operated by the Lutherans on the west coast of South Australia, 'was very pro-active in separating Aboriginal parents from their child endowment money in the 1940s at

17 *Submission 49*, pp 26-27. The figures in brackets are Dr Kidd's calculation of the current value of these amounts.

18 *Submission 30B*, p. 46.

19 *Submission 30B*, p. 46.

20 *Submission 19*, p. 4.

21 *Submission 8*, p. 5.

least'.²² Dr Raynes presented evidence of the mission withholding such money from residents, even after those residents left to live in nearby towns.²³ Dr Raynes asserted that the South Australian Government knew that this was occurring but did not put a stop to it.²⁴

3.17 Dr Raynes provided examples of the South Australian Aborigines Department using child endowment money as a means of 'controlling' the behaviour of Aboriginal people:

...the missionary-in-charge of the Finnis Springs Mission suggested to [Mr WR] Penhall [the head of the Aborigines Department] that he intervene in the case of a young Aboriginal woman who refused to do domestic chores. He suggested to Penhall that he withhold her £2 monthly payment. Penhall did as he asked. He had no authority to do so.

In fact, in 1941, Penhall requested that officers-in-charge of police stations throughout South Australia send all applications from Aboriginal people for child endowment to him, so that he could vet them before sending them to the Commonwealth Department of Social Security. Penhall made arrangements with them for his department to 'receive payment on the endowee's behalf' in certain cases.²⁵

3.18 Dr Raynes was also critical of the United Aborigines Mission (UAM) in South Australia:

[It]...had a very cavalier attitude towards Commonwealth entitlements payable to the Aboriginal residents of their Finnis Springs, Nepabunna, Swan Reach, Gerard and Oodnadatta Missions. At one point the UAM had an arrangement with the Commonwealth which allowed them to collect the child endowment money for all of the residents of these missions. The money 'raised' by each mission was supposed to be spent at the mission in question, but instead the money was pooled, and appears to have been spent as the UAM hierarchy saw fit. The missionary at Oodnadatta in particular was very concerned that *none* of the child endowment money raised on behalf of the children at that mission was ever spent on them. The South Australian government almost certainly knew that this was happening, but did nothing to stop it.²⁶

Maternity allowance

3.19 From 1912, a maternity allowance of five pounds was paid to mothers on the birth of a child. Subsection 6(2) of the *Maternity Allowance Act 1912* (Cth)

22 *Submission 8*, p. 5.

23 See *Submission 8A*, p. 4.

24 *Submission 8*, p. 5.

25 *Submission 8A*, p. 4.

26 *Submission 8*, p. 5.

specifically excluded the payment of the maternity allowance to 'women who are Asiatics, Aboriginal natives of Australia, Papua or the Islands of the Pacific'. The exclusion of 'Aboriginal natives' did not apply, on the basis of Commonwealth legal advice, to 'half-castes and persons with less than half aboriginal blood'; indeed, mothers living on state reserves and stations were paid maternity allowances.²⁷

3.20 The *Maternity Allowance Act 1942* (Cth) (the 1942 Act) provided that an Aboriginal woman could receive the maternity allowance where she was:

- exempt from state or territory legislation for the control of Aboriginal persons; or
- in the absence of such state and territory legislation, by reason of the woman's character, standard of intelligence and development, the prohibition on receiving the maternity allowance should not apply.²⁸

3.21 The maternity allowance in 1942 was four pounds, 10 shillings for the first child; five pounds where there were one or two other children; and seven pounds, 10 shillings where there were three or more other children.²⁹ Where an Aboriginal person was entitled to receive the maternity allowance, section 4 of the 1942 Act provided that payment could be made to someone else for the benefit of the person to whom the allowance was payable.

3.22 The 1947 Act had similar requirements to the 1942 Act, namely that an Aboriginal woman could only receive the maternity allowance if she was either exempt from state or territory legislation for the control of Aboriginal people; or if the Director-General of the Department of Social Services was satisfied that the allowance should be granted.³⁰ The 1947 Act also provided that 'where desirable to do so' the maternity allowance for a woman residing on an Aboriginal reserve, station or settlement, shall be made to an authority of a state or territory controlling Aboriginal affairs, or to some other authority considered suitable for the purpose.³¹

3.23 Further restrictions on Aboriginal women receiving the maternity allowance were removed in 1960, however those deemed 'nomadic or primitive' were still excluded. The capacity for indirect payment was also retained in 1960. The last

27 ILC, *Submission 98*, Attachment A, p. 25.

28 Section 3.

29 Section 3 of the *Maternity Allowance Act 1942*. See also Parliamentary Library, Social security payments for people caring for children, 1912–2004, July 2006, at http://www.aph.gov.au/library/pubs/online/children_parta.htm#maternity.htm (accessed 28 November 2006).

30 Subsection 86(3).

31 Section 91.

discriminatory exclusion – the reference to 'nomadic or primitive' mothers – was repealed in 1966.³²

3.24 Dr Ros Kidd submitted that, from at least 1928, it was department policy in Queensland to take 80 per cent of maternity allowances from mothers living in settlement dormitories and 50 per cent from those in settlement camps. She also asserted that mothers who received 'limited provisions for their new babies were told it was a gift from the government; they were not told it was an entitlement'.³³

3.25 Dr Kidd also informed the committee that, after 1942:

State governments could now also claim the allowance for mothers controlled on missions and reserves, receiving bulk payments for these 'institutions' to be distributed at their discretion. The Queensland government was warned in 1943 that no ministerial authority could be found authorising the confiscation of most of the allowance to meet state liabilities to maintain mothers confined on reserves; it continued the practice regardless. Investigation in other states and the territory will likely uncover similar practices.³⁴

3.26 Dr Kidd also noted evidence showing both the Queensland and NSW Governments consistently lobbied for pensions and the maternity allowance to be paid to all Aboriginal people. However, in 1953, Federal Treasury claimed 'lack of finance' for this anomaly. After 1959 all Aboriginal mothers were due the payment, although the allowance was repealed nationally between 1978 and 1996.³⁵

3.27 Dr Cameron Raynes submitted that there was a standing arrangement in the 1940s, and later, between the Aborigines Department and the major hospitals in South Australia, such that Aboriginal women who received the maternity allowance were required to pay some of that money directly to the hospitals in which their babies were delivered.³⁶

Other benefits and pensions

3.28 In a general sense, Dr Kidd submitted that pensions were intercepted for Aboriginal people under state control in Queensland, the Northern Territory, Western Australia and New South Wales and that these governments reduced state spending to reflect the Commonwealth income. According to Dr Kidd, the Queensland Government declared its intention to 'divert' pensions to revenue when it learned in 1959 that criteria would be widened to include many Aboriginal people who had

32 ILC, *Submission 98*, Attachment A, p. 26.

33 *Submission 49*, p. 25.

34 *Submission 49*, pp 25-26.

35 *Submission 49*, p. 25.

36 *Submission 8A*, p. 3.

previously been denied pensions.³⁷ Commonwealth pensions became more readily available to Aboriginal persons in 1960.

3.29 Dr Kidd also advised that:

Governments knew intercepted Commonwealth endowment and pensions were used as revenue by missions (Queensland, Northern Territory, Western Australia) and by pastoral stations (Northern Territory, Western Australia) thus replacing rather than augmenting current outlays.³⁸

Invalid and old-age pensions

3.30 The *Invalid and Old Age Pension Act 1908* (Cth) specifically excluded 'Aboriginal natives of Australia' from receiving the old-age or invalid pensions.³⁹ However, Aboriginal people who were living 'under civilised conditions' were eligible for the pensions.⁴⁰ Later, the 1947 Act provided that Aboriginal people could receive the old-age pension or invalid pension in two circumstances:

- if they were exempt from state or territory legislation for the control of Aboriginal people; or
- where state or territory legislation did not provide for an exempt status, the Director-General of the Department was satisfied that 'by reason of the character and the standard of intelligence and social development of the native, it is desirable that a pension should be granted to him'.⁴¹

3.31 Even after the granting of Commonwealth pensions to Aboriginal people in 1960, these pensions often did not end up in the hands of the rightful recipients. In relation to Western Australia, Mr Craig Muller told the committee that:

Most recipients lived part of their time near missions, and the pensions were paid to the missions, which then had the discretion in how much was passed on to the intended recipients. I am not certain whether the individual Indigenous people ever provided permission for their moneys to be withheld.

As another example, at Cundeelee mission again, the mission kept two-thirds of the 1960 pension rate—in other words, 65 of the 100 shillings. The initial legislative change saw two dozen of Cundeelee mission's inmates granted age pensions. When the mission was inspected 15 months after the pensions were granted, it was noted there had been an initial issue of tents to the pensioners but they had received no further benefits in the 15 months.

37 *Submission 49*, p. 34.

38 *Submission 49*, p. 34.

39 Subsection 16(1) and paragraph 21(1)(b).

40 PIAC submission to the Panel on the Aboriginal Trust Fund Reparation Scheme in September 2004.

41 See subsection 19(2).

In addition, the pensions had continued to be paid to the missions during the sometimes extended periods when the pensioners were away on ceremonial and other business. That is particularly relevant to the goldfields missions, which are on the edge of the settled frontier.⁴²

3.32 The ALSWA also provided evidence in relation to pensions being withheld in Western Australia:

[Archival] information...suggests that inadequate record keeping by station warrantees in relation to their administration of pensions was the norm rather than the exception. The extent of warrantees' withholding of pension payments intended for Aboriginal people in Western Australia remains to be fully investigated; it is clear from the documentary records that payments were withheld.⁴³

3.33 The ALSWA posed some pertinent questions:

How and why did the idea that Aboriginal people should only receive 'pocket money' amounts of cash form the basis of Commonwealth and State government policy in relation to the administration of Commonwealth benefits? This policy did not apply to other Australians, so why was the policy developed for Aboriginal recipients who became eligible to apply for pensions in 1960?⁴⁴

3.34 Furthermore, evidence was presented to the committee that in 1959 the Commonwealth Government instructed the Western Australian Department of Native Welfare to divert pension and maternity payments from beneficiaries to missions and station managers.⁴⁵

3.35 The ALSWA argued further that the system of administration of pension payments was fundamentally flawed:

It seems extraordinary that the Federal government, with the endorsement of the Western Australian Native Welfare Department, would put in place a system of administration of pension payments which so clearly was open to abuse. Kimberley pastoral station owners, who ten years previously had objected to paying Aboriginal workers any money at all, were expected by the Commonwealth to spend the 80% to 90% of the value of the pension payments that was banked in the station account on 'accommodation and general welfare' of elderly Aboriginal people. Past experience implied that this was not likely to happen, and subsequent investigations showed that it rarely did.⁴⁶

42 *Committee Hansard*, Perth, 16 November 2006, p. 27.

43 *Submission 30C*, p. 10.

44 *Submission 30C*, p. 11.

45 *Submission 30C*, Item 3, Attachment 4, *Circular Memorandum 272 (Confidential) from Commissioner for Native Welfare to all Field Officers*, 24 December 1959.

46 *Submission 30C*, p. 11.

Widows' pension

3.36 Similarly, the *Widows' Pensions Act 1942* (Cth) provided for the payment of the widows pension to Aboriginal women who: were exempt from the operation of state or territory legislation for the control of Aboriginal persons and held an exemption certificate under state legislation; or who could demonstrate 'character, standard and intelligence and social development'.⁴⁷

3.37 The disqualification criteria were narrowed further to those who were 'nomadic or primitive' from February 1960; and the disqualification of Aboriginal women was eliminated altogether in 1966.⁴⁸ From the outset, the legislation authorised the payment of widows' pensions to another person on a widow's behalf, due to infirmity or other special circumstances. Between 1942 and 1960, the legislation also specifically authorised indirect payment of the pensions of Aboriginal widows to state Aboriginal welfare authorities.⁴⁹

Unemployment and sickness benefits

3.38 The Commonwealth scheme for unemployment and sickness benefits came into operation in July 1945. At the outset, under the *Unemployment and Sickness Benefits Act 1944* (Cth), an 'aboriginal native of Australia' was disqualified unless the Department was satisfied that by reason of their 'character, standard of intelligence and development' it was reasonable that they receive the benefit. The provision disqualifying 'aboriginal natives of Australia' was repealed in 1960 but those deemed 'nomadic or primitive' remained ineligible until 1966.⁵⁰

3.39 There was no statutory provision (general or specific) for indirect payments of the unemployment or sickness benefit to a third party such as a state Aboriginal welfare authority.⁵¹ Further:

A discretionary payment, known as the special benefit, was available where the Department was satisfied that someone, who did not qualify for sickness or unemployment benefits or a pension, was unable to earn 'a sufficient livelihood for himself and his dependants (if any)' for any reason including 'age, physical or mental disability or domestic circumstances'. There was nothing in the Act to exclude Aboriginal people from the special benefit.⁵²

47 Paragraph 14(1)(g) and subsection 14(5).

48 ILC, *Submission 98*, Attachment A, p. 24.

49 ILC, *Submission 98*, Attachment A, pp 24-25.

50 ILC, *Submission 98*, Attachment A, p. 39.

51 ILC, *Submission 98*, Attachment A, p. 39.

52 ILC, *Submission 98*, Attachment A, pp 39-40.

War and service pensions

3.40 Indigenous people served in every major war in which Australia participated in the twentieth century.⁵³

3.41 Aborigines were entitled to war and service pensions and there was never a provision in the repatriation legislation for indirect payments (either generally, or specific to Aboriginal recipients). However, the ILC informed that committee that:

William Ferguson, President of the Aborigines Progressive Association alleged in correspondence in 1942 that the Board 'also takes widows Pensions and Invalid pensions. Also Soldiers pensions, and soldiers wives pay and dole it out as they think fit'.⁵⁴

3.42 Further:

In October 2004 the Panel investigating the design of a repayment scheme for Aboriginal people adversely affected by government administration of Board trust accounts reported that, as a result of its inquiries, it is possible that some 'returned soldiers may have had pension entitlements paid into the Trust Fund, although this was clearly contrary to the Aboriginal Welfare Board's written policy'.⁵⁵

3.43 The committee also received evidence suggesting that, even though Aboriginal returned soldiers received pensions, they were not paid the same amounts as non-Aboriginal soldiers. Mrs Beryl Gambrill from the Cherbourg Historical Precinct Group stated that:

The returned soldiers from the First World War were not paid the same as the European soldiers. They received a pittance in wages. It was not even half of what the white soldiers got. That money is still owing to them. Most of them have passed on now. My father was one of them.⁵⁶

3.44 Mrs Lesley Williams made a similar point:

I would also like to mention the Aboriginal soldiers who fought in the First World War, the Second World War, the Korean War and the Vietnam War. They were paid less than the white soldiers and, when they returned from the war and the government was cutting up blocks of land for settlements—for the ballot—Aboriginal people did not have access to those blocks of land. Therefore, without having land to farm, there was nothing they could hand over to their descendants.⁵⁷

53 ILC, *Submission 98*, Attachment A, p. 40.

54 *Submission 98*, Attachment A, p. 41.

55 *Submission 98*, Attachment A, p. 41.

56 *Committee Hansard*, Brisbane, 25 October 2006, p. 45.

57 *Committee Hansard*, Brisbane, 25 October 2006, p. 63.

3.45 Wampan Wages (Victorian Stolen Wages Working Group) noted that returned servicemen and women 'generally received a dowry for their services'; however, 'there is anecdotal evidence that dowries were never paid to many Indigenous returned service men and women from Victoria'.⁵⁸

58 *Submission 84*, p. 4.

CHAPTER 4

TRUST AND SAVINGS ACCOUNTS

On 15 November 1955 my father had supposedly withdrawn seven times in that one day. That is unbelievable because any Aboriginal person that lived under that protection act was lucky enough to get one withdrawal. The first entry was for £4 11s. Then the withdrawals were for £3 6s, £13 10s 3d and £5 11s. The last withdrawal on that day was for £25 8s 6d. That was a lot of money in those days. I even saw a withdrawal for £91. My sisters' provident fund accounts – they were 12 and 13 years old – had withdrawals of £6 15s.¹

4.1 Under protection Acts governments put in place measures such as compulsory savings regimes and welfare trust funds, and did not allow Indigenous people to handle their own financial affairs. However, government administration of Indigenous monies failed to ensure that Indigenous people did receive the money they were entitled to and that the savings and trust funds were adequately protected from misappropriation and fraud.

The establishment of trust and savings accounts

4.2 The committee received a substantial amount of information in relation to the funds that existed in Queensland. In other states and the Northern Territory there was much less information available. While some evidence of poor administration of trust accounts is presented in this section, the second part of the chapter deals with the misappropriation and mishandling of Indigenous monies in greater detail.

Queensland

4.3 In 1991 the Queensland Government commissioned The Consultancy Bureau to conduct an investigation into the Aborigines Welfare Fund and the Aboriginal Accounts. The Consultancy Bureau's final report provides an overview of the various trust and savings accounts which were established for the management of Indigenous monies in that state, and how they relate to each other.² The committee has relied on the Consultancy Bureau's final report, as well as other submissions relevant to how the trust and savings accounts operated in Queensland.³

1 Ms Yvonne Butler, *Committee Hansard*, Brisbane, 25 October 2006, p. 22.

2 Queensland Government, *Submission 116A*, The Consultancy Bureau, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 2001 (The Consultancy Bureau Report).

3 Dr Ros Kidd, *Submission 49*; and QPILCH, *Submission 50*.

The Queensland Aboriginals Account

4.4 From 1904, regulations provided that protectors were to retain a portion of Aboriginal workers' wages and deposit the money in the workers' names in the Government Bank Account.⁴ The state government policy of the time was that these accounts were the property of the individual, and were to be applied as the individual required for his/her welfare. However, The Consultancy Bureau Report notes that withdrawals from these accounts were tightly circumscribed.⁵

4.5 In 1933 the individual savings bank accounts were closed and consolidated into larger accounts:

The Savings Bank Accounts of individual natives were closed on 31/05/33 and one account covering the operations of Brisbane, and the three settlements of Cherbourg, Palm Island and Woorabinda was opened ...Country native accounts were also transferred to Brisbane on 01/07/33 and covered between 3000-4000 individual accounts supervised by 88 Local Protectors.⁶

4.6 In 1935-36 these two accounts, the so-called 'Brisbane and Settlement Natives' account and the 'Country Natives' account, were combined and subsequently named the 'Queensland Aboriginals Account'.⁷

4.7 The Queensland Government gave the following explanation of the administration of individuals' money within the Queensland Aboriginals Account:

An individual ledger card record was kept for each person who had money banked into this account. This record, known as a Savings Account, showed their name, individual deposits and withdrawals and the balance they had in their savings account.⁸

4.8 The Consultancy Bureau noted that the Queensland Aboriginals Account earned interest from three sources:

- interest on the cash balance of the account held in the Commonwealth Savings Bank;
- through investments made in inscribed stock; and

4 The Consultancy Bureau Report, Attachment A. Information provided to the committee by the Queensland Government states that 60 per cent of a workers' wage was compulsorily saved; see Queensland Government, *Submission 116*, Attachment 7, *Wages and Savings of Indigenous Queenslanders 1897-1972*, July 2001.

5 The Consultancy Bureau Report, p. 10.

6 The Consultancy Bureau Report, p. 11.

7 The Consultancy Bureau Report, p. 11.

8 Queensland Government, *Submission 116*, Attachment 7, *Wages and Savings of Indigenous Queenslanders 1897-1972: History Sheet*.

- from loans made mainly to Hospital Boards.⁹

4.9 The interest earned on the Queensland Aboriginals Account was not always credited to the savings account, but was used in the following ways:¹⁰

- to buy Christmas presents and 'Christmas cheer' for those living on settlements;
- for the general welfare of Aboriginal people; and
- transferred to the 'Aborigines Welfare Fund' (discussed further below).

4.10 In addition to money from individual savings, the Queensland Aboriginals Account contained money from other sources, including Aboriginal Child Endowment Accounts; and the Assisted Persons Estates Trust Account (discussed further below in relation to the Aboriginal Provident Fund).¹¹

4.11 The Consultancy Bureau Report tracks the balance of the Queensland Aboriginals Account from 1933. From 1940, the balance of the Account grew from approximately \$470,000, to reach almost \$2.5 million in 1981. By 1990, the balance of the Account had been reduced to just under \$750,000.¹²

4.12 The committee received conflicting evidence on the current status of the Queensland Aboriginals Account. Queensland Government literature says:

By the early 1990s the savings accounts were closed. All of the balances were distributed and there is now no money in these accounts.

Therefore, there is no money in the Queensland Aboriginals Account which used to hold the savings of Aboriginal workers.¹³

4.13 In contrast, the Queensland Public Interest Law Clearing House (QPILCH) informed the committee that the present status and balance of the Queensland Aboriginals Account is not publicly known.¹⁴

Aboriginal Protection of Property Account

4.14 The 'Aboriginal Protection of Property Account' (the Property Account) was established in 1902 and formalised under regulations in 1904. According to Dr Ros Kidd, the Property Account was initially established to put a stop to the practice of employers avoiding paying the newly introduced minimum wage to employees by

9 The Consultancy Bureau Report, p. 17.

10 The Consultancy Bureau Report, p. 12.

11 The Consultancy Bureau Report, pp 12-13.

12 The Consultancy Bureau Report, pp 13-16.

13 Queensland Government, *Submission 116*, Attachment 7, *Wages and Savings of Indigenous Queenslanders 1897-1972: History Sheet*. Emphasis in original.

14 *Submission 50*, p. 13.

'dumping' workers in remote locations and claiming that they had absconded or died.¹⁵ Under the regulations, the wages of missing or deceased workers were collected and distributed to the workers' relatives. Unclaimed funds were to be used for the general benefit of Aboriginal people.¹⁶ The Property Account later became the 'Assisted Persons Estate Trust Account'.¹⁷

The Aboriginal Provident Fund

4.15 Regulations in 1919 provided for deductions from the wages of Aboriginal workers for an 'Aboriginal Provident Fund' (the Provident Fund) for the relief of Aboriginal workers and their families at times of need or unemployment.¹⁸ According to The Consultancy Bureau Report, the Provident Fund was started as a source of funds from 1921.¹⁹

4.16 Deductions were at a rate of 5 per cent for single men and 2.5 per cent for married men.²⁰ Fund deductions were calculated by the protector and shown on wages sheets which were subsequently forwarded to the head-office for checking. The Provident Fund also received income from interest on loans made from the fund, as well as the interest on the individual savings accounts.²¹

Aborigines Welfare Fund

4.17 In 1939, legislation provided for the establishment of a welfare fund for the general benefit of Aboriginal people. The maintenance of the welfare fund was to be through money earned by the sale of produce from reserves; contributions by Aboriginal people, as prescribed from time to time; unclaimed monies; and such other monies as from time to time are prescribed.²² The Aborigines Welfare Fund (the Welfare Fund) was formally established under that name in 1943, although prior to that time the fund did operate as a special standing fund.²³

4.18 The income sources for the Welfare Fund included:

- deductions of 5-10 per cent of the wages of workers who lived on the settlements, reserves and missions who were employed outside of those settlements;

15 Dr Ros Kidd, *Black Lives, Government Lies*, JT Press, Redcliffe, 2002, p. 36.

16 Dr Ros Kidd, *Submission 49*, p. 14.

17 The Consultancy Bureau Report, p. 26.

18 Dr Ros Kidd, *Submission 49*, p. 14; QPILCH, *Submission 50*, p. 5.

19 The Consultancy Bureau Report, p. 27.

20 Dr Ros Kidd, *Submission 49*, p. 14; QPILCH, *Submission 50*, pp 5 and 14.

21 The Consultancy Bureau Report, p. 27.

22 Subsection 12(9) of *The Aborigines Preservation and Protection Act 1939* (Qld).

23 QPILCH, *Submission 50*, p. 14; The Consultancy Bureau Report, p. 24.

- deductions of 2.5-5 per cent from the wages of workers who did not reside on the settlements, missions or reserves, which were initially credited to the Provident Fund, and then transferred to the Welfare Fund;
- income for the sales of produce from Aboriginal reserves;
- transfers from the Aboriginal Protection of Property Account (money from unclaimed estates) and institutional child endowment;
- interest earned on funds in the Queensland Aboriginals Account;
- rents on houses and quarters on settlements; and
- income from trading enterprises, such as livestock, farming and retail stores.²⁴

4.19 The Consultancy Bureau Report notes that, prior to 1963, sources of income for the Welfare Fund, and disbursements from the Welfare Fund were identified using global descriptions, such as 'purchase of stores', 'wages' and 'relief of natives'.²⁵

4.20 Money disbursed from the Welfare Fund was to be used for:²⁶

- providing relief to indigent Aboriginal people;
- trading enterprises, such as livestock, farming and retail stores; and
- trade training schemes.

4.21 Statutory contributions to the Welfare Fund ceased in 1966.²⁷ However, the Fund continued to operate until 1993 when it was frozen. The Welfare Fund currently holds approximately \$10 million.²⁸

Island Fund

4.22 The Consultancy Bureau Report provides some information on the monies held for people of the Torres Strait.²⁹ In 1912, a separate 'Island Fund' was established and financial administration of the Torres Strait Island communities was separated from other accounts. At the time of the Consultancy Bureau Report all records for the Island Fund were held on Thursday Island. Savings Bank arrangements for Torres Strait Islanders were separate from mainland activities and were conducted through a separate bank account conducted through the Commonwealth Bank in Cairns.

24 QPILCH, *Submission 50*, pp 14-15; The Consultancy Bureau Report, p. 24.

25 The Consultancy Bureau Report, p. 21.

26 QPILCH, *Submission 50*, p. 15; The Consultancy Bureau Report, Attachment 3.

27 QPILCH, *Submission 50*, p. 15.

28 Queensland Government, *Submission 116*, p. 3, and Attachment 7, *Wages and Savings of Indigenous Queenslanders 1897-1972: History Sheet*.

29 The Consultancy Bureau Report, p. 28.

NSW

4.23 In NSW, the government withheld wages from child apprentices, as well as social security entitlements from eligible recipients.

4.24 It appears that from the late 1800s, even before the introduction of protectionist legislation in 1909, that NSW Government was operating a trust account for the wages of the apprentices:

In 1898 the Board opened an interest-bearing Trust account for child wages, then comprising £171 (\$17,865) held for Warangesda child workers and over £107 (\$11,217) earned by Brewarrina children. By 1899 wages in the Board's Trust account had more than doubled to over £245 (\$23,314), and £284 (\$26,435) in 1904.³⁰

4.25 In 1923 this interest-bearing Trust account was transferred from the Savings Bank department to the Rural Bank department of the Commonwealth Savings Bank.³¹

4.26 The Indigenous Law Centre (ILC) noted that there appeared to be obligations under the *Audit Act 1902* (NSW) in respect of the administration of the trust accounts:

Regardless of the precise location and nature of the trust account or accounts themselves, it seems clear that the Audit Act on its terms applied to the Board and its officials. This meant obligations to ensure that proper procedures for the deposit and withdrawal of money were followed – and a 'paper trail' for individual transactions was created at the time.³²

4.27 A number of submissions highlighted the lack of information that exists about the administration of the trust funds in NSW. In her submission, Professor Ann McGrath notes that 'little is known of the concrete details of how the trust funds operated' in NSW.³³

Western Australia

4.28 The Aboriginal Legal Service of Western Australia (ALSWA) noted that there was substantial information about trust funds established and administered by the Aborigines Department (and its successors) on behalf of Aboriginal people.³⁴

4.29 From 1910, departmental correspondence indicates that 'trust moneys' received by the Chief Protector on behalf of Aboriginal people was paid into an account in Perth called the 'Colonial Secretary's Aborigines Account'. Money was

30 Dr Ros Kidd, *Submission 49*, p. 20; see also ILC, *Submission 98*, p. 6.

31 ILC, *Submission 98*, p. 6.

32 *Submission 98*, p. 6.

33 *Submission 9*, p. 31; see also Indigenous Law Centre, *Submission 98*, p. 6.

34 ALSWA, *Submission 30*, p. 15.

drawn from this account as a lump sum and distributed to individual savings bank trust accounts which were also managed and monitored by the Chief Protector.³⁵

4.30 In 1922, a second account, the 'Deputy Chief Protector of Aborigines Trust Account' was opened to deal specifically with monies from Aboriginal people in the south-west of the state. Funds were transferred from the Colonial Secretary's Aborigines Account into the new account.³⁶

4.31 By 1919 there were 53 individual trust accounts, with a total balance of £1,155. By 1934 the number of individual accounts had risen to 173, and the total balance was £2,300, with a further £2,400 in Aboriginal wage earners savings invested in government bonds.³⁷ The ALSWA noted that, since many workers in the north-west of the state were not paid wages at all, the money accumulating in the trust accounts must represent payments to workers in the south-west of WA.³⁸

4.32 Dr Ros Kidd also noted that legislation in 1936 established a voluntary 'Aborigines Medical Fund' for station workers. The Aborigines Medical Fund had a fee of £1 annually for permanent workers and their dependants, 10 shillings for trainees and five shillings for casual workers. Where contributions were made to the Aborigines Medical Fund employers were absolved from holding workers compensation insurance.³⁹

Northern Territory

4.33 In the Northern Territory, trust funds for Aboriginal people were implemented from 1913, but not formally provided for in legislation until 1918:

By 1917 there were 481 accounts worth 1,448 pounds; in May 1920, 1,184 pounds of unclaimed money dating back to the inception of the scheme went into consolidated revenue.⁴⁰

4.34 By the 1930s, the amount in the trust fund had risen to over £3,000.⁴¹ According to sources cited by the Castan Centre for Human Rights Law (Castan Centre), trust fund administration was generally poor:

...the relevant government departments made little effort to recover money owed by employers to the Trust Account, and the Trust Account administration generally was very poor. Sums unclaimed after six years reverted into consolidated revenue, and sporadic efforts by Acting

35 ALSWA, *Submission 30B*, p. 27.

36 ALSWA, *Submission 30B*, pp 27-28.

37 ALSWA, *Submission 30B*, p. 28.

38 *Submission 30B*, p. 28.

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

40 Castan Centre for Human Rights Law, *Submission 11*, p. 13.

41 Dr Ros Kidd, *Submission 49*, p. 23.

Administrator Carrodus and by Cook to have these moneys used for the benefit of Northern Territory Aborigines were successfully resisted by Treasury.⁴²

4.35 Dr Ros Kidd also referred to a medical benefit fund being established in the Northern Territory:

...[the] fund required half-castes to contribute 6 pence weekly for single workers or 1 shilling for those with dependants, plus one shilling weekly from employers; contributions were optional for white workers who, in any case, received free medical treatment. This deduction was in addition to an employer-financed Aboriginal Medical Benefit Fund which accumulated large balances in Treasury.⁴³

South Australia

4.36 In South Australia, it appears that a number of trust funds were established on behalf of Aboriginal people. Dr Cameron Raynes told the committee that:

The Aborigines Department did establish trust accounts for certain Aboriginal people as the need arose. In 1940, the Secretary of the [Board] wrote:

There are a number of accounts at the Savings Bank of South Australia in the joint names of the Chief Protector of Aborigines and the person to whom the money belongs. The accounts have been operated by the Head of the Department and the Accountant as need has arisen.

Most of these accounts contained money received as a result of inheritance, compensation, or as gratuities payable to widows or children of Aboriginal men killed in World War II ... By 1953, there were 45 separate Aboriginal trust funds in existence. They contained £2,375 in total. They were consolidated into one, interest-bearing account...⁴⁴

4.37 In a supplementary submission to the committee, Dr Raynes provided additional notes on 13 trust funds that he had taken when reviewing archival material. Those notes show trust funds being opened for different reasons, including to provide for the children of a particular person; and for the Department to administer a gratuity left to a recently widowed woman. The balance of the account was only referred to in a couple of cases, but the amounts ranged from approximately £22 to more than £250.⁴⁵

42 *Submission 11*, p. 16.

43 *Submission 49*, p. 22.

44 *Submission 8*, p. 4.

45 *Submission 8B*, p. 2.

Victoria

4.38 In Victoria, the Board was able to modify employment contracts such that all or part of an Aboriginal worker's wage could be directed to a third person. In the early years of the protection regime, wages could be directed to the local guardian, who was to use the money for the benefit of the Aboriginal person or their family. In later legislation, wages could be directed to the Secretary of the Board, and subsequently paid into a trust fund. There was also provision for apprentices' wages to be paid to the Inspector of the Board and to have the money placed to the child's credit in a bank.⁴⁶

4.39 The Victorian Stolen Wages Working Group (Wampan Wages) also identified another trust fund, the Aborigines Board Produce Fund, which existed in Victoria. The Aborigines Board Produce Fund held the monies received from the sale of marketable goods produced on reserves.⁴⁷ In 1957, the Aborigines Board Produce Fund became the Aboriginal Welfare Fund:

The Aboriginal Welfare Fund was expressly kept in Treasury. All monies appropriated by Parliament, and all moneys received by the Board were to be paid into the Fund.⁴⁸

4.40 Wampan Wages provided the following information on the terms of these trusts:

The provisions of various Aborigines Acts, and regulations made under those Acts, repeatedly state that certain monies are to be used for the benefit of Aboriginal people. The existence of trust relationships can be inferred from the terms of the legislation, but it is difficult to be more explicit about the terms of such relationships without further research.⁴⁹

Misappropriation and mishandling of Indigenous monies

4.41 The committee received a wide range of evidence relating to the misuse of money which was due to Indigenous people. Misuse of money included misappropriation by governments, fraud by protectors and employers, and non-payment or underpayment of wages by employers.

4.42 Although protection boards, protectors and governments were under obligations to keep proper records and account for all Indigenous monies, these obligations were often not complied with.

46 Wampan Wages, *Submission 84*, pp 4-5.

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

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

49 *Submission 84A*, answers to questions on notice, p. 1.

Misappropriation of Indigenous monies

4.43 Much of Dr Ros Kidd's research has focused on the misappropriation of Indigenous monies from trust and savings accounts in Queensland. The committee has relied heavily on Dr Kidd's work, including her recent publication, *Trustees on Trial: Recovering the stolen wages*, which exposes the extent of government mishandling of Indigenous monies in Queensland.⁵⁰ Dr Kidd provided the committee with a number of examples of the misappropriation of Indigenous monies by the Queensland Government, including use of funds in the Aboriginal Protection of Property Account for general departmental administration:

During the 1925/35 period, covering the Depression years, Aboriginal funds were used to cover consolidated revenue shortfalls through a range of tactics. Fifty percent of the [Aboriginal Protection of Property Account] was diverted to the department's Standing account which financed general operations, a confiscation which only ceased in July 1941. This amounted to a total of £14,986 (almost \$868,000), with a further £4726 (\$277,227) taken for 'industrial development' in 1934. For several years an additional £500 from the [Aboriginal Protection of Property Account] went to the Yarrabah mission as part of the state's 'grant', increased to £1000 (\$4,922) in 1930 for development of the sawmill.⁵¹

4.44 Dr Kidd's research has demonstrated repeated examples of the Indigenous trust funds and savings accounts being used to pay expenses, such as settlement infrastructure and the cost of removing families to reserves.⁵²

4.45 The Consultancy Bureau Report, commissioned by the Queensland Government in 1991, also highlighted that there had been misappropriation of funds from the savings accounts:

There are a number of cases which have been identified of misapplication and misappropriation from the Savings Bank Accounts. Well documented cases exist of misappropriation, however, the lack of adequate control systems in the field probably resulted in a large volume of undetected fraud the quantum of which would be indeterminable today.⁵³

4.46 The committee did not, in relation to other states and the Northern Territory, receive extensive or comprehensive evidence of wholesale government misappropriation of Indigenous trust funds or other monies. There were suggestions that misappropriation of Indigenous funds was not limited to Queensland. For

50 Dr Ros Kidd, *Trustees on Trial: Recovering the stolen wages*, Aboriginal Studies Press, Canberra, 2006.

51 *Submission 49*, pp 14-15.

52 *Submission 49*, pp 13-19.

53 The Consultancy Bureau, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991, p. 4.

example, in relation to South Australia, Ms Joanna Richardson suggested to the committee that the Board diverted Commonwealth entitlements for its own benefit:

With no, or little, consultation the Aborigines Protection Board and Aborigines Department withheld these monies from the individuals who were entitled to receive the payments. The funds were used by the Aborigines Department to pay to itself rent at rates it determined were payable, to pay medical treatment expenses, to pay for clothes and other necessities (see above) and to pay instalments under hire purchase arrangements.

In the case of rents withheld, the accommodation provided by the Aborigines Department was scandalously substandard, both on and off reserves, and there was no mechanism by which rents were fairly or transparently fixed.⁵⁴

4.47 Dr Fiona Skyring from the ALSWA recommended that a forensic audit be conducted in Western Australia to determine whether misappropriation of funds was an issue in that state:

The mismanagement of trust accounts is also [an] issue here in Western Australia. Again, it has not been nearly as thoroughly researched as it has been in Queensland. I would endorse Dr Ros Kidd's recommendation for a forensic audit to be undertaken because that is what really needs to happen. Similarly, the misappropriation of government benefits such as old age pension, child endowment and maternity allowance...need to be investigated.⁵⁵

4.48 The committee believes that this is an area for further investigation in all states and at federal level in regard to past practices in the Northern Territory.

Fraud

4.49 The protection Boards and the chief protectors were often charged with protecting those in their care against fraud.⁵⁶ Notwithstanding this, the committee received substantial evidence of the vulnerability of Indigenous people to fraud. The committee also received some evidence of fraudulent practices. However, in many cases, the evidence to the committee was of allegations or suggestions of fraud by protectors or employers. To this end, the committee does note the observation of Professor Ann McGrath that:

Due to the piecemeal nature of existing financial records, the lack of substantiating and complementary records renders it almost impossible to detect cases of 'fiddling the books' or to disguise poor record keeping down

54 *Submission 14*, p.6.

55 *Committee Hansard*, Perth, 16 November 2006, p. 10.

56 See, for example, Professor Ann McGrath, *Submission 9*, p. 11, in relation to the NSW Board; Joanna Richardson, *Submission 14*, p. 6, in relation to the South Australian Board; Dr Thalia Anthony, *Submission 17*, p. 8, in relation to the Chief Protector of the Northern Territory.

the line. The detection of accounting malpractice, outright fraud and deception would be difficult.⁵⁷

4.50 In 1991, The Consultancy Bureau Report made the following damning statement about the extent of fraud in the administration of the savings bank accounts in Queensland:

Until 1965, control systems in the Savings Bank were ineffective in guarding against errors, fraud and misappropriation. Many of the clients were illiterate, geographically isolated, members of a (sic) oppressed minority group. Protectors and administrators who were responsible for controlling the accounts were in positions of considerable power over those under their protectorship. Consequently, it is doubtful if any control system could ever have been effective. Large frauds on the Savings Bank were detected from time to time, and the Department admitted that, even in these cases, the extent of the fraud could only be reliably determined by the admissions of the persons involved in the frauds. It is realistic to assume that detected frauds comprised only those which were large enough to draw attention to the perpetrators, or those where the perpetrators were careless in carrying out the fraud. Consequently, it is probable that undetected fraud, misappropriation and misapplication of funds comprised a higher proportion of the transactions than those subsequently proved to be fraudulent.⁵⁸

4.51 From the early 20th century it appears that there was concern in Queensland that the systems for administering Indigenous monies were being defrauded:

Thumb-printing of withdrawals was suggested in 1904 to lessen frauds by protectors and employers. In 1919 police fraud was debated in parliament and in 1921...thumb-printing was made mandatory 'as a further safeguard' to minimise police fraud and all dockets had to be witnessed by a disinterested third party. Although a Public Service report on the department in 1923 found that almost half the deductions by protectors were inaccurate...the department disregarded the recommendation that Aboriginal people be given the right to appeal against dubious handling of their accounts.⁵⁹

4.52 The Castan Centre noted how trust account systems in the Northern Territory, like in other states, were vulnerable to fraud:

The Trust Account had the same results for Aboriginal workers as did similar accounts elsewhere in Australia. Trust Account books could be easily falsified. Aboriginal people signed with a cross to withdraw their money. In other cases, 'money was released simply on the say-so of

57 *Submission 9*, p. 27.

58 The Consultancy Bureau, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991, p. 8.

59 Dr Ros Kidd, *Submission 49*, p. 11.

someone in authority.' Workers did not understand their rights, or how the Trust Account operated.⁶⁰

4.53 The committee also heard from Dr Thalia Anthony that there is circumstantial evidence that there may have been fraud occurring in relation to trust accounts in the Northern Territory:

...there are claims of missing monies in cases where cattle station workers had their wages or benefits put in a trust account. These included monies owed to itinerant drovers, apprentices, social security recipients and, after 1957, wards of the state.⁶¹

4.54 In relation to the Northern Territory, the committee also received evidence of the 'booking down' system where workers had their wages credited to the station store, which sold goods at inflated prices:

...station stores were marked up to 300% over town prices...Despite protectors' awareness of the booking down system, the Chief Protector failed to use his power under the Aboriginals Ordinance which allows for legal proceedings for defrauding of an Aborigine...Government officials were aware of 'booking down', but did not seek to ensure that station prices were kept at market levels. Patrol officer Evans noted that the system 'was open to all kinds of abuse as you can well imagine, and with only one or two visits a year, which was the most that I could make, it was pretty hard to police.'⁶²

4.55 Arnold Franks described for the committee how illiteracy and innumeracy posed a problem for many Indigenous people in being able to know the amounts of money they were signing to withdraw from their accounts:

They get you to sign this and sign that, and you do not know what you are signing. I learnt to read after that.

...If you could not read too well and you had to sign a paper for over £1,000, you needed to sneak someone in with you, some young fella who could read a bit, or you could come out with 10s. If you are like me, with no schooling, you do not know.⁶³

4.56 Professor Ann McGrath also highlighted the challenges for an Indigenous person in safeguarding their accounts from fraud:

It was not possible for wards to check to see if their statements were correct or to check if any errors, malpractice or fraud had occurred. As they were

60 Castan Centre for Human Rights Law, *Submission 11*, p. 13.

61 *Submission 17*, p. 6

62 Dr Thalia Anthony, *Submission 17*, pp 5-6.

63 *Committee Hansard*, Perth, 16 November 2006, pp 8 and 21.

not usually supplied with their own financial details, Aboriginal Trust fund holders were therefore unaware of the total amount owing to them.⁶⁴

Non-payment or underpayment of wages

4.57 By far the most evidence in relation to the mismanagement of Indigenous monies related to the non-payment or underpayment of wages to Indigenous workers. Ms Marjorie Woodrow explained to the committee that she never received her pocket money:

Our money was paid into the government. We never saw no money, any money. We never even saw pocket money. It is in our files that we were paid pocket money to spend. I was 136 miles out of town. How could you have pocket money to spend when you were that far out, for 2½ years, on a property?⁶⁵

4.58 The committee received evidence that in Western Australia workers were routinely not paid wages, a practice condoned by the government:

The records say that there were no wages. The Chief Protector said in 1925 that many Aboriginal people in Western Australia lived in a state of semi-slavery. It was openly acknowledged that many Aboriginal workers, throughout much of the 20th century, were not paid any money at all – and, as we argue in this submission, that system was not only known by the state government but also supported by the state government.⁶⁶

4.59 Mr Alan Griffiths told the committee of the years that he worked and received no wages and only inadequate rations:

I started work in 1944. From 1956 or 1957 we were on wages. From 1944, we were only working for bread, beef, damper and tobacco. We used to get it in the store. When we finished the camp we used to get all our clothes in the shop. In 1957, we were on the payroll – £2 a week. We used to work and book down some clothes, tobacco and stuff in the shop. We used to keep going until a proper holiday. There were a lot of horses in the paddock. We would put on the saddles and pack everything on the horses and we would finish up with £3 or £4 and all the rest of it was food. We used to get rations – two sticks of tobacco, a little bit of flour in the bag, a little bit of sugar, a little bit of tea and a little bit of milk. Every Saturday we used to go out bush hunting our own tucker, beef. We used to go back every Friday on foot – no horses. We used to walk so many miles. We used to go from station to station carting the rations. We used to walk so many miles for no wages, just a stick of tobacco.⁶⁷

64 *Submission 9*, p. 11.

65 Ms Marjorie Woodrow, *Committee Hansard*, Sydney, 27 October 2006, p. 26.

66 Dr Fiona Skyring, ALSWA, *Committee Hansard*, Perth, 16 November 2006, p. 19.

67 *Committee Hansard*, Perth, 16 November 2006, p. 35.

4.60 At the Brisbane hearing, Ms Yvonne Butler explained to the committee what it was like to have to ask to withdraw money from a savings account, a request that was often met with refusal despite there being funds in the account:

You had to go to the police station and, if he was having a good day, he would probably give you a couple of pounds. There were times when he was away, so you just did without. But most of the time it was always, 'You don't have any money in your account.'⁶⁸

4.61 Dr Ros Kidd highlighted that in Queensland the government was well aware of the non-payment of pocket money to workers:

An investigation into the Department in 1932 said it could be 'reasonably assumed' workers were cheated of their pocket money; in 1943 protectors described the system as a farce; in 1956 they reported it was useless, futile and out of control with workers 'entirely at the mercy' of employers who simply doctored the books. The Department rejected auditors recommendations to tighten the system as 'too costly', and admitted in the 1960s pocket money was probably not paid 'in many instances'. The system continued unchanged until 1968. Effectively, during a sixty-year period, potentially half the wages of the workforce of between 3000 and 5000 was lost through entrenched official negligence.⁶⁹

4.62 Dr Susan Greer also informed the committee that, although it was set out in legislation in NSW that apprentices were to be paid their savings at 21, this did not always happen:

...reaching the age of 21 and completing employment contracts did not, despite the provisions of the regulations, automatically result in the transfer of account balances from the Board to the beneficiaries. Indeed, the Correspondence Files of the Aborigines Welfare Board are replete with examples of how the Welfare Board either failed to adequately administer these regulations or dealt with applications in an untimely and unsympathetic manner.

The files indicate that rather than taking the initiative to inform beneficiaries of their entitlements, the onus was on account holders to apply for their funds. Underpinning these practices was an assumption that beneficiaries had knowledge of their entitlements, and the ability to negotiate with the Board for their return, which anecdotal evidence of Aboriginal people caught up in this system would seem to contradict.⁷⁰

4.63 Professor Ann McGrath also explained to the committee that in NSW often apprentices would only discover at the end of their service that their employer had not been making payments to the Board:

68 *Committee Hansard*, Brisbane, 25 October 2006, p. 22; see also Mr Steve Kinnane, *Committee Hansard*, Perth, 16 November 2006, p. 53.

69 *Submission 49*, p. 4.

70 *Submission 42*, pp 4-5.

Correspondence reveals cases where wards requested withdrawals after completing their terms of employment, to find employers had been in arrears or had not paid their wages at all. The Board consequently refused to allow withdrawals.⁷¹

Failure of obligations to keep proper records and account

4.64 Boards and Protectors were under obligations to keep proper records and account for the Indigenous funds that they administered, as well as to protect the interests of account holders. As has been noted earlier in this chapter, the committee received some evidence in relation to NSW and Queensland highlighting that, through negligence or deliberate omission, there was generally poor administration of the accounts and monies of Indigenous people.

4.65 The Indigenous Law Centre (ILC) set out the obligations that existed in NSW:

The Aborigines Protection Act 1909 (NSW) itself, and the regulations made under it, imposed some basic accounting and accountability obligations on the Board and its employees. There was a general statutory duty to protect Aboriginal people 'against injustice, imposition and fraud'. Station managers were required to 'keep daily accounts of all money and supplies received and disposed of, and to furnish to the Board monthly abstracts of the same'.⁷²

4.66 In relation to NSW, Dr Greer noted that there was little surviving evidence that these obligations were upheld:

The legislation/regulations required...regular inspections of the apprentices and their places of employment by police or Board officers, together with a regular audit of the apprentice pocket books, which were required to be signed by the inspector. There is, however, no evidence within the surviving records to indicate that the Boards undertook these procedures either on a comprehensive or regular basis. Given the constant financial difficulties the Boards encountered during their tenure, it is probable that these practices were either not instigated or only on an ad hoc basis. For example, of the surviving pocket books of the apprentices, not one of the books sighted by me has been signed by an inspector, which was a requirement of the regulations.⁷³

4.67 The Queensland Public Interest Law Clearing House (QPILCH) noted that government officials in Queensland were under an obligation to keep a proper account and record of funds handled on behalf of Indigenous people. QPILCH also described the findings of The Consultancy Bureau on its investigation of the accounts in Queensland as 'a wholesale failure to keep proper records and accounts of the wages

71 Professor Ann McGrath, *Submission 9*, p. 25.

72 *Submission 98*, p.50.

73 *Submission 42*, p. 2.

paid to the government by Indigenous workers throughout the history of the legislation.⁷⁴

74 Mr Patrick Hay, counsel instructed by QPILCH, *Committee Hansard*, Brisbane, 27 October 2006.

CHAPTER 5

IMPACT OF WAGES CONTROL

I waited for so many years for the pay to come that was owed to me but that I never, ever received. I was living in a tent for 6½ years with some of the children from my marriage. Nobody seemed to care whether we had the right to have the things that we were entitled to. Although we were brought up decently by the government, we had hard times in our lives when we went through these institutions. They were not easy. We were not called out by our proper names, not as 'Marjorie'; we were always called out by numbers, like a person in jail. These are the sorts of things that have to be made known today – what we suffered in the past as young children brought up by the care of the government and what they did to us. It should be known all over the place that we had to tolerate this.¹

Introduction

5.1 One of the most valuable elements of this inquiry has been the opportunity for the committee to hear first-hand, through submissions and evidence, about how the control of Indigenous wages has impacted on the workers, their families, and their descendants.

5.2 Evidence to the committee indicates that the wages control system had direct and indirect impacts on Indigenous people. The direct impact relates to the consequences of withholding the wages and savings of Indigenous workers as well as the misappropriation of monies and the non-repayment of wages and savings. These controls not only related to monies earned by Indigenous people but also to the control of employment conditions, the ability to undertake paid employment (for normal 'white' wages) and the ability to pursue opportunities for an improved career.

5.3 The indirect, and also the most disturbing, impact of wages controls was the mistreatment and abuse of Indigenous workers. The majority of evidence relating to the impact of the wages controls received by the committee detailed personal experiences of abuse and the inappropriate treatment of Indigenous men, women and children during the time when wages controls were in place. The committee recognises that these are difficult experiences to share, and wishes to thank all of those people who told their story during the course of the inquiry. These personal stories gave the committee some insight into the betrayal, anger, hurt and frustration that Indigenous workers have felt for generations.

5.4 This chapter of the report examines the inadequacy of the safeguards which were intended to 'protect' Indigenous workers whose wages were controlled. Importantly, it shares some of the stories that were told to the committee about the impact of wages control on Indigenous workers. The committee received evidence of

1 Mrs Marjorie Woodrow, *Committee Hansard*, Sydney, 27 October 2006, p. 25.

Indigenous workers experiencing physical, sexual and employment abuses as well as the creation of a poverty cycle through the denial of wages.

The inadequacy of safeguards

5.5 The protection Acts of different states and territories provided varying levels of oversight in relation to Indigenous employment. For example, in Queensland from early in the 20th century, protection legislation included broad powers for protectors to supervise the employment of Indigenous people and to enforce minimum standards in relation to wages and conditions. Dr Ros Kidd noted:

Queensland's comprehensive system relied on local police to oversee employment conditions and handle Aboriginal access to savings. Inspections of stations rarely occurred unless there was specific direction to inquire or coincidental police business to cover the cost.²

5.6 By contrast in South Australia:

...[the] *Aborigines Act (1911)* made no provisions to protect workers' rights, particularly in the remote pastoral areas, other than a prohibition against Aboriginal women wearing male clothing, a weak attempt to combat the common practice of using women for stock and station work.³

In the absence of employment protection in South Australia the Northern Territory Chief Protector Herbert Basedow said in 1927 that pastoral workers 'are kept in a servitude that is nothing short of slavery'. In the 1930s Dr Charles Duguid reported that cruelty against Aboriginal workers was common practice, with many 'breaking in' their workers as though they were 'taming wild animals'. The Newcastle Protector stated that most stockmen's wage did not even cover the debts charged against them in station stores. The missionary at Oodnadatta said in 1939 workers got only 'what their employers care to give them' and without legal safeguards workers could only walk off unpaid or continue to endure exploitation. From Ernabella the missionary warned some pastoralists were so abusive they should be banned from employing Aboriginal labour.⁴

5.7 Also in relation to South Australia, the committee heard how the lack of provisions in legislation regarding the conditions and wages of Aboriginal workers, left them vulnerable to exploitation:

At times employment was forced – mothers were required to give up the care of their children so they could work as domestics etc. They were threatened with denial of rations to themselves and their children if jobs were not taken. This, in part, led to the creation of the 'Stolen Generation'.

2 Dr Ros Kidd, *Submission 49*, p. 4; See also Mr Patrick Hay, counsel instructed by the Queensland Public Interest Law Clearing House (QPILCH), *Committee Hansard*, Brisbane, 25 October 2006, pp 12-13.

3 *Submission 49*, p. 3.

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

Workers were forced to move to isolated areas (e.g. working on railways, on stations, at Woomera etc) where there were very poor living conditions, again leading to the removal of their children. Children were forced to leave their homes in order to get higher schooling. Conditions of employment seem to have been arranged by officers of Aborigines Department – but there is insufficient research to establish if workers were paid according to white mainstream conditions. Older children who had been placed in private homes (including those ostensibly brought to town in order to attend high school) report being treated as domestic slaves, and it is not clear if they were paid anything other than board.⁵

5.8 Similarly in relation to Western Australia, Dr Kidd noted:

In the absence of mandatory employment provisions, a 1904 Royal Commission into Aboriginal administration in Western Australia found Aboriginal groups were entirely at the mercy of station management: cruelty in the 'unsettled districts' was intolerable and police treatment of Aboriginal people 'brutal and outrageous'. Although most workers were not employed on contracts it was common practice to set the police to recapture absconders, including young child servants. Recommendations for a minimum five shilling monthly wage were successfully opposed by pastoralists, leading one parliamentarian to describe the current system as 'another name for slavery'.⁶

5.9 Even where there was provision in legislation for protectors to ensure that minimum wages and conditions were observed, this did not necessarily result in official action to safeguard Indigenous employees from abuses. For example, evidence in relation to later periods in Western Australia noted:

One of the [Native Welfare] Department's functions was to check that pastoral employers fulfilled their responsibilities to their Aboriginal employees in terms of the provision of adequate food, housing and health care, but Native Welfare Department patrol reports from the Kimberley for the 1950s through to 1972 suggested that the standards of rations and housing were usually poor and often appalling. Correspondence showed that the Department provided assistance to pastoralists to secure employment of Aboriginal workers, but rarely were pastoralists forced to meet their obligations to their workers in terms of housing living conditions and health care.⁷

5.10 Mr Ted Carlton recalled officers of the Native Welfare Department visiting Carlton Hill Station in Western Australia. His evidence supported the view that these visits did not contribute to effective enforcement of the obligations of employers to their Indigenous employees:

5 Ms Joanna Richardson, *Submission*, 14 p. 4; see also Dr Cameron Raynes, *Submission* 8, p. 1.

6 *Submission* 49, p. 3.

7 Aboriginal Legal Service of Western Australia (ALSWA), *Submission* 30, p. 13; see also Professor Anna Haebich, *Submission* 19, p. 2.

They used to talk to the management mainly – only to the kardiya people, the non-Aboriginal people...They just went and spoke to the boss – that is all. They never came and talked to the Aboriginal people – nothing.⁸

5.11 In relation to the Northern Territory, the Castan Centre for Human Rights Law (Castan Centre) pointed to the employment of Aboriginal children from 12 years of age despite age minimums in the relevant legislation.⁹ While Dr Thalia Anthony noted that:

The Federal Government was responsible for these workers by virtue of the protective measures stipulated in both ordinances and regulations. Until the late 1950s, the regulations gave the Chief Protector the power to exempt cattle station managers from the payment of wages where they maintained the workers and their families' independence. As a result the vast majority of cattle station workers went unpaid...The issue for the Federal Government is that the protectors failed to fulfil their statutory duty and duty of care by not ensuring that the workers were properly maintained and, where they were not maintained, ensuring that licences were cancelled and that the Commonwealth took over the responsibility for these Indigenous workers...Under regulations, they were required to be given certain health provisions; they were required to be given nutrition and accommodation of a certain standard. These were almost invariably violated. This is clear in both Aboriginal people's testimonies and the official reports of governments.¹⁰

5.12 It should be noted that there were well-intentioned administrators, protectors and patrol officers who endeavoured to report and address the abuses they encountered. These individuals often reported their concerns about the system of wage controls, the diversion of social security entitlements, and their inability to effectively police employment arrangements.¹¹

5.13 However, as noted in Chapter 4, there is evidence to suggest that governments were not merely negligent in their administration of protection legislation: monies belonging to Indigenous people were also misappropriated.

5.14 There is also evidence that, rather than being driven by the perceived need to protect the interests of the Indigenous people, government administration of the protection Acts was primarily driven by financial concerns. For example, Professor Anna Haebich noted that the extension of Commonwealth welfare benefits to Indigenous people was viewed by state administrators as 'a new source of public revenue to promote policies of assimilation' and resulted in reduced expenditure on

8 *Committee Hansard*, Perth, 16 November 2006, p. 36.

9 Castan Centre, *Submission 11*, p.16.

10 Dr Thalia Anthony, *Committee Hansard*, Sydney, 27 October 2006, p. 11; see also Dr Thalia Anthony *Submission 17*, pp 5-6.

11 See, for example, Dr Thalia Anthony, *Submission 17*, pp 5-6; and ALSWA, *Submission 30C*, pp 2-3.

rationing and facilities at missions and settlements.¹² Similarly Ms Lauren Marsh noted:

The enforced banking of monies of Aboriginal workers was primarily a strategy to reduce potential financial burden to the department.¹³

Employment and living conditions

5.15 Indigenous workers were subjected to appalling work and living conditions. Workers were expected to work long hours doing physical labour. Young children, although not paid for their work, were expected to perform demanding jobs as either domestic workers or on farms. Accommodation for workers was poor, and often consisted of makeshift bedding set up in sheds and outbuildings.

5.16 Mrs Beryl Gambrill explained the work she was expected to do as a five year old, helping her father who ran the vegetable garden at Cherbourg:

The first time I started work was at five years of age when I first started school. I had to help my father because he was in charge of the farm. I had to get up at five o'clock in the morning, go and get the night horse, round up all the draught horses that they used to plough up the farms and everything, take them down and yard them and feed them before they started work, and then go back and milk a cow we had and take that home before breakfast. That was the job I had to do when I was five – and that was during winter and summer. I did not get any money for it and my father was only earning at the time £3 10s for a 14-day fortnight.¹⁴

5.17 Mr Melrose Donley described his living quarters at a dairy farm where he was sent out to work at the age of 14:

I was shown my sleeping quarters, which was on the end of the car garage, which was approximately 3 meters by 4 meters, I was given a chaff bag, told to fill it with oaten hay and a sugar bag filled with the same material, no sheets or pillow slips, my blankets were corn bags, sewn together with string.

It had a wooden shutter for the window, propped up with a prop, no door, a kerosene box, with a blackened kerosene lantern, had 3 inch nails in the studs to hang my clothes on and during the wet season I had to sleep in my wet clothes, because they would be wet next morning and cold to put on.¹⁵

5.18 As part of its submission to the inquiry, the ALSWA circulated questionnaires through its regional offices in Western Australia relating to the working and living conditions of Indigenous workers in that state. Respondents to this questionnaire, who

12 *Submission 19*, p. 4.

13 *Submission 127*, p. 12.

14 *Committee Hansard*, Brisbane, 25 October 2006, p. 45.

15 *Submission 115*, p. 2.

were mostly stock and station workers, painted a grim picture of working conditions. The workers' accommodations were tin sheds with dirt floors, swags, humpies or tents. Rations consisted of flour, tea, sugar, jam, tinned milk, salted beef, sometimes fresh beef, and tobacco, but no fresh fruit or vegetables.¹⁶

Abuse of workers

5.19 The committee was told of horrific physical abuses of Indigenous workers. The Public Interest Advocacy Centre (PIAC) provided the story of Mr Cecil Bowden who, while living at Kinchella Boys Home, would be sent out to work on the local farms:

If you made a mistake you were punished and most of the time you were flogged. They'd strip you off and line you up in front of all the boys and each kid had to belt you. If the kid didn't belt you then he would have to get belted. If the other kids didn't hit you hard enough to satisfy the managers they were sent down the line to get a flogging too. By the time you got to the end you were black and blue and bleeding all over. There was one incident I was involved in with cementing the laundry and someone put their footprint in the concrete. When the manager saw this he went crazy and lined all the boys up to ask who put their footprint there. He made us all place our foot over the print. Half a dozen boys would have fitted it but he blamed me so I was sent down the line and belted. He stripped me off and started belting me with a cane; all over my body. All I could do was cover my face up and my genitals. Later on it was discovered that it was the manager's son that had made the footprint in the wet cement.¹⁷

5.20 The Castan Centre provided evidence on the conditions in the Northern Territory and noted that physical abuse of Indigenous workers was seen as an acceptable means of disciplining Indigenous workers:

It was generally accepted that 'firmness' was a necessary ingredient of workplace relations on pastoral leases, since 'it was important to keep the Aborigine in his proper place [and] to stand no insolence or disobedience'. 'Firmness' was a euphemism for what today would be called physical abuse.¹⁸

5.21 Girls who went out to work as domestics were 'easy marks' for sexual abuse, and many girls became pregnant.¹⁹ The committee gained some insight into the extent of abuse from Professor Anna Haebich who stated that, in 1931, 30 young women

16 ALSWA, *Submission 30B, Attachment A*.

17 *Submission 76*, p. 9.

18 *Submission 11*, p. 10.

19 Dr Ros Kidd, *Submission 49*, p. 10, quoting a witness to the 1937 NSW Select Committee Inquiry and the *Bringing them Home Report*. The 1937 NSW Select Committee is discussed further in Chapter 6.

workers were sent back to the Moore River settlement in Western Australia because they were pregnant.²⁰

5.22 Mr Craig Muller's research of Western Australian Government archives revealed documents recording a police investigation of sexual abuse on one pastoral station, including a statement from a woman named 'Genevieve' who was forced to have sex with the station manager:

I always sleep in the tin shed near [the station manager's] room. When he wants me he calls me into his room. After he have connection with me he send me back to my place. He never sleep with me all night. He tell me to go away after he have connection with me.²¹

5.23 The station manager was eventually charged with co-habiting with an Indigenous woman, but the charge was dismissed. The women who were abused (and the children resulting from the rapes) were removed to Moore River.²²

5.24 The committee recognises that the abuse Indigenous workers suffered is a difficult matter for witnesses to talk about, and is grateful to those who came forward to tell of their experiences. Ms Valerie Linow described her personal experience and how government officials responded:

I ran away from one employer where I was raped. I didn't know who told the police about the abuse. All I remember is the police arriving and they told me to pack up my clothes and go back to the station to meet the matron. When I got back to Cootamundra matron told me 'Don't tell anyone what has happened and tomorrow I shall take you down town and buy you a new dress'. They should have been protecting us but they didn't. Matron's response was to find me other work. One week later she put me out working with someone else. The only option was to run away, but even this was hard because we were so isolated on the properties and didn't even know which way to head.²³

5.25 Mrs Lesley Williams described trying to secure the building she slept in, and defending herself from attack:

Every night before I went to bed I would lock the windows even in summer. Because there was no key to lock the door, I would drag a bag of sugar up to the door and also a golf club bag, as a form of security.

Late one Saturday night while I was asleep in bed, I woke to the sound of something being dragged across the floor – it was the bag of sugar which was leaning up against the floor to see a (white) drunken older man (about

20 *Submission 19*, p. 2.

21 *Document tabled on 16 November 2006*, p. 2 quoting Genevieve, statement dated 12 January 1935, SROWA Acc993:506/1927.

22 Mr Craig Muller, *Document tabled on 16 November 2006*, pp 2-3.

23 Quoted in PIAC's submission, *Submission 76*, p. 7.

forty years old) standing next to my bed. He also worked there as a fencing contractor. I immediately jumped up out of bed, pushed him out of the way and took off outside. I ran crying and screaming into the main house where I woke up Mr and Mrs, I calmed down enough to tell them what had happened. Mr immediately went to where the man had his room in the stables and told him to pack his bags.²⁴

Fighting against employment controls

5.26 The committee also heard from a number of witnesses who fought against the controls imposed by the protection Acts. Some did this by leaving their communities to try and start a new life. Others protested the unfairness of the regime, only to be jailed for their efforts.

5.27 Mrs Yvonne Butler, at the public hearing in Brisbane, explained how she ran away from her community in Mt Garnet rather than face the continuing humiliation and degradation of having her finances controlled:

I ran away ... in 1967, just two days after my father's funeral. I borrowed \$12 from my married sister rather than go to the police station and be interrogated about what I wanted my money for. Growing up, that is all you saw – our people, my parents, my sisters and other family members being questioned: 'What do you want your money for? You don't have any money.' It was humiliating and degrading. So I left, a 16½- year-old, and started a new life in Townsville. That \$12 was the best investment I have ever made. I educated myself.²⁵

5.28 Mr Peter Bird also appeared at the Brisbane hearing and advised the committee of how he initially tried to run away from Cherbourg, before being thrown out of the town by the Superintendent:

My brother and I got sick and tired of this, of being under such a regime. We were supposed to be freeborn people but we became prisoners within our own country. My brother and I, we decided to run away, which we did. The government – the Department of Native Affairs – picked us up on a forestry station. We worked there for about three weeks and they picked us up. In fact two white police came out in a brand new Holden ute. There were about half-a-dozen of us working on this one forestry station. They handcuffed us and put us in the back of the ute. One of the young police sat in the back. I was sitting right on the tail of the ute. We had to travel 60 miles over rough roads – there was no bitumen in those days, just dirt track – and I was sitting right on the back, facing him. He sat there for 60 miles with his service revolver pointed at me. How do you think I felt? We were treated like common criminals. We were put into jail at Cherbourg and we were sentenced to six weeks on bread and water.

24 *Submission 82*, p. 5.

25 *Committee Hansard*, Brisbane, 25 October 2006, p. 21.

...during that time my brother and I wrote a letter to the *Truth* – the Brisbane paper at that time was the *Truth*. The caption of our letter was, 'The iron curtains fall on Cherbourg'. The Superintendent got word that we wrote the letter. He sent for us and he said, 'Well, if you want to go out, you get out.' He just kicked us out.²⁶

5.29 Mrs Alexandra Gater explained her experience of going on strike in order to get better conditions:

I worked in the hospital ... The hours were long and our wages were £2 10s a fortnight. The staff who came there said, 'We're being paid big money, and youse are doing all the work.' You name it, we did it. We looked after patients and we scrubbed the floor. We got on our hands and knees, we scrubbed, we cleaned and we polished – you name it. And one day I organised about six of us: we went on strike for more wages. So we were marched down to the Superintendent's office and he said to us in no uncertain terms, 'I'll give you 24 hours to go back to work or I'll put you in jail.' If you spoke up for your rights, you were sent to jail for three weeks. Your only diet was black sweetened tea and bread and jam. If you continued to speak out you were sent to Palm Island, which was referred to as a punishment island.²⁷

5.30 Mrs Pat Kopusar pointed out the difficulties Indigenous people faced in resisting employment abuses:

We had no rights and we had no citizenship. That coloured how well you could look for what you were entitled to and how you got information that might help you to sort something out if you thought it was not fair. The other thing is that you did not know whether things were fair or not, so you just carried on.²⁸

5.31 The committee also heard evidence of some isolated cases in which employers refused to abide by discriminatory protection Act requirements.²⁹ For example, Professor Ann McGrath noted in relation to New South Wales:

Some employers, such as Joan Kingsley-Strack, refused to pay wages to the APB [Aborigines Protection Board] in the 1930s as they were suspicious about its accountability and inhumane treatment of the girls, especially regarding sexual exploitation, medical attention and financial management. Kingsley-Strack had to pull strings, use her political networks, and concoct numerous strategies to ensure one of her servants received her trust account funds from previous employment. A lone Aboriginal domestic, with poor education, plus a sense of social inferiority often drummed into her, was far

26 *Committee Hansard*, Brisbane, 25 October 2006, p. 48.

27 *Committee Hansard*, Perth, 25 October 2006, p. 46.

28 *Committee Hansard*, 16 November 2006, p. 40; see also Mr Ted Carlton, *Committee Hansard*, 16 November 2006, p. 36.

29 Professor Anna Haebich, *Committee Hansard*, Brisbane, 25 October 2006, p. 31.

less likely to engage in such efforts. Agitating for rights risked worsening their experience of a system in which Indigenous peoples' characters were so easily tarnished by comments by Board staff.³⁰

The continuing impact of wages control

5.32 A number of witnesses directly attributed the current poverty of some Indigenous Australians to the discriminatory treatment and control of wages that Indigenous workers were subjected to through the 19th and 20th century.³¹ Mr Robert Haebich has coined the term 'consequential poverty' to describe this dynamic.³² Professor Anna Haebich stated that in Western Australia:

...Aboriginal people played a major role in building the state economy in the pastoral and rural industries in the north and south of the state. It was the state government's discriminatory employment system that prevented Aboriginal workers from benefiting from the Australian labour system, which was hailed around the world as an exemplary model for protecting workers' wages and rights. Instead, Aboriginal people were subject to a disabling system which denied them proper wages, protection from exploitation and abuse, proper living conditions, and adequate education and training. So while other Australians were able to build up financial security and an economic future for their families, Aboriginal workers were hindered by these controls. Aboriginal poverty in Western Australia today is a direct consequence of this discriminatory treatment.³³

5.33 The committee received evidence from many Indigenous people outlining how they would spend their money today, if it was returned to them:

I'd like to buy some lovely things for my flat which I'm living in at the moment and I'd like to buy a couple of tombstones for my family which is dead now and I would like to share some of my money with my children and grandchildren.³⁴

5.34 Ms Theresa Blair also shared with the committee how she would spend her wages if they were returned:

We all would like to own our own homes and cars, buy things for our houses like white people but we don't. I would like to get my money

30 *Submission 9*, p. 11.

31 See Dr Ros Kidd, *Committee Hansard*, Brisbane, 25 October 2006, p. 5; Professor Anna Haebich, *Committee Hansard*, Brisbane, 25 October 2006, p. 29; Mr Anthony Westmore, *Committee Hansard*, Sydney, 27 October 2006, p. 33.

32 *Submission 77*, p. 1.

33 *Committee Hansard*, Brisbane, 25 October 2006, p. 29.

34 Ms Mabel Ann Hopkins, *Submission 111*.

because my son is buried in Denmark...I would like my son to come home to Cherbourg to be buried.³⁵

5.35 The desire to provide tombstones for relatives, or to put aside money for a funeral for loved ones, was a recurring theme through many submissions.³⁶ Ms Tammy Williams explained this to the committee:

...the one thing that concerns me as a young person is that the cemeteries all look the same. Our grandparents, great-grandparents and aunties and uncles have worked most of their lifetimes to build the infrastructure of the state and country and all they have left in memory of them is just a white cross, sometimes with not even their name painted on it.³⁷

5.36 This evidence generally reflected the modest aspirations of people who wanted to provide better for their families, but have been denied the opportunity to do so.

35 *Submission 93*.

36 Mr Conrad Yeatman, *Submission 28*, p. 1; Ms Mabel Hopkins, *Submission 111*, p. 1.

37 *Committee Hansard*, Brisbane, 25 October 2006, p. 64.

CHAPTER 6

PREVIOUS INQUIRIES INTO STOLEN WAGES AND ACCESS TO RECORDS

There has not been a conscious effort by people to access information about stolen wages from what I understand. People access their personal family records because they want to know what happened to their families, and they might find out this information on the way. The big questions that are raised in the terms of reference – how much money; what was done; the whole system, how it was done; and all of those things – we really do not know about. We need research so that we can reconstruct the process of removal, what happened, what management and what protected measures were in there and so on. There is some information in the annual reports, but we need an archived survey...¹

Introduction

6.1 In some jurisdictions, there have been long-standing concerns about the administration of the finances of Indigenous people under protection Acts. This is evidenced by reports and inquiries in a number of states and territories which have investigated, or at least commented on, the control of labour and wages of Indigenous workers.

6.2 Current investigations into the extent of the issue of stolen wages are reliant on governments providing access to the records that they hold on the administration of Indigenous funds. In some states there has been a concerted effort by government to facilitate access to these records. In other jurisdictions access to records has been tightly controlled by government.

6.3 The first part of the chapter reviews some of the previous investigations that have been conducted into stolen wages. The second part of the chapter looks at the state of records that still exist in relation to the protection Act era, and the access that governments allow affected parties to those records.

State and territory investigations into stolen wages

6.4 The extent and nature of previous investigations into these issues is an area where the committee expected that the state, territory and the Commonwealth governments would have been able to provide assistance. In particular the committee notes that Dr Ros Kidd commented that governments may have undertaken recent analysis on the management of Indigenous money:

1 Professor Anna Haebich, *Committee Hansard*, Brisbane, 25 October 2006, p. 32.

...[i]t is likely governments have recently undertaken analyses of their exposure to litigation regarding controls and handling of trust monies; any such analyses should be available to those affected by financial controls.²

6.5 As most states, and the Commonwealth, did not make submissions to the inquiry on this issue the committee is grateful to submitters who were able to share their research and to direct the committee to investigations and inquiries. Although some of these inquiries were not primarily about the management of Indigenous monies, they did provide the committee with contemporaneous observations and comments on this issue.

6.6 The committee notes that as a result of the reliance on evidence, other than that available from governments, this section of the report detailing the previous investigations undertaken by states and territories into the management of Indigenous monies is necessarily limited to where others have completed necessary research and have identified relevant material.

6.7 In particular, the committee recognises the work of Dr Ros Kidd in relation to previous investigations undertaken in Queensland into the official management of Indigenous monies in that state. The committee also notes that similar evidence, in the form of audit reports, should exist for other states and the Northern Territory.

Queensland

6.8 Extensive investigations have occurred in Queensland into the official management of Indigenous monies. From at least the early 1920s, it appears that annual audit reports and public service reports inquired into the operation of the trust and savings accounts in Queensland used to hold Aboriginal wages and savings.

6.9 Reports detailing the Queensland Government's failings of the operation and management of Indigenous monies continued throughout the 20th century, culminating in 1991 with the Queensland Government commissioning an independent report on matters including the operation of the Aboriginal Welfare Fund, the Queensland Aboriginal Account and other savings accounts.

6.10 Dr Ros Kidd highlighted a number of key annual audit reports and public service reports which highlighted the mismanagement of Indigenous monies. In 1923, a Queensland Public Service report found that almost half the deductions made by protectors were inaccurate, and recommended that Indigenous people be given the right to appeal against dubious handling of their accounts. This recommendation was ignored.³

6.11 Dr Kidd also provided evidence that an investigation undertaken in 1932 found that the 'supervision exercised by the Chief Protector over the natives' banking

2 *Submission 49*, p. 34.

3 Dr Ros Kidd, *Submission 49*, p. 11.

transactions is totally inadequate'.⁴ The same report found that the Aboriginal Provident Fund, which was intended to provide relief for indigent Indigenous people, was in fact being used as an alternative to state revenue to provide for the maintenance of Indigenous people.⁵

6.12 Another report commissioned in 1932 on the operation of Aboriginal settlements found a total of £9756 (\$564,480) expended from the Aboriginal Protection of Property Account for maintenance matters, such as funding for a bridge and the provision of timber for a hospital. In 1941 during an investigation into the Sub-department of Native Affairs, auditors raised the precarious position of the Aboriginal Protection of Property Account, which was in danger of insolvency if claims were made on it by relatives.⁶

6.13 Throughout the 1940s, auditors' reports continued to detail negligence in relation to the handling of Indigenous workers' savings accounts by protectors:

...dockets were presented by protectors that bore witnessing to thumb prints where no thumbprints appeared; they reported receipts that bore signatures of witness to both the delivery of goods and the endorsement by the recipient although no worker's imprint was present. Storekeepers 'consistently' acted as the independent witnesses to workers' endorsement on goods purchased in their own stores; protectors likewise wrongly witnessed endorsements of transactions organised by themselves.⁷

6.14 Queensland Public Service and auditors' reports throughout the 1960s continued to criticise the accounting systems in place which failed to protect Indigenous accounts from fraud.⁸ Audit reports also criticised the Queensland Government's operation of a large cattle business which utilised many Aboriginal reserves. Initially a training scheme, the business did not produce any financial statements for the 25 years it operated from the 1970s to the early 1990s. Profits from the running of the cattle business should have been credited to the Aboriginal Welfare Fund; however, incompetent business practices saw this fund continue to lose money.⁹

6.15 In 1990, the Queensland Minister for Families Services and Aboriginal and Islander Affairs commissioned an independent report (The Consultancy Bureau Report) from The Consultancy Bureau on matters such as the Aboriginal Welfare Fund, the Queensland Aboriginal Account and the savings accounts.¹⁰

4 Dr Ros Kidd, *Submission 49*, p. 11.

5 Dr Ros Kidd, *Submission 49*, p. 15.

6 Dr Ros Kidd, *Submission 49*, p.12.

7 Dr Ros Kidd, *Submission 49*, p. 12.

8 Dr Ros Kidd, *Submission 49*, p. 12.

9 Dr Ros Kidd, *Submission 49*, pp 17-18.

10 QPILCH, *Submission 50*, p. 16.

6.16 The committee acknowledges the assistance of the Queensland Government in providing a copy of The Consultancy Bureau Report.¹¹

6.17 The findings of The Consultancy Bureau Report relevant to this inquiry are:

- control systems for the savings accounts were poor and frauds on these accounts were a fairly regular occurrence;
- record systems are poor, and changes in staff resulted in a lack of continuity of knowledge relating to the operations and administrations of the Department of Aboriginal and Islander Affairs (as it was then); and
- sampling confirmed that it was impossible to reconstruct the complete financial history of any individual.¹²

New South Wales

6.18 In relation to NSW, the Indigenous Law Centre (ILC) drew the committee's attention to two investigations in the late 1930s which considered the official management of Indigenous monies.

6.19 The NSW Legislative Assembly established a Select Committee in 1937 to investigate the administration of the Aborigines Protection Board (the NSW Board). Although the Select Committee lapsed in 1938 before it reported, the minutes of evidence for that inquiry highlight the fact that the operation and management of Indigenous monies by the NSW Board warranted further investigation:

The long term Secretary of the [NSW Board], Arthur Pettitt, admitted to the Select Committee that the Board had allowed 'large sums of money' to accumulate in the Trust account and that some of it had been diverted to general Board expenditure, including homes owned not by Aboriginal families but by the Board. The same committee heard other accounts of suspect and inconsistent practices with the use of child endowment money, in particular as an offset against rations and blankets, or towards Board owned property.¹³

6.20 The ILC summarised the evidence before the Select Committee into the Administration of the NSW Board in the following way:

The picture that emerges from evidence given to the Select Committee in 1937 is of an often authoritarian atmosphere in which corruption could occur, complaint was discouraged and whistleblowers could be punished. Several witnesses referred to the discretionary power exercised by

11 *Submission 116A*, The Consultancy Bureau, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991 (The Consultancy Bureau Report).

12 The Consultancy Bureau Report, pp 3-4.

13 ILC, *Submission 98*, Attachment A, pp 28-29.

managers, for example over the distribution of rations, and how that could be abused.¹⁴

6.21 The ILC also referred the committee to a report of the Public Service Board written in 1938 and published in 1940.¹⁵ Some of the findings of the Public Service Board included:

- the large accumulation of family endowment funds in the hands of the Aborigines Protection Board;¹⁶ and
- for much of the 1930s rations for Aboriginal people were inadequate and unsatisfactory.¹⁷

6.22 In addition to the inquiries undertaken in 1937 and 1938, Auditor-General's reports exist in relation to the accounts of both Aboriginal stations and the NSW Board held by the State Records New South Wales:

...the Auditor-General did investigate the accounts kept on particular Stations by managers employed by the Board, as well as audit the accounts of the AWB. State Records NSW, the government's archive and record management agency, holds reports of Inspectors of Public Accounts for the period 1907 to 1930, relating to the Board and a number of specific Aboriginal Stations.¹⁸

6.23 Evidence received during the inquiry also indicated the existence of a document prepared by the NSW Department of Community Services in 1998 which proposed the establishment of a project to investigate the issue of outstanding Aboriginal Trust Fund balances and to consider implementing a scheme to repay trust fund monies to Aborigines.¹⁹

Northern Territory

6.24 In relation to the Northern Territory, submissions directed the committee to a number of previous investigations which are relevant to the management of Indigenous monies in that jurisdiction.

14 *Submission 98*, Attachment A, pp 48-49.

15 Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940.

16 ILC, *Submission 98*, Attachment A, p. 29.

17 ILC, *Submission 98*, Attachment A, p. 48.

18 ILC, *Submission 98*, Attachment A, p. 54.

19 Australians for Native Title and Reconciliation (ANTaR), *Submission 78*, p. 14; and A. Goodstone, 'Stolen Aboriginal wages', *PIAC Bulletin*, No. 19, June 2004, p. 3. This 1998 document formed the basis of a 2001 draft Cabinet Minute which, although not presented to Cabinet, sought endorsement for the establishment of a scheme to reimburse Aboriginal Trust Funds monies to rightful claimants.

6.25 Dr Ros Kidd noted that evidence given during the 1919 Royal Commission into the Administration of the Northern Territory had revealed the ease with which Trust Funds could be defrauded.²⁰

6.26 Dr Thalia Anthony provided a copy of the 1940 report titled *Aboriginal Trust Fund Investigation*. In that report, the Secretary of the Native Affairs Branch observed that the Trust Account, as far as workers employed in the Town Districts were concerned, created work of a redundant and abortive nature.²¹

The objects which the creators of the Account sought to achieve in its early history are somewhat obscure. It would appear that the payment to the Trust Fund by employers of a proportion of wages payable to Aboriginals and half-castes was regarded as a measure to protect 'myall' and unsophisticated employees from exploitation...

A comparison of these conditions with those existing now reveals a marked change, which nullifies, in most part, present policy as a protective measure.

...

Practically all natives, whether employed or not, who reside in town centres are now detribalized and sophisticated. They are also keenly aware of their economic work. In fact, they have displayed a tendency to assert themselves in an endeavour to obtain higher wages from their employers, who, in many cases, have acceded to their demands, to retain their services.²²

6.27 The committee was also directed to the work of anthropologists R M and C H Berndt, who conducted a survey of Aboriginal labour on Northern Territory cattle stations from 1944-1946.²³ Although not a report by the Commonwealth Government, which was the governing body of the Northern Territory at the time, this report would also seem to address the issue of the official management of Indigenous wages.²⁴

6.28 In their report, the Berndts noted that one employer considered itself absolved from paying the five shillings per week to Aboriginal employees, provided the cost of supporting the workers' dependants and the aged and infirm on the station exceeded the proposed aggregate amount. This, in turn, led to the employer inflating the number of people considered 'dependants' and underestimating the number of workers

20 *Submission 49*, p. 22.

21 V.J. White (Secretary, Native Affairs Branch) *Aboriginal Trust Account Investigation*, 12 June 1940, 4-6; National Archives (Darwin): CRS F1, Item 42/40, see cover letter to Patrol Officer Stehlow, District Officer Alice Springs.

22 V.J. White (Secretary, Native Affairs Branch) *Aboriginal Trust Account Investigation*, 12 June 1940, 4-6; National Archives (Darwin): CRS F1, Item 42/40, pp 1-2.

23 See Castan Centre, *Submission 11*, p. 3. The Berndt report was initially suppressed and not published until 1987.

24 Castan Centre, *Submission 11*, p. 16.

employed by the station, a practice which was apparently condoned by the local protector.

Western Australia

6.29 The Aboriginal Legal Service of WA (ALSWA) noted some investigations which specifically examined the management of Indigenous monies. The committee understands that, in 1965 and 1966, the Commonwealth Government and the Western Australia Government undertook investigations into allegations that station and mission warrantees misappropriated old age pension payments which were intended for Aboriginal people.²⁵

6.30 The committee also notes that there have been three Royal Commissions in Western Australia into the treatment and conditions of Indigenous people in that state.²⁶ Extracts and material cited from the evidence and reports of those Royal Commissions demonstrate that those inquiries related to the broader issue of the condition and treatment of Indigenous Australians in Western Australia.²⁷ However, to the extent that those Royal Commissions considered the employment and payment of wages and other monies to Indigenous people, the committee considers that those inquiries are relevant to the official management of Indigenous monies in Western Australia. For example, the 1904 Royal Commission gathered evidence that no workers in the north-west of Western Australia were paid wages, despite the fact that, at the time, they comprised the overwhelming majority of workers in the region.²⁸

South Australia and Victoria

6.31 The committee received very little evidence on this matter in relation to South Australia and Victoria. Ms Joanna Richardson informed the committee that there have been no previous investigations in South Australia into the official management of Indigenous monies.²⁹

6.32 Wampan Wages (the Victorian Stolen Wages Working Group) stated that it was not aware of any previous investigations by the Victorian Government into the official management of Indigenous wages.³⁰

25 *Submission 30*, p. 16; *Submission 30C*, p. 2.

26 In 1904 there was the 'Royal Commission on the Administration of Aborigines and the condition of the Natives', also known as the Roth Royal Commission. The 'Royal Commission in relation to Condition and Treatment of Aborigines', or the Moseley Royal Commission, was held in 1934. Finally, in 1948 the Bateman Royal Commission was established to investigate into Aboriginal affairs in Western Australia.

27 See Dr Ros Kidd, *Submission 49*, pp 3 and 7; and ALSWA, *Submission 30B*, pp 5, 7, 26 and 29.

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

29 *Submission 14*, p. 7; Dr Cameron Rayne in correspondence to the committee also stated that he was not aware of any previous investigations by the South Australian Government.

30 *Submission 84*, p.3.

6.33 The Law Institute of Victoria indicated in its submission that there had been little or no research into the issue of withheld wages, savings or other entitlements in Victoria.³¹ Wampan Wages commented that it is currently preparing an application for funding to the Victorian Government to enable it to fully investigate what it described as a 'substantial amount of material' in the state and Commonwealth archives which may be relevant to the issue of control of Indigenous monies in Victoria.³²

6.34 The committee believes that substantial research is required in South Australia and Victoria in order to review the material currently in archives and determine the nature and extent of previous investigations, if any, into the official management of Indigenous monies.

Disclosure of evidence and public access

6.35 Access to records and financial information is an important issue in the context of stolen wages. Legislation placed an obligation on governments to keep proper records and accounts and often individuals did not know that such records were being kept. For this reason it is important that those who were affected by the protection regimes are able to access their records and see what information is held about them.

6.36 Professor Ann McGrath provided the committee with some general information about the existence of archival records and sources in relation to payments made into trusts (or other accounts) for individuals:

These are available in Commonwealth and State Archival authorities for most of the 20th Century, and for more recent decades, they are held by the relevant Commonwealth and state departments administering Community Services and/or Aboriginal affairs. Some states have Indigenous research officers/specialists who can assist with finding guides and tools. In some cases, Data bases have been established, eg [by] the Department of Queensland Aboriginal and Torres Strait Islander Programs (sic) in collaboration with the Queensland State Archives. To cover the twentieth century, a changing range of records from a variety of responsible state and federal departments will require investigation.³³

6.37 Professor McGrath also advised the committee that other pertinent records would be held by banks or bank archives – for example, the Commonwealth Bank, and other banks in NSW and other states. Further, the Noel Butlin Archives of Business and Labour (at the Australian National University), private company records (for example, the Australian Investment Agency and the Australian Agricultural Company), and a range of other records would provide vital information.³⁴

31 *Submission 94*, p. 1.

32 *Submission 84*, p. 1.

33 *Submission 9A*, p. 2.

34 *Submission 9A*, p. 2.

6.38 Professor McGrath expressed the view that adequate research into the complex arrangements relating to account-keeping 'need to be undertaken by qualified researchers with historical training, working in collaboration with experts in the history of administration, in accounting, book-keeping practices and law'.³⁵ Further:

Where the answer to key process issues is not clear from the available records, in many cases, (depending on the time period in question) public servants involved in administering the Aboriginal departments or Trust funds could also be consulted. They can be identified by various public lists held in state and Commonwealth Archives.³⁶

Queensland

6.39 In Queensland the issue does not appear to be the ability of the public to access records of financial control, but rather the incomplete nature of the records and the complexity of the files, such that individuals are unable to access the entirety of their records.

6.40 The Queensland Government explained the work undertaken in the context of the current reparations offer, and the previous scheme for the reparation of underpaid award wages³⁷ to maintain records and allow appropriate access:

The Government established a Work and Savings Histories Branch within the former Department of Aboriginal and Torres Strait Islander Policy to support both the under-award wages and reparations process. In addition to this Branch, the Community and Personal Histories Branch was engaged to undertake extensive, highly acclaimed and nationally recognised research and archivist work to connect Indigenous people and communities to government records and to assist in the processing of claims...The Community and Personal Histories Branch has been at the forefront of endeavours to provide access to government records and to educate the broader community about past government control practices.³⁸

6.41 Despite these efforts, the committee notes that a number of obstacles remain preventing Indigenous people in Queensland from accessing records which evidence the financial controls that were exercised over them.

6.42 The Consultancy Bureau, in its 1991 report, advised that it would be 'impossible' to reconstruct the complete financial history of any individual, and that consequently, individual claims for wages and savings could not be accommodated.³⁹

35 *Submission 9A*, p. 2.

36 *Submission 9A*, p. 2.

37 The Queensland Government's reparations offer, and the earlier process for the reparations of underpaid award wages, are further discussed in Chapter 7.

38 *Submission 116*, p. 2.

39 The Consultancy Bureau, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991, p. 4.

The Queensland Government commented that the problems identified in the Consultancy Bureau Report continue today:

...very considerable effort had been put into finding, collating, indexing and putting on microfiche any records that could be found that could be made available. I also understand that that still did not change the conclusion that was reached in 1990 about the extreme difficulty of putting back together the story on a case-by-case basis that would allow the determination on an equitable basis of what might be owed to individuals.⁴⁰

6.43 Two difficulties have been identified when endeavouring to put 'back together the story on a case-by-case basis'. Firstly, records and files have been lost or are missing; and secondly, the complexity and number of records make it difficult to find all information in relation to an individual.

6.44 The Consultancy Bureau report made the following observation about the completeness of financial records for the Aborigines Welfare Fund and the Aboriginal Accounts:

Record systems are poor, and records for a period of some twenty to thirty years from the late 1940s are often missing. Even some comparatively modern material cannot be located.⁴¹

6.45 The Queensland Government indicated that the government did not hold a full record of the savings accounts as some of these had been lost or destroyed.⁴²

6.46 Pastor John Andrews commented on missing records in relation to his family:

My wife's Great Grandparents lived at Tolga on the Atherton Tablelands and grandfather was an Aboriginal Black Tracker for the Police...This old man worked but never saw money but relied on handouts from farmers around who knew them. Where are the records as we are told they do not exist, and where are the wages?

My father in law worked on cattle properties as a stockman drover and my mother in law picked beans and corn to make ends meet but also no records exist. All aboriginal people [were] under the Protection Act but records were few and far between.⁴³

6.47 The committee also notes that some witnesses expressed scepticism at the Queensland Government's ability to locate records, suggesting that it was easier for the Government to simply say the records are 'missing'.⁴⁴ To this end, Mr Tony

40 *Committee Hansard*, Brisbane, 25 October 2006, p. 74.

41 The Consultancy Bureau, *Final Report: Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991, p. 9.

42 *Committee Hansard*, Brisbane, 25 October 2006, p. 83.

43 *Submission 40*.

44 See Dr Ros Kidd, *Committee Hansard*, Brisbane, 25 October 2006, p. 6; Mr Bob Weatherall, *Committee Hansard*, Brisbane, 25 October 2006, p. 27.

Woodyatt, Co-ordinator of the Queensland Public Interest Law Clearing House (QPILCH) pointed out the difficulties in trying to find information about an individual in the records:

...there is a mass of records. There are millions of these very complex documents that are these huge folios, ledgers – it was a very complicated accounting system that was employed. In these ledgers there will be one line of a person's name and then the amount that was deducted or whatever, referring to other folios that had the amounts that they had earned over a period; there were payment records and expenditure records. Imagine if people had been working 30 years or more; the records were spread across many, many volumes of books. It is very hard to find those individual records.⁴⁵

6.48 Ms Thurlus Saunders explained her experience of locating records in the archives in Brisbane:

Our family has travelled to Brisbane and spent many hours, days and weeks in the archives searching for information about our family members. It is a lot of work going through the paperwork and would be impossible for people with literacy problems. Going to the archives is straightforward with identification, but the searching is very time consuming and difficult. There are many records to search through.⁴⁶

6.49 Ms Christine Howes of ANTaR Queensland also highlighted for the committee how literacy, and misspelling of names could also be an issue in locating information:

There are also literacy issues for people who are chasing up records. One of the profiles that I wrote in *Koori Mail* was that of Alf Neal from Yarrabah. He showed me some original documentation where he was looking for some other records extended on that. They had been looking at these records and wondering for years why they could not find anything else on them. I noticed that there was an 'e' on the end of the name, and 20 people might have looked at that piece of paper before then and never noticed there was an 'e'. There can be different spellings. Many of these elderly people did not have that schooling.⁴⁷

6.50 Dr Ros Kidd provided an indication of the extent of the material available in Queensland, indicating that all the material for her research had been obtained from the files and records of the Department of Native Affairs (and its successors):

The administrative records, which I looked through, are full of finances, because controlling people's money was one of the major focuses of controlling people...So all of the material in my book, if you get a chance just to flick through the figures in it, is available on the administrative files.

45 *Committee Hansard*, Brisbane, 25 October 2006, p. 15.

46 *Submission 22*, p. 2.

47 *Committee Hansard*, Sydney, 27 October 2006, p. 50.

I did not go into the files that are retained by Treasury, for instance, which would have another dimension, but the finances of the department, the budgeting of the department, is all on files that I looked at.⁴⁸

New South Wales

6.51 The Government has also taken steps to index and locate records of financial controls that were exercised over Indigenous people living in NSW. The Government has established two research services to assist with the indexing and organisation of records and databases to assist with the Aboriginal Trust Fund Repayment (ATFR) Scheme.⁴⁹

The Department of Aboriginal Affairs employs 3 indexing officers, a senior indexing officer and the Manager of the [ATFR Scheme] and Family Records Unit. The Department is also responsible for ongoing indexing of the Aborigines Welfare Board records and for maintaining various databases and searching these databases for each Trust Fund claim.

State Records contribute a research service staffed by Aboriginal people to provide evidence from archival records in their collection to support claims made under the [ATFR] Scheme.⁵⁰

6.52 The NSW Stolen Wages Working Group provided information on a number of guides and resources published by the State Records of NSW and the NSW Department of Indigenous Affairs to assist people in locating records and information relevant to the stolen wages issue.⁵¹

6.53 State Records of NSW has created an 'Archives in Brief' document which outlines access arrangements to Aboriginal records.⁵² The Brief states that most state records are open to public access once they are 30 years old; however, records that contain sensitive information are closed for a longer period. In order to access closed records of the Aborigines Welfare Fund, an application needs to be made to the Department of Aboriginal Affairs. The committee was also informed that, where a person makes a claim under the NSW, ATFR Scheme records relevant to the assessment of monies owed are provided to the claimant.⁵³

48 *Committee Hansard*, Brisbane, 25 October 2006, p. 4.

49 The NSW Government's Aboriginal Trust Fund Repayment Scheme is discussed in Chapter 7.

50 *Submission 92*, p. 3.

51 *Submission 91*, p. 12, see in particular the State Records of NSW, *Guide to New South Wales State Archives relating to Aboriginal people*, available at: <http://www.records.nsw.gov.au/publications/aboriginalguide/aboriginalguidetoc.htm>, accessed 29 November 2006.

52 State Records of NSW, *Archives in Brief 78 – Access to Aboriginal records*, available at http://www.records.nsw.gov.au/archives/archives_in_brief_78_2139.asp, accessed 21 November 2006.

53 PIAC, *Submission 76*, p. 13.

6.54 The committee notes the high praise given to staff at State Record New South Wales by Dr Susan Greer who assured the committee that, if records existed, the staff would be able to find them.⁵⁴ However, as in Queensland, one of the hurdles to a person accessing their financial records in NSW is the fact that many records are missing, or may not have been created in the first place.

6.55 Ms Charmaine Smith from Public Interest Advocacy Centre (PIAC) stated that PIAC had noticed 'inconsistencies' in the availability of records:

We have noticed that there have been considerable inconsistencies in the documents that are available...With the Cootamundra girls training home, I think there are better maintained records that have survived in that institution, but even then Valerie Linow, for example, has a number of sisters who also went through Cootamundra and there are still quite significant differences in the number of documents that we have received in relation to each sister when you would think that they might have been similarly maintained. I have noticed that the documents that have survived from Kinchela boys training home are considerably fewer than we have for Cootamundra. I have clients who have had employment arranged for them through the board and worked on stations and missions who do not have documents at all.⁵⁵

6.56 The NSW Stolen Wages Working Group provided the committee with the following information on where some of the 'gaps' in the records exist:

...the accounting records substantially do not exist post 1934, after the Accountant, Chief Secretary's office took over the accounting role from the Secretary of the Aborigines Protection Board; and the correspondence files relate substantially to the Aborigines Welfare Board, and contain only a limited number of pieces of correspondence that predate 1949.⁵⁶

6.57 The NSW Stolen Wages Working Group also identified two other issues that hampered public access to the records:

- new material is constantly becoming available, so there is a need to keep checking to see if additional material has been found since the database was last revised; and
- records were not necessarily collated in a way that facilitates the sorts of investigations that are now being made by Aboriginal people and those conducting inquiries.⁵⁷

54 *Committee Hansard*, Sydney, 27 October 2006, p. 44.

55 *Committee Hansard*, Sydney, 27 October 2006, p. 19.

56 *Submission 91*, p. 5.

57 *Submission 91*, p. 5.

Western Australia

6.58 In relation to Western Australian files, Professor Anna Haebich provided the following summary:

...there are three main sets [of records]: staff records, which were disposed of after a couple of years and so there are not very many of them left; the administrative records; and also the personal records. There are not very many of them left. The records are controlled by the Department of Indigenous Affairs. A lot are held at the State Records Office. The Department of Indigenous Affairs has a vetting process for administrative files, so, if you want to look at them, you apply and then maybe three weeks or even longer after that you get to see the file. The personal files of course are restricted to access by the family of the person the file addresses, and they have to have written permission from that person.⁵⁸

6.59 Professor Haebich described the records held in Western Australia as 'more tattered and disconnected' than those in Queensland.⁵⁹

6.60 Access to Western Australian personal files is through application to the Family Information Records Bureau at the Western Australian Department of Community Development.⁶⁰ Many of the administrative archival files which are housed at the State Records Office of WA have restricted access; however the application process is open to general researchers and to those preparing expert evidence for native title litigation. Access to the administrative archival files is managed by the Department of Indigenous Affairs (DIA).⁶¹

6.61 In this context, the committee notes the significant efforts of the ALSWA during the course of this inquiry to obtain access to restricted DIA archival files and provide them as evidence to the committee.⁶²

6.62 The ALSWA also referred to a pattern of archival destruction in WA:

Recent research into the records of the Aborigines Department and its successors shows that of the 15,400 personal dossier files created between 1926 and 1959 in relation to Aboriginal individuals and families...about 21% were deliberately destroyed. These records would likely have contained, among other material, information about the Department's management of individual trust accounts, the person's employment history and any real or personal property the Chief Protector held in trust for the person who was the subject of the file.

58 *Committee Hansard*, Brisbane, 25 October 2006, p. 31.

59 *Committee Hansard*, Brisbane, 25 October 2006, p. 31.

60 ALSWA, *Submission 30B*, p. 42.

61 ALSWA, *Submission 30*, p. 19.

62 See further *Submission 30C*.

...During the same period, from 1926 to 1959, approximately 55% of the administrative files created by the Department were destroyed. The selection of these files suggested it was more than routine culling, since the list of destroyed files contained 'both provocative and potentially important titles for contemporary areas of research'.⁶³

6.63 Mr Steve Kinnane has researched the destruction of files in WA and indicated that he did not believe that the destruction was a deliberate attempt by the Aborigines Department (or its successors) to avoid future claims that may be brought in relation to stolen wages, but rather was aimed at protecting employers:

I do not personally believe that they were deliberately destroyed on the basis that there may be future interest in a claim. I do not think that people believed that Indigenous community members would eventually be delving into these files or seeing what was written on them. I think, though, that often files, particularly files dealing with cohabitation or with complaints against employers, were destroyed.

There was a culture, if you like, that came out from reading a large number of files...and the culture that comes across is that the department was reluctant to pursue any complaints that Indigenous employees had against their employers. Often, those kinds of files dealing with employment were destroyed. I have no proof to say that they were destroyed for that reason, but I would say that there was a culture of not wishing to rock the boat as far as dealing with white employers went.⁶⁴

South Australia

6.64 The committee received very few submissions in relation to the disclosure of evidence and public access to records in South Australia. However, it appears that while extensive archival records do exist in relation to the management of Indigenous monies in South Australia, there are obstacles to accessing that information.

6.65 The committee was informed that in South Australia there is one particular series of records, GRG 52/1 –*the correspondence of the Aborigines Department, 1868-1962* (the GRG 52/1 records), which is 'the most important record group relating to Aboriginal people in South Australia'.⁶⁵ The file is one of 93 record groups which relate to the running of the Aborigines Department in South Australia.

6.66 The GRG 52/1 records contain the correspondence of the SA Aborigines Department, including correspondence from the Crown Solicitor as well as information on the trust funds for Indigenous monies that existed in South Australia. While there are a number of other files which might be relevant to the number of workers employed on Point Pearce and Point McLeay Stations, according to Dr

63 *Submission 30*, pp 5-6.

64 *Committee Hansard*, Perth, 16 November 2006, p. 50.

65 Dr Cameron Raynes, *Committee Hansard*, Perth, 16 November 2006, p. 3.

Cameron Raynes, the GRG 52/1 records contain 'virtually everything' the committee would need to answer the issues in relation to South Australia in the Terms of Reference.⁶⁶

6.67 However, this potentially rich resource of information has been rendered 'all but useless' due to a specific referral process instigated by the Department of Aboriginal affairs for anyone requesting access to the GRG 52/1 records:

This department then vets the file for any material subject to legal professional privilege, and advises their CEO accordingly. The CEO then informs the Attorney-General and then a decision is made to either allow or deny access to the file.

As a result, it now takes many months to access any item within GRG 52/1. Worse still, the items can only be accessed on a one-by-one basis, making extensive research and the ability to 'browse' through the material completely impossible.⁶⁷

6.68 Ms Joanna Richardson also outlined the difficulties in accessing records in South Australia:

It is very difficult to access the records of the Aborigines Protection Board and Aborigines Department held by the South Australian Government. The difficulty is twofold: firstly, detailed indexing of the vast materials of the Aborigines Protection Board and Aborigines Department (and associated government departments) is not complete, therefore it is not clear what material is available; secondly, restrictions have been placed on access to documents by the present government, especially those which might be described as 'sensitive' from a litigious perspective.⁶⁸

Northern Territory

6.69 The committee received very few submissions in relation to the Northern Territory on the issues of disclosure and public access to records. On this point, the committee notes the submission of the NT Working Women's Centre:

We are unaware of...even how Indigenous women in the NT may be able to access records showing any money owing to them.⁶⁹

6.70 Dr Thalia Anthony explained that there is a scarcity of records relating to the wages of cattle station workers in the Northern Territory. The records that do exist are predominantly station ledgers, which are held in the National Archives in Canberra

66 *Committee Hansard*, Perth, 16 November 2006, pp 5-6.

67 Dr Cameron Raynes, *Submission 8*, p. 6.

68 *Submission 14*, p. 7.

69 *Submission 10*, p. 1.

and Darwin. However, there is not a comprehensive Commonwealth record of individuals' names with ledgers and entitlements.⁷⁰

Victoria

6.71 Wampan Wages commented that there is a substantial volume of material held in state and Commonwealth archives which may be relevant to the issue of control of Indigenous wages in Victoria.⁷¹ Mr Joel Wright from Wampan Wages stated:

...the Victorian Public Record Office has gone through its records, its archives, and, through a project which was done about six years ago called My Heart is Breaking, looked at all of the administrative records relating to the Board for Protection of Aborigines and certainly a whole range of correspondence and administrative records in relation to Aboriginal people on reserves. As part of that project, the Public Record Office of Victoria has established a specific Indigenous archive containing all of those records, which include examples of wages paid to people for particular work performed on reserves. That represents a huge body of documentation that we are identifying primarily as one of the sources that needs to be researched and investigated with respect to the terms of reference for the stolen wages.

...

Certainly there is an indication that there is a bulk of evidence that exists there but we are also of the understanding that there are elements of information and evidence that exist in the National Archives which, within our research terms of reference, we have identified as one of the areas that we would want to investigate.⁷²

6.72 According to Wampan Wages, there are currently no measures in place to disclose evidence of historical financial controls to affected Indigenous families;⁷³ however, Mr Wright informed the committee that access to archives is available in Victoria.⁷⁴ As indicated previously, Wampan Wages is developing a proposal for funding to enable it to research material in the archives.

70 *Committee Hansard*, Sydney, 27 October 2006, pp 12-13 and 15. For more information on records held by the National Archives of Australia, and information on accessing these records see National Archives of Australia, *Indigenous Records*, at http://www.naa.gov.au/the_collection/indigenous_records.html, accessed 22 November 2006.

71 *Submission 84*, p. 1.

72 *Committee Hansard*, Canberra, 28 November 2006, p. 7.

73 *Submission 84*, p. 3.

74 *Committee Hansard*, Canberra, 28 November 2006, p. 10.

6.73 The committee notes the National Archives of Australia has produced a number of guides and fact sheets in relation to the Indigenous Records that it holds.⁷⁵ The Koori Records Unit of the Public Record Office Victoria is also responsible for improving the accessibility of Aboriginal records held by the Victorian Government.⁷⁶ Until comprehensive research is done to determine the extent of the materials held, these two repositories would probably be the starting point for an individual wanting to access records that may exist about the financial controls to which Victorian Aboriginal people were subjected.

Commonwealth

6.74 The committee received some evidence in relation to access to Commonwealth archives. Professor Ann McGrath explained that some records in the National Archives of Australia are not available to the public:

...a lot of the [records] apparently require some sort of conservation so they are not actually available to the public and, because a lot of them contain personal names, they are also not open. It would take several weeks and you would have to ask for each individual file. Certainly, in terms of getting the facts and getting the information, it would be very valuable to researchers to have more open access to these records, of course taking into account the privacy that is required. There has been a lot of blocking and gatekeeping right around Australia, both at the state and federal levels. That is one of the reasons Australians do not have this knowledge. PhD students cannot get to the sources. Historians do not do this research because they cannot get the evidence. It is blocked.⁷⁷

6.75 In a response to a question on notice from the committee with respect to what files and records held by the Commonwealth Government may be relevant to investigating the stolen wages issue, FaCSIA informed the committee that:

In the time available, FaCSIA has not conducted a comprehensive search to determine the nature and scope of any material it may hold. It is therefore not possible to readily estimate what material, if any, is held by the department that could possibly be relevant to the Committee's inquiry. The department has an extensive amount of historical material, primarily held in the National Archives. Any research into this material would require specialist skills and a substantial diversion of resources. A comprehensive

75 See National Archives of Australia, *Indigenous Records*, at http://www.naa.gov.au/the_collection/indigenous_records.html, accessed 22 November 2006. Records of Indigenous people in Victoria are held in the National Archives because the Victorian Government handed over responsibility for Aboriginal Affairs to the Commonwealth Government in 1975.

76 See, Public Record Office Victoria, Koori Records Unit, at <http://www.prov.vic.gov.au/about/kru/default.asp>, accessed 22 November 2006.

77 *Committee Hansard*, Canberra, 28 November 2006, p. 13.

response would require information to be sought by the Committee from all appropriate agencies.⁷⁸

6.76 At the Canberra hearing, a representative from FaCSIA told the committee that it is willing to investigate substantive stolen wages claims but that a broad investigation into the issue has not been justified to date:

We are bound as much as anyone to the requirements and regulations that Archives operates under, but clearly we would have access, as departmental officers, to any records which are the responsibility of our department or its predecessors. We have always been ready to investigate any substantive claims that have come to us about these issues where they fall within our responsibilities. In recent years we have not had any, and, where they have occurred in the recent past, where we have sought to go to the substance of the matters they have not been forthcoming.

On that basis, we did not feel it was sustainable to divert substantial resources away from Indigenous business to go spec-hunting across the range of possible sources in that regard. Clearly, the Commonwealth had responsibility for the Territory up until the late seventies, and there may be some basis for looking into that history, but we have not received any claims that warranted us seeking to investigate those particular historical circumstances. On that basis, we have not been able to justify doing a broad investigation, because we did not have a basis to know where to look or what to look for, given the wealth of material that probably sits in archival sources.⁷⁹

78 *Submission 126*, p. 2.

79 *Committee Hansard*, Canberra, 28 November 2006, p. 18.

CHAPTER 7

REPAYMENT OF MONIES BY GOVERNMENTS

What if your wages got stolen? Honestly, wouldn't you like to have your wages back? Honestly, I think it should be owed to the ones who were slave labour. We got up and worked from dawn to dusk. I had to get up and milk the cow. I did not know how the hell to milk a cow. I got there and I had to chop wood. I was only young; I was only a kid. So of course I want my money and the rest of them want their money. It belongs to them. Everything else has been taken off them. Why can't they have something back? Australia should give something back to us Aboriginal people. We lost everything – family, everything. You cannot go stealing our lousy little sixpence. We have got to have money back. You have got to give something back after all this country did to the Aboriginal people. You cannot keep stealing off us.¹

7.1 In 1999 the Queensland Government introduced a process referred to as the Underpayment of Award Wages Process (UAWP) to make reparations for the underpayment of award wages to Indigenous workers who had been employed by the government on Aboriginal reserves for the period 31 October 1975 to 29 October 1986.

7.2 In 2002, the Queensland Government introduced the Indigenous Wages and Savings Reparations Offer (the reparations offer) for the reparation of money to Indigenous workers who had their wages and savings controlled under protection Acts. The NSW Government also introduced the Aboriginal Trust Fund Repayment Scheme (ATFR Scheme) to address the repayment of monies held in trust funds by the NSW Government. Evidence suggests that the ATFR Scheme for the repayment of monies is generally better regarded than the Queensland reparations offer.

7.3 This chapter provides a brief overview of the UAWP, which was used as a model for Queensland's reparations offer. An outline is then provided of both the Queensland reparations offer and the NSW repayment scheme. Evidence which identified problems and criticisms of these schemes is also discussed.

Queensland

7.4 The first scheme introduced by the Queensland Government was the UAWP scheme which provided a one-off payment of \$7000 to workers employed on Aboriginal reserves. The second scheme was the reparations offer which provided for payments of \$2000 or \$4000, depending on the date of birth of the Indigenous worker.

1 Ms Valerie Linow, *Committee Hansard*, Sydney, 27 October, pp 21-22.

The Underpayment of Award Wages Process

7.5 The Queensland Government announced the UAWP in direct response to a decision of the Human Rights and Equal Opportunity Commission (HREOC): the so-called *Palm Island Wages case*².

7.6 In 1985 and 1986, workers from Palm Island complained to the Human Rights Commission (HREOC's predecessor) claiming that, in the course of their employment on the Queensland Government reserve on Palm Island, they had been discriminated against because they were Aboriginal people, and, in particular, that they had been paid wages at a rate less than they would have been paid if they were not Aboriginal.

7.7 The matter took 10 years to run its full course and, ultimately, HREOC determined that six of the workers had been discriminated against in the course of their employment on the basis of race³. HREOC rejected the Queensland Government's claims that the workers were not 'employees' and that it had been acting in compliance with Queensland law at the time⁴.

7.8 HREOC heard evidence that each worker had suffered a loss of between \$8,573.66 and \$20,982.97. Despite this, each of the successful workers was awarded \$7,000 in compensation.⁵

7.9 The UAWP was announced by the Queensland Government in May 1999. The process included a single payment of \$7,000 which was paid to Aboriginal and Torres Strait Islander people who were employed by the Queensland Government on Aboriginal reserves between 31 October 1975 (the commencement of the Racial Discrimination Act 1975 (Cth)) and 29 October 1986 (the date from which Award wages were paid to all workers).⁶

7.10 Applications for the UAWP closed in 31 January 2003. The UAWP offer was open to employees of government reserves who were alive on 31 May 1999 (the date the process was announced) and, therefore, excluded Aboriginal and Torres Strait Islander people who had died prior to this date. Claimants who accepted the \$7,000 payment were required to sign a deed waiving their rights to recover further compensation.⁷ However, the Queensland Government stated that the acceptance of the payment in the UAWP offer does not prevent a person accepting a payment under the Queensland Government's reparations offer, because the two offers relate to

2 *Bligh & Ors v State of Queensland* [1996] HREOCA 28.

3 *Bligh & Ors v State of Queensland* [1996] HREOCA 28, part 11.

4 *Bligh & Ors v State of Queensland* [1996] HREOCA 28, part 9.

5 *Bligh & Ors v State of Queensland* [1996] HREOCA 28, parts 9 and 16.

6 HREOC, *Submission 41*, para. 18.

7 HREOC, *Submission 41*, para. 20

different matters.⁸ The Queensland Government has paid out \$40 million to workers under the UAWP.⁹

7.11 One criticism that has been levelled at the UAWP is that it only applied to workers on government-run reserves, and not to people employed by church organisations on the mission communities.¹⁰ The committee notes the issue of underpayment of award wages for workers on church missions has been the subject of litigation. In one matter, *Baird v State of Queensland* (the *Baird case*), the Federal Court accepted that the applicants had proved economic loss, but ruled that loss was not a result of discrimination by the Queensland Government contrary to the Racial Discrimination Act.¹¹ That decision was successfully appealed, with the Full Federal Court ruling that the calculation and payment of grants by the Queensland Government to the missions, based on the payment of below-award wages to Aboriginal workers on the missions, was a breach of the Racial Discrimination Act. The Full Federal Court is yet to make final orders in relation to the case.¹² In a second matter, a permanent stay has been granted over the bulk of the proceedings insofar as they relate to the employment of the applicants.¹³

Indigenous Wages and Savings Reparations Offer

7.12 In May 2002, the Queensland Government made a 'without prejudice offer of a one-off payment' to Indigenous workers who were able to demonstrate governmental control of their wages and savings under the Queensland Protection Acts.¹⁴ In the Queensland Parliament on 16 May 2002, Premier Peter Beattie stated: '...this offer is made in the spirit of reconciliation, as a demonstration of our desire to heal the past, so we can move on.'¹⁵

7.13 The Queensland Government, in its submission to the inquiry, set out the components of the reparations offer:

8 Queensland Government, *Submission 116*, Attachment 7, *Indigenous Wages and Savings (1890s-1980s) Reparation Process Information Sheet*, September 2003.

9 Queensland Government, *Submission 116*, p. 6.

10 HREOC, *Submission 41*, para 20.

11 HREOC, *Submission 41*, paras 26-38.

12 *Baird v State of Queensland* [2006] FCAFC 162.

13 HREOC, *Submission 41*, paras 39-41; and Mr Jonathon Hunyor, HREOC, *Committee Hansard*, Sydney, 27 October 2006, p. 2.

14 The Hon. Peter Beattie, Premier of Queensland, *Legislative Assembly Hansard*, 16 May 2002, p. 1715.

15 The Hon. Peter Beattie, Premier of Queensland, *Legislative Assembly Hansard*, 16 May 2002, p. 1716.

1. \$55.4 million¹⁶ for payments to individuals with any unspent balance to be applied to the Aborigines Welfare Fund and a proportion allocated for Torres Strait Islanders;
2. a written apology from the Government to all living persons who had their wages and savings controlled under an Act and who were eligible to make a claim for compensation;
3. a statement in Parliament to publicly recognise past injustices on the basis of race; and
4. a protocol for commencing official Government business with an acknowledgement of the traditional owners of the land.¹⁷

7.14 The Queensland Government provided the following eligibility criteria for individuals claiming the reparations offer. In order to be eligible, claimants had to:

- be alive on 9 May 2002, which was the date of the offer;
- be born on or before 31 December 1956; and
- have had their wages or savings controlled under a 'protection Act'.¹⁸

7.15 Depending on the claimant's date of birth, the following amounts were to be paid to eligible claimants under the reparations offer:

- \$4,000, for those born before 31 December 1951; and
- \$2,000, for those born between 1 January 1952 and 31 December 1956.¹⁹

7.16 The Queensland Government provided the following explanation for the structure of the reparations offer:

The cut of date of 1956 was based on the fact that people born between 1957 and 1965 would have been 9 years old or younger when the 1939 Act was repealed in 1965 and 15 years old or younger in 1972 when the 1965 Act was repealed. They were therefore unlikely to have had their wages and/or savings compulsorily controlled.

Depending on their date of birth, eligible claimants were paid either \$4,000 or \$2,000. The differing amounts reflected the assumption that (a) people born before 31 December 1951 were subject to the 1897 and/or the 1939 Acts and their wages/savings were subject to intensive controls and (b) those born between 1952 and 1956 were more likely to have worked and had their savings controlled under the 1965 Act. This Act removed some of

16 The total amount of the offer was \$55.6 million, however the Queensland Government gave \$200,000 to the Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS) to conduct consultation on the offer. This consultation is discussed later in this chapter.

17 *Submission 116*, p. 3.

18 *Submission 116*, p. 5.

19 *Submission 116*, p. 5.

the controls, such as compulsory contributions to the Aborigines Welfare Fund, included in the earlier legislation²⁰.

7.17 If a claimant was determined to be eligible for the reparations offer, and chose to accept the offer, the claimant was required to sign a 'Deed of Agreement', which included the claimant indemnifying the Queensland Government against:

...all actions, suits, claims, costs and demands which the Claimant, and all other persons claiming by or through or under the Claimant may now have or could have, whether pursuant to common law or under the Protection Acts, against the State, its servants or agents.²¹

7.18 The committee was advised that claimants who were assessed as eligible were provided with independent legal advice prior to accepting the reparations offer. Claimants had a 24-hour 'cooling off' period once they received their legal advice to decide if they wanted to accept the offer.²²

7.19 The reparations offer was approved by State Cabinet in November 2002 following a period of consultation which was carried out by the Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS). Claims were able to be lodged from 1 February 2003²³ and the offer closed on 31 January 2006.

7.20 The Queensland Government provided the following statistics of claims and assessments made under the reparations offer:

- 8,761 claims have been received;
- up until 9 October 2006, 8,752 claims had been assessed;
- of those 8,752 claims, which had been assessed, 63 per cent were deemed eligible; and
- 5,413 claims have been paid totalling \$19.11 million (of the \$55.4 million set aside for the scheme).²⁴

7.21 The Queensland Government's reparation offer received criticism from witnesses and submitters during the inquiry in the following areas:

- the inadequacy of the reparations offer;
- the requirement for indemnity and provision of legal advice;
- the reliance on documentary evidence; and

20 *Submission 116*, p. 5.

21 Queensland Public Interest Law Clearing House (QPILCH), *Submission 50*, p. 21.

22 Queensland Government, *Submission 116*, Attachment 7, *Indigenous wages and savings reparations process: How will it work?*.

23 The Hon. Peter Beattie, 'Historic Reparations Offer to Indigenous Queenslanders To Proceed', *Press Release*, 20 November 2002.

24 Queensland Government, *Submission 116*, p. 6.

- the distribution of the remainder of the reparation offer monies and Welfare Fund amounts.

Inadequacy of the reparations offer

7.22 The most widespread criticism of the Queensland Government's reparations offer is that it was too far short of the real value of appropriated wages and savings to be acceptable. The failure to offer reparations to the beneficiaries of deceased workers is another area in which the offer has been criticised.

7.23 A number of witnesses who appeared before the committee described the offer as 'insulting'²⁵. One witness called it 'laughable'²⁶. Mr Victor Hart of the Queensland Stolen Wages Working Group saw the offer as a reflection of the Queensland Government's general attitude towards Indigenous people:

I think it is pretty obvious that the general attitude behind the government's offer of \$2,000 implies that they take for granted the legal and constitutional rights of Indigenous people. From this you can apparently make a clear assertion that they do not think we are as equal as other people.²⁷

7.24 In presenting the offer to the Queensland Parliament, Premier Beattie acknowledged that there were estimates that the total amount owed to Indigenous people in Queensland may be as much as \$500 million²⁸. Despite this, Premier Beattie pre-empted criticism of the extent of the offer on the basis that it was preferable – from the perspective of both the Queensland Government and claimants – to a protracted legal battle:

Canberra has spent more than \$12 million on just one case alone – the Gunner and Cubillo case – which went all the way to the High Court and helped no-one but the lawyers. If we resisted every one of these cases, this could cost Queenslanders \$100 million or more in legal expenses. That is a rough guess. It is a lot of money. Settling this away from the courts will save the taxpayers of Queensland millions. There is a win for indigenous people, particularly old indigenous people or elderly indigenous people

25 See Dr Ros Kidd, *Committee Hansard*, Brisbane, 25 October 2006, pp 5-6; Ms Yvonne Butler, *Committee Hansard*, Brisbane, 25 October 2006, p. 21; Dr Rev. David Pitman, *Committee Hansard*, Brisbane, 25 October 2006, p. 38; Mrs Alexandra Gater, *Committee Hansard*, Brisbane, 25 October 2006, p. 44; and Ms Tammy Williams, *Committee Hansard*, Brisbane, 25 October 2006, p. 66.

26 Ms Yvonne Butler, *Committee Hansard*, Brisbane, 25 October 2006, p. 22.

27 Mr Victor Hart, Queensland Stolen Wages Campaign Working Group, *Committee Hansard*, Brisbane, 25 October 2006, p. 58.

28 The Hon. Peter Beattie, Premier of Queensland, *Legislative Assembly Hansard*, 16 May 2002, p. 1716.

approaching the end of their lives. There is a win for taxpayers, because it will cost them less, and there is a win for reconciliation and decency.²⁹

7.25 Some witnesses mentioned their anger that, in announcing the reparations offer, Premier Beattie had referred to the funds as 'taxpayers' money':³⁰

All I want is justice and what is owed to us. And it is not taxpayers' money; these are wages that every working Australian earns each week.³¹

7.26 Witnesses commented that their understanding was that the reparations offer was based on what the Queensland Government could 'afford to pay', and not what it owed to claimants.³² In November 2002, Dr William Jonas, the then Aboriginal and Torres Strait Islander Social Justice Commissioner highlighted this inadequacy in the reparations offer, and criticised the Queensland Government's unwillingness to increase reparations by staggering payments over successive budgets:

...it was not an appropriate figure for the inter-generational harm and poverty inflicted on Indigenous people through the control exercised by the government. It is clearly an arbitrary figure based on what can be afforded by Queensland Treasury in one hit. There does not appear to have been due consideration of proposals by Indigenous groups for staggering payments over several budgets. There is no justification for how the figure of \$55.4m came to replace the previously cost [sic] of \$180m (estimated by the Queensland Aboriginal and Islander Legal Service) to adequately address the harm caused.³³

7.27 Dr Ros Kidd disagreed with the suggestion that the reparations offer could be considered as recognition by the Queensland Government that it accepted some responsibility for the injustices suffered by Indigenous workers. In Dr Kidd's view, this could only be the case if the Queensland Government had made an 'honest and equitable' attempt at reparations.³⁴ However, when compared with other initiatives of the Queensland Government, Dr Kidd did not believe that the offer demonstrated the Queensland Government accepting any responsibility:

29 The Hon. Peter Beattie, Premier of Queensland, *Legislative Assembly Hansard*, 16 May 2002, p. 1716. Peter Gunner and Lorna Cubillo were the unsuccessful claimants in a 'stolen generation' case; they were seeking compensation for being removed from their families.

30 See the Hon. Peter Beattie, Premier of Queensland, *Legislative Assembly Hansard*, 16 May 2002, p. 1716.

31 Mrs Yvonne Butler, *Committee Hansard*, Brisbane, 25 October 2006, p. 21; see also ANTaR, *Submission 78*, p. 13.

32 See Dr Ros Kidd, *Committee Hansard*, Brisbane, 25 October 2006, p. 2; Mr Victor Hart, Queensland Stolen Wages Campaign Working Group, *Committee Hansard*, Brisbane, 25 October 2006, p. 60.

33 Dr William Jonas, "'Stolen Wages' case should be delayed, says Social Justice Commissioner", *Press Release*, 8 November 2002; Stolen Wages Working Group, *Press release*, 15 May 2005.

34 *Committee Hansard*, Brisbane, 25 October 2006, p. 5.

...to say to a person over 50, 'We value your working life at \$4,000,' is an absolute insult. I should say that in the same year...the Beattie government offered \$50,000 to each of 200 underperforming teachers so they could retrain. It gives you an idea of the level of their sorrow.³⁵

7.28 Given the considerable anger that was expressed by claimants and other witnesses at the public hearings in relation to the amount set aside for the offer, the committee was interested to learn how the Queensland Government had arrived at the overall figure of \$55.6 million for the reparations offer. In an answer to a question on notice, the Queensland Government informed the committee that:

The amount of \$55.6 million was determined by Government. This monetary amount is one part of a broader reparation package which also includes a written apology from the Government, a statement in Parliament to publicly recognise past injustices on the basis of race, and a protocol for commencing official Government business with an acknowledgement of the traditional owners of the land.³⁶

7.29 During the public hearing in Brisbane, the Queensland Government was questioned on the adequacy of the reparations offer. The justification given was:

...the reparations offer was not by way of compensation. It was a gesture of reparations in a spirit of reconciliation. It acknowledged the scale of the injustices done to people whose wages and savings were controlled under the legislation; it was not by way of compensation.³⁷

7.30 The Queensland Government's failure to offer reparations to the descendants of deceased workers was another aspect of the offer that witnesses and submitters to the inquiry criticised as being inadequate.

7.31 Mr Peter Bird expressed to the committee the frustration of his family of being denied the wages of his mother-in-law who had worked at Cherbourg for more than 30 years:

My wife's mother worked for Cherbourg for some 30 or 40 years, looking after the dormitory cooks – our cook, in fact. Then she ended up being a cook at the Cherbourg Hospital. We could not get the money that should be hers either. She died in the early nineties. She was entitled to that \$4,000. We have tried and tried and we have pleaded with every known source of government.³⁸

7.32 Ms Pamela Meredith explained the experience of her grand-uncle, whose wages were withheld from him for his entire life:

35 *Committee Hansard*, Brisbane, 25 October 2006, p. 6.

36 *Submission 116B*, p. 2.

37 *Committee Hansard*, Brisbane 25 October 2006, p. 7; see also *Committee Hansard*, Brisbane 25 October 2006, pp 70, 75 and 80.

38 *Committee Hansard*, Brisbane, 25 October 2006, p. 48.

The wages of my grandfather's brother (my grand-uncle) James Meredith continued to be withheld for years after he was taken from Cherbourg mission and adopted to a white family. He never married and worked until he was quite old, meaning the government collected a life-times wages belonging to this gentleman – he was practically a slave for them! His wages should rightfully be returned and re-paid to his estate.³⁹

7.33 Mr Marshall Saunders pointed out that the NSW scheme (discussed below) makes provisions for the payment of money to the estates of deceased workers:

My mother died in 1966, and as with many other women she was sent out from Cherbourg (Q) to work on 6 different work sites. She died not knowing what happened to her wages...NSW has paid for deceased people, why can't QLD.⁴⁰

7.34 The Queensland Government provided evidence which explained its reasons for not opening the reparations offer to the families of deceased workers:

The Government was aware from its experience in the [UAWP] that the majority of Aboriginal and Torres Strait Islander people die intestate and that attempts to distribute estates in accordance with succession requirements are administratively complex and likely to result in outcomes that are considered inequitable by some or all of the parties concerned. These difficulties would have been magnified if descendants of long-deceased persons were entitled to claim on behalf of these persons. Having considered these matters, a decision was taken to focus on those persons who were alive at the time of the offer.⁴¹

Inadequate consultation with the community

7.35 The Queensland Government has been criticised for the way in which it consulted with the Indigenous community over the reparations offer. Much of the criticism focussed on the manner in which the offer was initially conveyed to representatives of the Indigenous community. The consultation process which was conducted by QAILSS in 2002 was also criticised.

7.36 To appreciate the frustrations of the Indigenous community in respect to the inadequacy of consultations undertaken on the reparations offer, it is important to understand the events which preceded the offer, how the offer was initially made and communicated, and the context in which the QAILSS' consultation occurred.

7.37 For a number of years before the reparations offer both claimants and the Queensland Government were preparing for litigation. At the time the reparations offer was announced, the Queensland Government had spent at least \$1.5 million researching the history of Aboriginal wages and savings in preparation for legal

39 *Submission 18.*

40 *Submission 46.*

41 *Submission 116, p. 5.*

challenges. Further, the Aboriginal and Torres Strait Islander Commission (ATSIC) had provided at least \$800,000 in funding to QAILSS for research in preparation for litigation. QAILSS had also collected testimony and identified approximately 4000 potential litigants wanting to recover lost wages.⁴²

7.38 In preparation for negotiating with the Queensland Government in relation to the Aboriginal Welfare Fund and associated savings accounts and issues, QAILSS prepared a statement of demand on behalf of claimants. The statement of demand set out a table of reparations to individual claimants for injustices imposed under the protection regime. The proposed reparations were based on a sliding scale, depending on how long a person worked under the protection Acts. At one end, a person who worked 5 years or less would receive \$25,000 and, at the other end, a person who worked more than 20 years would receive \$45,000. The total amount of the proposal was \$180 million to be paid over a period of three budgets.⁴³

7.39 It appears that this document was provided to the Queensland Government in February 2001 by the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) on behalf of QAILSS.⁴⁴ The committee did not receive any evidence during the inquiry to determine the extent of consideration given to the proposal by the Queensland Government.

7.40 On 9 May 2002, Premier Beattie and the then Minister for Aboriginal and Torres Strait Islander Policy, Judy Spence, met with representatives from QAILSS, the State Government Indigenous Advisory Board, and the Aboriginal Community Council.⁴⁵ Evidence provided by witnesses suggests that some attendees at the meeting were confident that the Queensland Government would make an offer along the lines of the proposal that QAILSS had put forward. Mrs Ruth Hegarty advised of a meeting she attended with QAILSS representatives, two days before the meeting with Premier Beattie, where it was agreed that if the Queensland Government did not make the offer that QAILSS proposed, then the Indigenous representatives would leave the meeting.⁴⁶

7.41 However, as Mrs Hegarty explained, at the meeting with the Queensland Government, Premier Beattie made the offer of \$55.6 million and said that claimants

42 The Hon. Peter Beattie, Premier of Queensland, *Legislative Assembly Hansard*, 16 May 2002, p. 1716.

43 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).

44 The QAILSS Proposal, covering letter.

45 Queensland Stolen Wages Campaign Working Group, *Submission 117A*, answers to Question on Notice.

46 Mrs Ruth Hegarty, Queensland Stolen Wages Campaign Working Group, *Committee Hansard*, Brisbane, 25 October 2006, p. 60.

could 'either take it or leave it'. The Mayor of Cherbourg Aboriginal Community, Mr Kenneth Bone, who was also present at the meeting, supported Mrs Hegarty's recollection of the meeting, commenting that Premier Beattie said 'This is a one and only offer'.⁴⁷

7.42 The Queensland Government explained that, following the offer of the \$55.6 million for reparations, it was subsequently agreed that \$200,000 from the original amount would be given to QAILSS to undertake community consultation, reducing the final offer to \$55.4 million.⁴⁸

7.43 HREOC provided the committee with a copy of QAILSS' report to the Queensland Government on the consultation (Report on the QAILSS Consultations).⁴⁹ The QAILSS consultation process took place between 13 June 2002 and 9 August 2002 and comprised five consultation teams who visited a total of 115 locations across Queensland. The Report on the QAILSS Consultations also contained copies of documents provided to those who attended the consultations, including: a sheet advising claimants of what would happen if they accepted or rejected the offer; and a copy of the letter of acceptance/rejection to be signed and witnessed by claimants.⁵⁰

7.44 The Queensland Government informed the committee that the QAILSS consultation found that, from 5,501 responses, there was an acceptance rate of 94% for the reparations offer.⁵¹

7.45 The committee was somewhat surprised at the high rate of acceptance, particularly given the obvious dissatisfaction expressed about the offer in the QAILSS report on the consultation:

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.

A number of individuals and communities referred to the Reparations offer as a 'pittance' or a 'lousy pittance'...⁵²

7.46 The Report on the QAILSS Consultations also contained a 'selection of representative comments' from Indigenous people who were consulted which explained their feelings on the offer:

47 *Committee Hansard*, Brisbane, 25 October 2006, p. 50.

48 *Committee Hansard*, Brisbane, 25 October 2006, p. 73.

49 *Submission 41A*, answers to Questions on Notice, the *Report on Consultations with Aboriginal Peoples and Torres Strait Islanders of Queensland Regarding Queensland Government offer of Reparations* (Report on QAILSS Consultations).

50 See Schedule 1 of the Report on QAILSS Consultations.

51 *Submission 116*, p. 2.

52 Report on QAILSS Consultations, p. 6.

I think it very rude of government (sic) to offer that \$4,000. 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. \$4,000 is not good enough. Our women were raped by white men and we were all ripped off.

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.

This is the closure? You can't go anywhere with this, and we are forced to take it!⁵³

7.47 The conclusions to the Report on the QAILSS Consultations provided the following explanation of the incongruity between the concerns about the adequacy of the offer and the high level of acceptance of the offer:

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) and Category B (\$2,000) are adequate.⁵⁴

7.48 To this end, a number of witnesses provided explanations as to why the acceptance rate of the offer in the consultation period was so high.

7.49 Ms Christine Howes, the Queensland President of Australians for Native Title and Reconciliation (ANTaR), believed that in responding to the QAILSS survey in the course of the consultation, people believed they were signing legal documentation in relation to the offer, and if they ticked 'no' on the survey, then it would be recorded that they had rejected the offer:

The documents that people were presented with at those meetings looked legal and felt legal.

...

The [acceptance/rejection letter] that people were asked to sign looked like a legal document; to the extent that some people we spoke to...had the expectation that the cheque was in the mail an'd that they should receive it by Christmas. They thought that they were getting \$4,000 and that they should have it by Christmas.

...

[If they had ticked 'no' in the survey, it was their understanding they would have been rejecting the offer]...and it would have been on some kind of record somewhere they that were saying no. If they had known that it was a survey, if it was explained to them that it was a survey right from the

53 Report on the QAILSS Consultations, pp 6-8.

54 Report on QAILSS Consultations, p. 16.

beginning, then I am not convinced that they would have got 94 per cent out of it.⁵⁵

7.50 Mr Darren Dick, Director of the Aboriginal and Torres Strait Islander Social Justice Unit of the Human Rights and Equal Opportunity Commission (HREOC), suggested that those who were not in favour of the offer simply did not participate in the consultation process:

QAILSS ... turned up to communities with ... a one-page flyer. It was not what you would call particularly independent legal advice: telling people that if they say no to this offer then they could get stuck in the courts like Mabo for the next 10 years and they may not end up with anything. It was all sorts of things like this which were not particularly objective in nature. They then held community meetings in which they would ask people to sign on to an offer – 'Do you want this money?' – and you would have to tick 'yes' or 'no'.

...

A lot of the feedback that we got from people was, 'They think we are going to say no so then it is on record somewhere that we do not want the compensation.' I think at the end of the day, the money has been dangled in front of people and they may well ultimately choose to take it. I think that accounts for the very high rate that the Queensland government pays because those people who want to accept the offer were willing to tick the form. Those who were not willing to sign it just did not show up. The records that QAILSS had in their report would show that, for example, there might be a community with 1,000 people in it and there would be 50 who would turn up to the meeting.⁵⁶

7.51 In respect of these criticisms, two paragraphs in the Report on the QAILSS Consultations are particularly relevant:

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.⁵⁷

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.⁵⁸

55 *Committee Hansard*, Sydney, 27 October 2006, pp 52-53.

56 *Committee Hansard*, Sydney, 27 October 2006, p. 4.

57 Report on the QAILSS Consultations, p. 6.

58 Report on the QAILSS Consultations, p. 14.

7.52 Mr Victor Hart of the Queensland Stolen Wages Working Group expressed other concerns about the manner in which the QAILSS consultation was conducted:

Over the last four years, I have raised concerns and there have been concerns raised to the [Queensland Stolen Wages Working Group] about the process of consultation undertaken by QAILSS back in 2002 on behalf of the Beattie government. Over a three-day period, they visited something like 16 communities in Cape York and consulted with, apparently, 95 per cent of claimants. To fly around and meet at least 3,000 or 4,000 people in that time is a phenomenal piece of research.⁵⁹

7.53 Mr Tony Woodyatt, Co-ordinator of QPILCH, also noted that by failing to undertake a 'proper' consultation, the Queensland Government has ended up with a situation where people are 'justifiably' unhappy with the outcome.⁶⁰

7.54 Mr Bob Weatherall stated his concern that the QAILSS representatives who conducted the consultation were placed in the situation of having to sell the reparations offer.⁶¹ On this point, the committee notes that the Report on the QAILSS Consultations does say:

Consultations teams were clearly instructed that they were not agents or servants of the Queensland Government and were not authorised 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.⁶²

The indemnity and the provision of independent legal advice

7.55 Further elements of the reparations offer that were criticised were the extent of the indemnity that claimants were required to sign on accepting the offer, and the manner in which the independent legal advice was provided to claimants prior to them signing the Deed of Agreement (see paragraph 7.17).

7.56 In advice to potential claimants, the Queensland Government said of the indemnity:

If you decide to accept the payment you must also sign a Deed of Agreement saying you will not ever go to the courts about the same claim. If you decide to sign this Deed, then you can receive your payment.⁶³

59 *Committee Hansard*, Brisbane, 25 October 2006, p. 53.

60 *Committee Hansard*, Brisbane, 25 October 2006, p. 15.

61 *Committee Hansard*, Brisbane, 25 October 2006, p. 26

62 Report of the QAILSS Consultations, p. 4. Emphasis in original.

63 *Submission 116*, Attachment 7, *Indigenous Wages and Savings (1890s-1980s) Reparation Process Information Sheet*, September 2003.

7.57 As noted previously, the Queensland Government also paid for claimants to receive independent legal advice, after which claimants would have at least a 24 hour cooling off period before deciding if they wanted to accept the offer.⁶⁴

7.58 HREOC noted that the effect of accepting the reparations offer and signing the indemnity was to conclusively determine any rights to compensation in relation to missing or withheld wages and savings. HREOC expressed concern that in those circumstances, claimants had only limited access to information to make an informed decision about accepting or rejecting the offer.⁶⁵

7.59 Given the implication of accepting the offer and signing the Deed of Agreement on a claimant's ability to take future legal action, the committee is concerned that some claimants felt they had been coerced into accepting the offer and signing the indemnity agreement. Some of the comments that the committee heard from claimants included:

I signed for it. I went to the city and I had a witness with me. I went in to see the bloke, the solicitor. He said: 'You sign it or you get nothing.' ...'Or wait 20 years like Mabo.' So I signed it, because my cousin died of cancer. I signed it under pressure.⁶⁶

The reason why I took it was my little daughter was very sick. That is the only reason why I took it; otherwise I would never have taken it.⁶⁷

The whole point is: I was practically going on for 70 years of age. I was sick; my wife was sick and there were many around about my age. We were so concerned about the future: we might not be alive by the time all of this great amount of money came in. So, in a sense, we were coerced into taking the \$4,000 ...⁶⁸

What had happened was that when people were out there, they already had the money spent – the \$4,000 or the \$2,000. In your mind, you had that money spent. Most of it was spent for funerals. Mine was, for my 94- year-old mother... There was no way in the world that I could not have signed that piece of paper, indemnity or not. That indemnity, we were told by the young solicitor who was there, was a legal document.

64 Queensland Government, *Submission 116*, Attachment 7, *Indigenous wages and savings reparations process: How will it work?*

65 *Submission 41*, para. 23.

66 Mrs Ettie Gleeson, *Committee Hansard*, Brisbane, 25 October 2006, p. 50.

67 Pastor Henry Collins, *Committee Hansard*, Brisbane, 25 October 2006, p. 49; see also *Committee Hansard*, Brisbane, 25 October 2006, p. 50.

68 Mr Peter Bird, *Committee Hansard*, Brisbane, 25 October 2006, pp 50-51.

What I am saying is that we had had that money spent, more or less. When you then get into a meeting and somebody says, 'If you do not sign this paper, you do not get the money,' what are you going to do? Are you going to go back and tell your mum: 'Look, I refused the money. I cannot bury you. We have got to hand the hat around again to communities'? So I think it was unfair of them to say to us, 'You sign it.'⁶⁹

7.60 In responses to questions on notice, the Queensland Government provided information in relation to access by claimants to independent legal advice⁷⁰. The Queensland Government advised that:

In accordance with the offer document, the Department expected the legal advice to be provided by a legal practitioner on an individual basis to an eligible claimant, whether by personal interview and/or telephone and/or letter of advice.

...

However, the department's preference was for legal advisors to meet directly with each eligible claimant.⁷¹

7.61 The Queensland Government advised that letters were sent to each eligible claimant which included the Deed of Agreement, payment instructions, Practitioner's Checklist and Practitioner's Certificate; and no eligible claimant could sign a Deed of Agreement without first receiving independent (non-government) legal advice about the implications of signing the indemnity.⁷²

7.62 In response to a question about the actual number of people who sought access to the legal advice, the Queensland Government advised that:

The number of eligible living claimants under the reparations process is 5216, all of whom have, or will have, received legal advice about the consequences of signing a deed in acceptance of their offer.⁷³

7.63 The Queensland Government also advised the committee about the substance of the legal advice that was provided:

The advice to each eligible claimant related to ensuring the claimants understood their rights; that they understood the contents and effect of the claim form (in particular, the offer and deed of agreement); the claimants were also fully informed having regard to all the relevant circumstances

69 Mrs Ruth Hegarty, *Committee Hansard*, Brisbane, 25 October 2006, p. 54.

70 *Submission 116B*, p. 3.

71 *Submission 116B*, pp 3 and 5.

72 *Submission 116B*, p. 4.

73 *Submission 116B*, p. 4.

(including cultural and language requirements) of the claimant; and that the deed was executed correctly.⁷⁴

Reliance on documentary evidence

7.64 To determine if a person had their wages or savings controlled under a protection Act, the Department of Aboriginal and Torres Strait Islander Policy considered only written evidence demonstrating control of a claimant's wages or savings in Queensland Government records, rather than attempting to reconstruct work or savings histories in order to establish eligibility.⁷⁵

7.65 The committee has previously commented on difficulties that result from missing records, and the extent and complexity of the archives when locating records relating to individuals⁷⁶. Where there is no written record of a person under the protection Acts, they are not eligible for the reparations offer. For example, Mr Colin Graham advised the committee about how a lack of documentary evidence meant he, and his family, were excluded from the reparations offer:

Even though we were Queenslanders we were not dependent on any mission or Government assistance we are still Aboriginal people and that meant we were still under the Queensland Department of Aboriginal Affairs, and we still had to abide by their rulings.

...

But because I do not have documented evidence and cannot meet the Queensland Government guidelines, I still believe that people like my mother, and stepfather, my brother Raymond, Paul and three sisters Leonie, Roberta and Elsie, are entitled to the same payout and condition of the \$4,000 + \$2,000 that was made to certain applicants who meet the Government guidelines.⁷⁷

7.66 Ms Pamela Meredith raised a similar concern, commenting that lax government recordkeeping practices have meant that her mother will never be able to prove her eligibility for the offer.⁷⁸

7.67 Ms Christine Howes, Queensland President of ANTaR, provided further information of an instance where a potential claimant had been discouraged from applying for the reparations offer because they were told that their records were

74 *Submission 116B*, p. 5.

75 *Submission 116*, p. 6.

76 See the section on Queensland, under the heading 'Disclosure of evidence and public access' in Chapter 6.

77 *Submission 61*, pp 2-3.

78 *Submission 18*.

destroyed in a flood.⁷⁹ Dr Ros Kidd explained to the committee that she believed that statements by the government that it could not find records should be treated with caution.⁸⁰

7.68 Many witnesses considered it was unfair to place such a reliance on the documentary records, particularly when it was the responsibility of the Queensland Government, and not the individual worker, to keep and maintain the records. Mrs Margaret Marshall suggested the onus should be on the government to disprove an application for the reparations offer.⁸¹

Distribution of the remainder of the reparations allocation and the Welfare Fund

7.69 As at 9 October 2006, a total of \$19.11 million had been paid to claimants as part of the reparations offer⁸². Much discussion occurred during the inquiry on how the remainder of the \$55.4 million (the original \$55.6 million less \$200,000 for consultation) allocated for the reparations offer was to be spent.

7.70 The Queensland Government indicated that there had been a change in its original plan as to how the unspent balance of the reparations offer funds will be allocated:

In 2003, the Government made a commitment that at the end of the process any unspent balance of the reparations amount will be placed into the Aborigines Welfare Fund with a proportion to be provided for the benefit of Torres Strait Islander people. The Government had decided that a foundation governed by a board of eminent persons would be established and will make decisions relating to the management of assets of the foundation. However, because of the quantum of funds now involved, further consultation is planned to seek the views of Aboriginal and Torres Strait Islander people in relation to the application of monies within the Aborigines Welfare Fund and the unspent funds out of the [reparations offer].⁸³

7.71 Ms Tammy Williams drew the committee's attention to the distinction between the unspent reparations offer funds and the money that remains in the Aborigines Welfare Fund:

...when we talk about reparation there are two sub-issues. The first issue is that there needs to be an appropriate reparation package in relation to the Aboriginal Welfare Fund because...the Aboriginal Welfare Fund was set up for the benefit of all Indigenous people, and therefore a reparation package must benefit the entire Indigenous community. The second issue is

79 *Committee Hansard*, Sydney, 27 October 2006, p. 50.

80 *Committee Hansard*, Brisbane, 25 October 2006, p. 3.

81 *Submission 123*.

82 Queensland Government, *Submission 116*, p. 6.

83 *Submission 116*, p. 6.

in relation to the savings bank accounts ... these were personal accounts which contained individuals wages and earnings. The Queensland government's \$55 million reparation fund was set up for the purpose of providing compensation for the people who had their money in those savings accounts, so there is an issue in relation to the surplus of this money.

It is my submission...that that money should be used for the primary and direct benefit of those old people whose money was taken. It should also be used to have a long-term positive effect on those people.⁸⁴

7.72 Ms Tammy Williams was particularly critical of suggestions that the remainder of funds and the Welfare Fund monies be spent on initiatives which should rightly be funded by the Queensland Government, such as education kits and road signage.⁸⁵ Mr Kenneth Bone, Mayor of Cherbourg Aboriginal Community, also expressed his opposition to some of the suggestions which had been made for the unspent reparations offer money:

We had a minister from the government up [at Cherbourg] last week. He spoke to the council. He said there was about \$31 million left. With that we said we were thinking about setting up some sort of welfare fund to do with our children so that our children could get a good education to be able to face the future. I was not being rude but blunt. All I said was, 'Your government did not steal the money from my kids. They stole it from me, my mother and my father. So we want it back ...'⁸⁶

7.73 Mrs Ruth Hegarty advised the committee that she would 'love' to use the approximately \$34 million remaining from the reparations offer to pay people what they were actually owed, but there has never been any suggestion that this would happen.⁸⁷

7.74 The Queensland Government assured the committee that the money remaining from the \$55.4 million allocation (the original \$55.6 million less \$200,000 for consultation) for the reparations offer would be kept separate from the Department of Communities' budget for general Indigenous programs and services. The Queensland Government during the public hearing reiterated its commitment to expend the money for the benefit of Aboriginal and Torres Strait Islander people in Queensland, and that expenditure would be done in consultation with the Indigenous people of Queensland.⁸⁸

84 *Committee Hansard*, Brisbane, 25 October 2006, pp 63-64.

85 *Committee Hansard*, Brisbane, 25 October 2006, p. 64.

86 *Committee Hansard*, Brisbane, 25 October 2006, p. 43.

87 *Committee Hansard*, Brisbane, 25 October 2006, p. 59.

88 *Committee Hansard*, Brisbane, 25 October 2006, p. 76.

7.75 Mr Patrick Hay, representing QPILCH, acknowledged the Queensland Government's proposal to consult with the Indigenous community over the spending of the funds remaining from the reparations offer and the Aborigines Welfare Fund, but cautioned the Queensland Government to undertake a 'proper' consultation.⁸⁹

New South Wales - Aboriginal Trust Fund Repayment Scheme

Background

7.76 On 11 March 2004, the then Premier, The Honourable, Mr Bob Carr, formally apologised to the Indigenous people of NSW in relation to the management of monies paid into the Aboriginal Trust Fund, and announced that State Cabinet had agreed to develop a scheme to identify and reimburse the people who were owed money. The Aboriginal Trust Fund Repayment (ATFR) Scheme was to be developed in consultation with Aboriginal communities. In announcing the development of a scheme, Premier Carr also recognised the inherent difficulties in the task:

This is a problem that has built up over generations. It will not be fixed overnight, and the records barely exist. But administrative complexities should not overshadow the need to discover the truth, and the Government certainly will do all it can to help find evidence that will support claimants' cases. In those cases where the evidence is sketchy, the Government, in consultation with the Aboriginal community, will develop rules for payment.⁹⁰

7.77 In May 2004, the NSW Government established the first ATFR Scheme Panel (the first Panel) to consult with the NSW Aboriginal community and report back to the NSW Government on the design of a scheme to repay the wages and other payments that had been put in the Aboriginal Trust Fund.⁹¹ The current ATFR Scheme Panel (the second Panel) provided evidence of the consultation undertaken by its predecessor:

During 2004, the [first] Panel was briefed by government agencies on information known about records, categories of claimants and the history of developing a repayment scheme. A 1800 free call number was established and an Aboriginal Trust Fund Repayment Scheme web site set up. Information sheets were developed and circulated.

The [first] Panel undertook a series of visits to locations across NSW to seek the opinion of Aboriginal people about how a payment scheme should work.

... Approximately 538 people attended meetings with the [first] Panel in [15 regional locations].⁹²

89 *Committee Hansard*, Brisbane, 25 October 2006, p. 14.

90 Hon. Bob Carr, Premier of NSW, *Legislative Assembly Hansard*, 11 March 2006, p. 7164.

91 NSW Cabinet Office, *Submission 92*, p. 1.

92 The Aboriginal Trust Fund Repayment Scheme Panel, *Submission 79*, p. 2.

7.78 The first Panel received 13 submissions from individuals and organisations and meetings were held with NSW Government and non-government organisations to further explore issues raised in submissions.⁹³

7.79 The first Panel presented its report to the NSW Government in October 2004.⁹⁴ This panel reported that the NSW Government's liability was not as great as had been previously estimated and stated that the number of eligible claimants would be unlikely to exceed 3,500 and '[all] indications are that total payments during the first three years of operation of the scheme may not exceed \$15m'.⁹⁵

7.80 The first Panel recommended that a scheme be established for the repayment of all wages and other money paid into the Aboriginal Trust Fund which had not been repaid during the period 1900 to 1968.⁹⁶ The first Panel noted that the money that was placed in the Aboriginal Trust Fund included wages and social security benefits such as maternity allowances and compensation payments.⁹⁷

7.81 The proposals made by the first Panel were accepted by the NSW Government in December 2004, when it announced the establishment of the ATFR Scheme. The ATFR Scheme was administered by the Aboriginal Trust Fund Repayment Scheme Unit (ATFR Scheme Unit) and the second ATFR Scheme Panel, which consists of Mr Aden Ridgeway, Mr Sam Jeffries and Ms Robynne Quiggin.⁹⁸

7.82 The ATFR Scheme officially commenced operation in February 2005. The second Panel was appointed in May 2005 and commenced work on 1 July 2005.⁹⁹

7.83 The main features of the ATFR Scheme included:

- the repayment of wages and other money placed in the Aboriginal Trust Fund which has not been repaid, indexed to its current value;
- no cap on repayment amounts;

93 The Aboriginal Trust Fund Repayment Scheme Panel, *Submission 79*, p. 3.

94 See 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.

95 Brian Gilligan, Terri Janke, Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, October 2004, sections 2.5.1 and 2.6.

96 Brian Gilligan, Terri Janke, Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, October 2004, section 1.2.

97 Brian Gilligan, Terri Janke, Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, October 2004, section 1.3.

98 NSW Cabinet Office, *Submission 92*, p. 2.

99 PIAC, *Submission 76*, p. 3; The Aboriginal Trust Fund Repayment Scheme Panel, *Submission 79*, p. 3.

- claims to be paid where there is reliable evidence of money being paid into the Aboriginal Trust Fund and where there is no evidence, or no reliable evidence, that the money was paid out. Oral evidence may be accepted where gaps in written records exist;
- claims may be made by individuals who had their money placed into the Aboriginal Trust Fund (or their authorised representative), or, where the direct claimant is deceased, their descendents may make a claim;
- claimants are not required to sign an indemnity; and
- the provision of practical support and counselling for claimants.¹⁰⁰

Operation of the Aboriginal Trust Fund Repayment Scheme

7.84 The NSW Government explained the process for making a claim under the ATFR Scheme:

The ATFR Scheme Unit is responsible for receiving and investigating applications made pursuant to the Scheme, compiling all relevant information, and preparing an interim assessment for that claim. The interim assessment is sent to the claimant seeking their views as to whether they agree or disagree with the interim assessment. If claimants disagree, they are afforded an opportunity to provide additional evidence to the Panel.

Once an interim assessment is agreed to, claims are referred to the ATFR Scheme Panel, which reviews each case and any evidence provided by claimants either via Statutory Declaration or through the provision of oral evidence. A recommendation is made to the Minister as to whether a repayment should be made.¹⁰¹

7.85 The NSW Government also provided a copy of the 'Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme' (ATFR Scheme Guidelines).¹⁰² The NSW Government stated that the ATFR Scheme Guidelines retained some flexibility and were 'not binding on the Director-General of the Premier's Department, the [second] Panel or the Minister where they are satisfied that strict adherence to the guidelines would not be in the interests of equity for claimants or potential claimants'.¹⁰³

7.86 The Public Interest Advocacy Centre (PIAC) described the investigations that the ATFR Scheme Unit carried out in preparing the interim assessment:

The [ATFR Scheme] Unit forwards the claimant's details to the NSW Department of Aboriginal Affairs ('DAA') and State Records NSW ('State

100 NSW Cabinet Office, *Submission 92*, pp 2-3.

101 *Submission 92*, p. 2.

102 *Submission 92*, Attachment A.

103 *Submission 92*, p. 2.

Records') to enable both agencies to undertake a search of all archived documents in relation to the claimant. The Agencies provide a list of all documents and copies of those documents they consider relevant to the claim.

The [ATFR Scheme] Unit reviews the documents it receives from DAA and State Records. In particular the [ATFR Scheme] Scheme concentrates on documents that detail payments into and out of the claimant's trust fund account and makes an interim assessment of the amount owed to the claimant ('Interim Assessment').¹⁰⁴

7.87 The NSW Government noted that various forms of evidence can be used to substantiate claims, including Aborigines Protection Board and Aborigines Welfare Board records; other government or independent written records; and oral evidence. The greatest reliance is placed on the records of the Aborigines Protection Board and Aborigines Welfare Board.¹⁰⁵

7.88 The second Panel also provided an explanation of the work that it undertakes when considering claims:

The Panel reviews all claims, the interim assessments prepared by the ATFR Scheme Unit and can either endorse or reject these for payment. The Panel has full discretion to review all the facts in each case using all available evidence, including oral evidence.

...

An important role for the Panel is that it can review decisions of the ATFR Scheme Unit at the request of claimants...the Panel may request further information or investigation by the ATFR Scheme Unit, ask for more information from a claimant, or recommend to the Minister that an ex gratia payment be made or not to the claimant in accordance with Part 8 [of] the ATFR Scheme Guidelines.

The Panel can seek expert assistance in locating, collating or interpreting the records if it considers this would be of assistance in assessing the application. For example, in the case of a very complicated descendants' claim the Panel can, if it wishes, seek advice from the Public Trustee or legal advice from the Crown Solicitor's Office.¹⁰⁶

7.89 The second Panel noted that in order to recommend to the Minister that an ex-gratia payment be made, the ATFR Scheme Guidelines required that the Panel be satisfied that:

- there is certainty, strong evidence or strong circumstantial evidence that an amount of money payable to or held on behalf of a claimant at any time was paid into the Trust Fund between 1900 and 1969; and

104 *Submission 76*, p. 10.

105 NSW Cabinet Office, *Submission 92*, p. 3.

106 The Aboriginal Trust Fund Repayment Scheme Panel, *Submission 79*, p. 4.

- there is no evidence, or no reliable evidence, that the full amount of the money was paid to the claimant.¹⁰⁷

7.90 The committee is disappointed that neither the NSW Government nor members of the second Panel were able to appear before it in order to further discuss the progress of the ATFR Scheme.

7.91 The committee notes evidence provided by the NSW Government that repayments under the scheme have varied between almost \$1,000 and \$24,000.¹⁰⁸ PIAC also provided the following information on the ATFR Scheme as at 31 August 2006:

- 290 claims lodged;
- 190 claims where an interim assessment has been completed; and
- the total value of the interim assessments is \$385,325.¹⁰⁹

Concerns about the Aboriginal Trust Fund Repayment Scheme

7.92 Evidence received during the inquiry indicates that, overall, the NSW ATFR Scheme has been better received than the Queensland Government's reparations offer.¹¹⁰

7.93 The committee was pleased to hear evidence from Mrs Valerie Linow, detailing her positive interaction with the second Panel when she challenged the interim assessment by the ATFR Scheme Unit:

Going to the panel takes a load off you. If you went to court, it would be more traumatic. I thought the panel were out to knife me, but they were understanding and compassionate people. I did not realise that. I was brought up in an environment where non-Indigenous people turn against Aboriginal people. I did not realise that there are people in this world who have an understanding towards Aboriginal people. I found that the panel was very good. It was very easy for me – because, at my age, I am too old for this.¹¹¹

7.94 Mr Darren Dick of HREOC described the ATRF Scheme process as empowering:

In New South Wales you have people who have received settlements that are less than the resulting settlements in Queensland, less than \$2,000 or

107 The Aboriginal Trust Fund Repayment Scheme Panel, *Submission 79*, p. 5.

108 NSW Cabinet Office, *Submission 92*, p. 2.

109 *Submission 76A*, p. 1.

110 See Mr Darren Dick, HREOC, *Committee Hansard*, Sydney, 27 October 2006, p. 3; Mr Sean Brennan, ILC, *Committee Hansard*, Sydney, 27 October 2006, p. 35.

111 *Committee Hansard*, Sydney, 27 October 2006, p. 18.

\$4,000, and there does not appear to be dissatisfaction with that. Part of that is a process issue, I think – if people feel empowered through the process rather than disempowered.¹¹²

7.95 Despite these encouraging indicators, the committee is aware that some concerns remain in relation to the ATFR Scheme.

7.96 PIAC outlined that it believes that the ATFR Scheme may allow for a gross under-estimation of money owed to Indigenous people because of the starting point for calculations:

In PIAC's experience, the Unit calculates the amount owed to the claimant by working backwards in time. It starts its calculations from the final recorded figure in the claimant's trust account. The Unit then investigates whether there were any invalid payments made from the account such as dental bills and then credits this amount back to the final available balance of the trust account.

The Unit adopts this approach as it is limited by the boundaries of the Scheme as set out in the Guidelines...Accordingly, the Unit does not question whether the final amount in the claimant's trust fund account is an accurate assessment of the amount owed, that is, the amount that should have been in trust based on the person's work or other entitlements history. The Unit does not investigate whether all the wages were paid into the trust fund or invite the claimant to give evidence of the dates between which they were employed, their level of wages or whether they received payments from their trust accounts. In PIAC's view this approach is likely, in some cases, to lead to a gross underestimation of the amount owed to a claimant.¹¹³

7.97 PIAC also raised a number of other issues with the committee, including:

- the delay in developing the ATFR Scheme Guidelines;
- the prioritising of some claims on the basis of the time at which the first Panel was contacted by the claimant to indicate a possible claim;
- that claimants do not receive all records about them held by the Department of Aboriginal Affairs and State Records New South Wales as part of the process;
- the lack of funding for practical assistance, in particular legal advice for claimants who have received an interim assessment; and
- the lack of information available to potential claimants and the public about the ATFR Scheme.¹¹⁴

112 *Committee Hansard*, Sydney, 27 October 2006, p. 8.

113 *Submission 76*, p. 11.

114 *Submission 76*, pp 12-15.

7.98 Ms Sally Fitzpatrick, a representative of ANTaR, stated that there was concern in the Aboriginal community that the ATRF Scheme did not address the repayment of pocket money which apprentices may not have received.¹¹⁵

7.99 Mr Sean Brennan of the ILC commented on the operation of the ATRF Scheme and said the 'judgement of the jury is still out':

There has been some concern about delays and that is very understandable. There is a concern about the degree to which written evidence may drive the conclusions of the panel and that is an issue that has continued to be worked through in individual cases for the moment.¹¹⁶

7.100 Mrs Marjorie Woodrow provided further comment on the ATRF Scheme and expressed her dissatisfaction with the scheme and the interim assessment of her wages:

I went and saw the panel with my lawyer. My son was with me. My son said, 'No, that is not my mum's signature, I can vouch for that.' He said: 'My mum is not a very tidy writer, she's very sloppy in her handwriting. That is not her signature.' But they still said that I was paid out. We went home, and then my brother passed away a couple of months ago and we had to bury him. He did not have any money. And because they found out I was looking for money they offered me \$2,060, because they thought I would take it. I said, 'No, I would battle it out and bury him the best way we could,' which I did.¹¹⁷

7.101 Mrs Woodrow indicated that she did not intend to pursue repayment of her wages further through the ATRF Scheme, because 'they will probably want to offer me less'.¹¹⁸ Further:

...I am not running after them. I have done enough running. I think it is up to them to do the running from now on. I am there waiting for my wages. If I have to go to court, well, court it will be.¹¹⁹

Experience in other jurisdictions

7.102 The committee received some evidence in relation to mechanisms that have been implemented in other jurisdictions with similar histories of Indigenous protection regimes in order to redress injustices.

7.103 ANTaR and the NSW Stolen Wages Working Group noted that both Canada and the United States have similar histories of Indigenous protection regimes:

115 *Committee Hansard*, Sydney, 27 October 2006, p. 54.

116 *Committee Hansard*, Sydney, 27 October 2006, p. 35.

117 *Committee Hansard*, Sydney, 27 October 2006, p. 26.

118 *Committee Hansard*, Sydney, 27 October 2006, p. 27.

119 *Committee Hansard*, Sydney, 27 October 2006, p. 26.

While the 'protection' systems that operated were not identical to those in Australia, they do share significant similarities with Australia's, and research into approaches they have taken to redressing the damage of 'protection' regimes could be useful.¹²⁰

7.104 The NSW Stolen Wages Working Group suggested that North American approaches to redressing the damage of 'protection' regimes could assist in developing an appropriate Australian approach to the stolen wages issue.¹²¹

7.105 Ms Thurlus Saunders suggested that a similar approach to that taken in Canada in relation to the Inuit people might be followed in Australia:

One example of responsible government handling of a similar situation with the Inuit people of Canada, is that the people now have a percentage of the GDP, self-governance, recognition and respect as traditional owners, and the opportunity of true sustainability and self-reliance and working out past and current issues in the way they need to themselves. Our country would do well to emulate or even better that situation for the Aboriginal peoples of Australia.¹²²

7.106 Ms Yvonne Butler also noted that the Canadian Government has instituted formal restitution to Indigenous peoples who have suffered discriminatory policies.¹²³

7.107 Dr Ros Kidd informed the committee that, in 1992, the United States' Senate 'commissioned a report into more than a century of mismanagement of Indian monies held in trust by federal governments'.¹²⁴ Dr Kidd submitted that the Synar Report¹²⁵ 'has formed the basis not only for subsequent pressure in the Senate to achieve justice on this matter but also for court action to the same ends'.¹²⁶

7.108 Further, according to Dr Kidd:

The District Court of Columbia [has] stated [that] the government will be held to the same standard of accountability as any financial institution and in 2003 it required the government to account for all funds deposited or

120 *Submission 78*, p. 18; *Submission 91*, p. 15.

121 *Submission 91*, p. 15.

122 *Submission 22*, p. 2.

123 *Submission 21*, p. 8.

124 *Submission 49*, p. 35.

125 M. Synar, *Misplaced Trust: The Bureau of Indian Affairs Mismanagement of the Indian Trust Fund*, Seventeenth Report by Committee on Government Operations (HR 102-499, 102d Cong, 2d Sess), April 1992.

126 *Submission 49*, p. 35.

invested since the trust commenced in 1887, including also for deceased beneficiaries.¹²⁷

7.109 Dr Kidd argued that Australian governments should be held to the same standard of accountability, and be liable for the same redress as other major financial institutions.¹²⁸

7.110 Some noted that courts in other jurisdictions such as the United States and Canada have relied upon the existence of fiduciary duties in holding governments liable for abuses of powers exercised over Indigenous people placed in positions of vulnerability. The Castan Centre for Human Rights Law and Australian Lawyers for Human Rights asserted that the most promising argument for stolen wages claimants in Australia is that the government breached a fiduciary duty to those whose wages it controlled. Such an argument would require the claimants to prove that the government was a fiduciary, and that it breached its duty under that relationship.¹²⁹

7.111 Professor Anna Haebich submitted that Australia 'should be looking to examples overseas – Native Americans, Jewish families, and former slave workers for the Nazi regime'.¹³⁰

7.112 Ms Butler drew the committee's attention to the plight of Jewish people in the Second World War and noted that:

Shortly after the end of the Second World War, reparations negotiations commenced against Germany and its allies. The international Jewish community have been the recipients of huge amounts of funds stolen from its members during the holocaust. The tracing of these funds cost in excess

127 *Submission 49*, p. 35. The committee understands that the United States case of *Cobell v Secretary of the Interior* (also known as the Individual Indian Monies case) has dealt with the issue of the United States Government's accounting for money held on trust for Native American Indians. In the late 1800s, the United States Government divided up tribal lands and allocated Native American Indians with personal allotments. The United States Government was the statutory trustee of the legal title for each of the allotments and income from allotments (derived through exploitation of natural resources) was held in 'Individual Indian Money' (IIM) accounts for the owners of the allotments. In 1996, six applicants commenced an action against the United States Government on behalf of around 500,000 people, alleging that the government had breached its duty as trustee of the IIM accounts. A brief overview of the proceedings is available on the plaintiffs' website: 'Indian Trust, Cobell v Norton: an overview', at <http://www.indiantrust.com/index.cfm?FuseAction=Overview.Home> accessed 10 July 2006

128 *Submission 49*, p. 35.

129 *Submission 11*, p. 25; *Submission 80*, p. 9. However, the Australian Lawyers for Human Rights noted that 'Indigenous people in Australia have had very little success in bringing claims based upon fiduciary duty, largely by reason of the fact that Australian courts have been reluctant to find that a relevant fiduciary relationship existed. It cannot, in those circumstances, be said that this avenue constitutes an 'accessible and effective remedy' for those seeking redress in relation to stolen wages': *Submission 80*, p. 10.

130 *Submission 19*, p. 5.

of US\$12 billion, and was funded by various parties including the Swiss Bankers Association.¹³¹

7.113 Ms Butler also submitted that:

The World Jewish Restitution Organization (WJRO) extends beyond the recovery of Jewish gold and money and currently has listed 14,083 properties in Europe which it is in the process of recovering, in addition to ongoing financial claims against many governments. These properties are where claims can be made to the origin of ownership being secured by Jewish funds.

Although many governments and banks have repatriated funds to Israel and the WJRO, many claims are being actively pursued nearly 70 years after these monies and properties were appropriated.¹³²

7.114 The document prepared by the Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS), containing the proposal to the Queensland Government for the repayment of stolen wages, provided information on precedents in Germany and Switzerland in relation to individual reparations payments made to claimants who were subject to enforced work schemes.¹³³

7.115 Ms Butler and Ms Lillian Willis pointed to the possible relevancy of the Treaty of Waitangi in New Zealand;¹³⁴ as well as to the Diego Garcia case in the British High Court in which 'several rulings have been made in favour of handing back sovereignty to dispossessed Indigenous peoples'.¹³⁵

131 *Submission 21*, p. 8.

132 *Submission 21*, p. 8.

133 The QAILSS Proposal, pp 36-37.

134 For further information, see <http://www.treatyofwaitangi.govt.nz/>, accessed 30 November 2006.

135 *Submission 21*, p. 8; *Submission 48*, p. 5. The native inhabitants of the island of Diego Garcia in the Indian Ocean (known as the Ilois or the Chagossians) were forced to relocate between 1967 and 1973 so that the island could be turned into a United States military base. In 2000, a British court ruled that the order to evacuate Diego Garcia's inhabitants was invalid, but the court also upheld the island's military status, which permits only personnel authorised by the military to inhabit the island. The Chagossians also sued the British Government for compensation, but in October 2003 a British judge ruled that their claims were unfounded. Further, and as a result of strong pressure from the United States, the British Government issued an 'Order of Council' in 2004, prohibiting islanders from ever returning to Diego Garcia. However, in May 2006, the British High Court ruled that the Chagossians may return to other Chagossian islands, and called the British Government's conduct in the case, 'outrageous, unlawful and a breach of accepted moral standards': see further B. Brunner, 'Where in the World Is Diego Garcia?' at <http://www.infoplease.com/spot/dg.html> accessed 29 November 2006.

CHAPTER 8

SUMMARY AND CONCLUSIONS

Am I after money? Of course I am after money. But I am after closure too and I am after justification with regard to what happened to us. That you could go to jail for turning up late for work is not an issue. Things were done just because they could do the things they did. They were able to do whatever they wanted. I heard one of the ladies speaking at one of the meetings about welfare payments and stolen wages. 'It's not about the money,' she said. 'But it's about what was done to us as young women when we were sent out by the Government away from our own people at 13 or 14 years of age.' That is the kind of thing that everybody needs to hear about, especially people in government – including senators and everybody else – because there was a big hush-hush about it, it was all closed down and nobody was allowed to talk about it.¹

8.1 Evidence to the committee revealed some of the practical hurdles to redressing the Indigenous stolen wages issue as well as a range of views about how this issue should be addressed. In particular, evidence received during the inquiry raised the following issues:

- the difficulties in obtaining access to archival records and the incomplete nature of those records;
- whether there is a need for a national inquiry or forum in relation to stolen wages; and
- the advantages of acceptable compensation schemes, compared to litigation.

Access to records

8.2 The committee received evidence that researchers in some jurisdictions have experienced difficulty accessing records relating to the stolen wages issue.² Some witnesses supported the establishment of a neutral body to control records relating to stolen wages:

I think that we need some kind of a tribunal, who will basically ensure that the documents are acquired from the archives and wherever else they exist – whether they are hidden in community police stations or wherever else they have been over the many years. And the tribunal ought to ensure that the Queensland government makes those records available for the claimants to make adequate claims so that they can get what is rightfully theirs.³

1 Mr Kenneth Bone, Mayor, Cherbourg Aboriginal Community, *Committee Hansard*, 25 October 2006, p. 43.

2 ALSWA, *Submission 30C*, Attachment 3; Dr Cameron Raynes, *Committee Hansard*, Perth, 16 November 2006, pp 3-7.

3 Mr Bob Weatherall, *Committee Hansard*, Brisbane, 25 October 2006, p. 27.

8.3 However, Professor Ann McGrath cautioned against over reliance on written records in assessing stolen wages claims:

...that does introduce a bit of a lottery. If we are talking about inequality there is this problem that if you are going to only give people compensation because there is historic evidence about them, you are unfortunately introducing another inequality just because of the random nature of the records that were left and whether those records can actually be found as proof.⁴

8.4 Based on her study of Western Australian archival material, Ms Lauren Marsh argued that the onus of providing written evidence regarding stolen wages and entitlements should not fall on Indigenous claimants:

Given both the department's attitude in not consulting, informing, or holding itself accountable in any way towards Aboriginal workers and pension recipients regarding their trust accounts, coupled with the level of destruction of archival material relating to trust accounts, it would be both an impossible and unjustifiable requirement for Aboriginal people to provide comprehensive written evidence.⁵

A national inquiry to set the record straight

8.5 The committee received conflicting evidence in relation to the need for a national inquiry to 'set the record straight' on the stolen wages issue. Several witnesses supported either a national inquiry or a Royal Commission:

[W]e think is important is that more research needs to be done – both archival research and also research sourcing oral history – so that we can more accurately determine the extent of this practice and its impacts. That could take place in the context of a broader national inquiry, perhaps administered by HREOC along the lines of the Bringing Them Home inquiry.⁶

8.6 Other witnesses noted that the committee's inquiry had not heard from all of the Indigenous people affected by the stolen wages issue and supported Indigenous people having an opportunity to 'tell their story':

I want it recorded that the inquiry is very limited with regard to providing Indigenous peoples – throughout the community of Queensland, at least – access to be able to come down to tell their stories or make their inquiries. I would encourage some other process being put in place so that Aboriginal people throughout the state have an opportunity to tell their story – so that

4 *Committee Hansard*, Canberra, 28 November 2006, pp 12-13.

5 *Submission 127*, p. 21.

6 Mr Gary Highland, ANTaR, *Committee Hansard*, Sydney, 27 October 2006, p. 48. See also ALSWA, *Submission 30*, p. 10; National Tertiary Education Union, *Submission 60*, p. 7.

our history here is recorded and they have the opportunity to basically give their comments to the inquiry itself.⁷

8.7 Ms Yvonne Butler noted that she had initially welcomed a national inquiry but later wondered what that would achieve:

At the time I wrote my submission I felt it was right to have a national forum, but you become disheartened because there have been many inquiries over the years – it is just prolonging the cause for us to get justice with our stolen wages.⁸

8.8 HREOC commented on proposals that it conduct a national inquiry:

One of the recommendations in the ANTaR submission is that there should be an inquiry by HREOC. I have a few points to make about that. First of all, I think it would have to be a very extensive inquiry and it would be time-consuming. It would require quite a lot of historical research and...a lot of consultation. The oral evidence would be very important, which is something that we, of course, cannot achieve unless it were a funded inquiry...It is more fundamental to ask: what would a national inquiry do? At the end of the day, it could further identify the situation and the need for something to be done and recommend a way of doing that, but it will not actually result in a settlement.⁹

Litigation as an alternative to payment schemes

8.9 The committee received some evidence suggesting that, if governments did not establish acceptable compensation schemes, some Indigenous claimants would be able to pursue their stolen wages claims through the courts:

...we think that at minimum the state Government in Queensland has a duty to account either pursuant to trust obligations or to a general fiduciary obligation. The duty to account has some potentially far-reaching significance for the Queensland Government, I would suggest—that is, if the Queensland Government is liable at law to provide an accounting to an Indigenous worker for the funds that were taken from them, in that sense, the obligation and the onus is on the Government to provide a full accounting. The significance of this in evidentiary and cost terms is that the Government will be forced to conduct a full investigation of its records potentially in respect of every individual who wishes to bring a claim and is found to be entitled, so there is potentially a massive task for the Queensland government if this issue continues to be ignored.¹⁰

7 Mr Bob Weatherall, *Committee Hansard*, Brisbane, 25 October 2006, pp 21-22. See also Mrs Pat Kopusar and Mrs Oriel Green, *Committee Hansard*, Perth, 16 November 2006, p. 46.

8 Ms Yvonne Butler, *Committee Hansard*, Brisbane, 25 October 2006, p. 27.

9 Mr Darren Dick, Director, HREOC, *Committee Hansard*, Sydney, 27 October 2006, p. 5.

10 Mr Patrick Hay, counsel instructed by QPILCH, *Committee Hansard*, Brisbane, 25 October 2006, p. 14; see also Dr Thalia Anthony, *Committee Hansard*, Sydney, 27 October 2006, p. 13.

8.10 Evidence to the committee indicated that litigation would be more expensive, more time consuming and less just than the establishment of compensation schemes. For example, Mr Robert Haebich who acted for the litigants in the *Palm Island Wages case*¹¹ noted:

Litigation] 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.

...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.¹²

What should happen next?

8.11 The committee acknowledges that there is a need for further archival research and consultation with Indigenous people who were subject to the protection regimes. However, the committee is concerned that establishing a national inquiry or a Royal Commission into stolen wages will not directly resolve the stolen wages issue and will only delay actions taken by state and territory governments to address these issues. The advanced age and ill-health of many potential claimants means that the expeditious resolution of claims must be a priority. It is time to resolve this issue.

8.12 Despite this, the committee accepts the evidence it received that an important part of redressing the stolen wages issue is not just monetary compensation but a chance for Indigenous people to tell their stories. It is equally important that those stories are recorded so that the wider community becomes aware of this part of Australian history. The committee therefore recommends that the Commonwealth Government provide funding for a national oral history and archival research project which seeks to record these stories.

8.13 The committee notes that submissions put forward arguments supporting a number of legal bases on which governments are responsible for the repayment or compensation of those who suffered financially, physically and psychologically under

11 *Bligh & Ors v State of Queensland* [1996] HREOCA 28.

12 Mr Robert Haebich, *Submission 77*, p. 3; see also Dr Thalia Anthony, *Committee Hansard*, Sydney, 27 October 2006, p. 13.

protection regimes. The *Palm Island Wages case*¹³ and the *Baird case*¹⁴ demonstrate that it is possible for Indigenous claimants to pursue the repayment of wages through existing legal channels. However, it is clearly not in the interests of governments or claimants to resolve these matters through expensive and time-consuming litigation. Such an approach would also result in substantial injustice as claimants whose records have been lost or destroyed by governments would remain uncompensated.

8.14 Both the Queensland and NSW Governments have recognised that claims should be resolved through a compensation or reparations scheme. The intense dissatisfaction with the Queensland Government's reparations offer illustrates the need for governments to genuinely consult Indigenous people in relation to the terms of such schemes and the process for assessing claims. The committee considers that other jurisdictions establishing compensation schemes should use the NSW scheme as a model, and should also ensure that genuine consultation with Indigenous claimants occurs before the terms and processes of the scheme are determined.

8.15 The committee accepts the view that compensation schemes should allow claims based on oral and other circumstantial evidence where the records held by the relevant government are incomplete. Governments were responsible for, and held, the records relevant to these claims and, in many cases, refused to allow Indigenous people access to their own records. It would be iniquitous if the failure to keep adequate records or the destruction of records allowed governments to avoid repaying money which is owed to Indigenous people.

8.16 The committee received substantial evidence that Aboriginal people in Western Australia were denied or underpaid wages and entitlements. There was also evidence that the system of government control of wages and savings in Western Australia was similar to the system in Queensland. The committee therefore recommends that the Western Australian Government consult with Indigenous people in relation to the immediate establishment of a stolen wages compensation scheme.

8.17 The evidence available to the committee in relation to the Northern Territory and the Australian Capital Territory, which were under Commonwealth jurisdiction during the relevant period, and South Australia, Tasmania and Victoria, was that protection regimes were in place in those states and territories. However, evidence received during the inquiry was inconclusive in terms of how control of Indigenous wages and savings was implemented by these governments and the extent to which, if at all, monies were withheld from Indigenous people.

8.18 The committee does not accept the view that these governments should 'wait and see' whether Indigenous people pursue similar claims to those raised in Queensland and NSW against them. Such an approach may amount to governments relying on the age, infirmity and social disadvantage of the claimant group to escape

13 *Bligh & Ors v State of Queensland* [1996] HREOCA 28.

14 *Baird v State of Queensland* [2006] FCAFC 162.

or reduce liability. Unless governments take a more proactive approach, there is a risk that past injustices will be compounded with further inaction. There is certainly sufficient evidence to warrant these governments conducting preliminary research of their archival material to determine whether there are issues to be addressed and how to address them.

8.19 There is also a responsibility on the Commonwealth Government and state governments to facilitate unhindered access to their archives for Indigenous people and their representatives for the purposes of researching the Indigenous stolen wages issue. While the committee understands the concerns about protecting personal information which appears on such files, governments should ensure that there are workable mechanisms to support access for researchers.

8.20 Evidence to the committee suggests that many Indigenous people remain unaware that they have been denied wages and welfare entitlements. The committee therefore considers that the Commonwealth Government and relevant state governments should jointly fund an education and awareness campaign in relation to the stolen wages issue in Indigenous communities. Funding should also be provided for preliminary legal research on Indigenous stolen wages matters. The two objectives of this research are: firstly, to establish whether grounds exist for pursuing stolen wages claims in states other than NSW and Queensland; and secondly, to establish whether additional grounds exist for stolen wages claims in all states and territories. In allocating this funding, priority should be given to jurisdictions where there is currently a limited awareness of the stolen wages issue. This priority will reduce the possibility that Indigenous people are unable to pursue the return of their money solely because they lack the resources to conduct this research.

8.21 Evidence to the inquiry identified a number of serious deficiencies in the Queensland Government's reparations offer. These included:

- the failure to fully compensate claimants for money withheld from them;
- the arbitrary exclusion of the descendants of claimants who died before 9 May 2002; and
- the extremely broad terms of the indemnity into which claimants were required to enter in order to receive a reparations payment.

The committee recommends that the terms of the Queensland Government's reparations offer be revised to address these issues.

8.22 The committee wishes to particularly acknowledge those witnesses who shared their personal stories with the inquiry. Some of those stories included painful personal memories. The committee was moved by these accounts and acknowledges that the inquiry would not have been possible without the assistance of those witnesses.

Recommendation 1

8.23 The committee recommends that the Commonwealth Government and state governments facilitate unhindered access to their archives for Indigenous people and their representatives for the purposes of researching the Indigenous stolen wages issue as a matter of urgency.

Recommendation 2

8.24 The committee recommends that the Ministerial Council on Aboriginal and Torres Strait Islander Affairs agree on joint funding arrangements for:

- (a) an education and awareness campaign in Indigenous communities in relation to stolen wages issues; and
- (b) preliminary legal research on Indigenous stolen wages matters.

Recommendation 3

8.25 The committee recommends that the Commonwealth Government provide funding in the next budget to the Australian Institute of Aboriginal and Torres Strait Islander Studies to conduct a national oral history and archival research project in relation to Indigenous stolen wages.

Recommendation 4

8.26 The committee recommends that:

- (a) the Western Australian Government:
 - (i) urgently consult with Indigenous people in relation to the stolen wages issue; and
 - (ii) establish a compensation scheme in relation to withholding, underpayment and non-payment of Indigenous wages and welfare entitlements using the New South Wales scheme as a model, and
- (b) the Commonwealth Government conduct preliminary research of its archival material in relation to the stolen wages issues in Western Australia.

Recommendation 5

8.27 The committee recommends that the Commonwealth Government in relation to the Northern Territory and the Australian Capital Territory, and the state governments of South Australia, Tasmania and Victoria:

- (a) urgently consult with Indigenous people in relation to the stolen wages issue;
- (b) conduct preliminary research of their archival material; and
- (c) if this consultation and research reveals that similar practices operated in relation to the withholding, underpayment or non-

payment of Indigenous wages and welfare entitlements in these jurisdictions, then establish compensation schemes using the New South Wales scheme as a model.

Recommendation 6

8.28 The committee recommends that the Queensland Government revise the terms of its reparations offer so that:

- (a) Indigenous claimants are fully compensated for monies withheld from them;**
- (b) further time is provided for the lodgement of claims;**
- (c) claimants are able to rely on oral and other circumstantial evidence where the records held by the state are incomplete or are allegedly affected by fraud or forgery;**
- (d) new or further payments do not require claimants to indemnify the Queensland Government; and**
- (e) the descendants of claimants who died before 9 May 2002 are included within the terms of the offer.**

Senator Marise Payne

Chair

ADDITIONAL COMMENTS BY SENATOR BARTLETT

1.1 As the initiator of this Senate Committee Inquiry, I would like to make a few additional comments.

1.2 Firstly, I would like to add a personal thanks to all those who provided evidence to the Inquiry, particularly those who told their personal stories. It was the continuing expressions of serious dissatisfaction and deep hurt and anger from Indigenous people in Queensland, combined with the details of methodical archival research already done which made me believe this issue deserves further scrutiny and attention.

1.3 While I have been and remain critical of the Queensland government's approach to the Stolen Wages issue up to now, it was not my intention to have an Inquiry which would serve simply to provide more criticism of the Queensland government. A growing body of work suggests that very similar injustices and practices occurred in other states. Controversy over the way the issue has been handled in Queensland should not obscure the fact that in some other states, and at federal level (in regards to past practices in the Northern Territory), there has been no response or action taken at all.

1.4 For all the flaws in the Queensland government's response, there has at least been an acknowledgement, albeit sometimes rather begrudging and inadequate, that serious injustices occurred. I also appreciated their preparedness to participate in this Inquiry, something which a number of other state governments failed to do.

1.5 Whilst this Inquiry has been brief and the many competing demands on Senators' time has meant there was less opportunity than I would have liked to dig into the details, the evidence provided has still been sufficient to clearly demonstrate that Stolen Wages is a national issue, not one isolated to Queensland and New South Wales.

1.6 While there are valid arguments for a comprehensive national Inquiry, such as could be done by HREOC or Royal Commission, the simple fact is that the time for action is now. Governments at state and federal can, at a relatively small cost, facilitate the necessary research now, if the political will is there.

1.7 The urgency of the matter is clear, as the age of many of the direct victims is advanced. This has been brought home in a sad way just during the course of this brief Inquiry. Pastor Collins gave passionate and compelling evidence as a member of a delegation of Aboriginal people who travelled from Cherbourg to appear at the Committee's hearings in Brisbane on 25th October, 2006. He passed on before this report was tabled on 7th December, 2006. I hope the record of his evidence and his commitment, right to the end, of achieving recognition and justice for his people,

serves as a both reminder of the urgency for proper action on this issue and a motivation for governments and society to deliver it,

1.8 The extent and depth of injustice inflicted on Indigenous Australians through the twentieth century is enormous. This Inquiry touched on and revealed just a small, but important component of it. The concerted exploitation of thousands of Indigenous people over decades was a building block of the prosperity which Australia as a nation enjoys today.

1.9 The report shows a pattern of behaviour over many years by authorities in many parts of Australia which had a direct consequence of leaving many Indigenous people in poverty. The 'consequential' and intergenerational poverty resulting from this should be acknowledged, as it relates directly to the conditions many Indigenous people live in today.

1.10 While it will not be possible to directly recompense every injustice, it reinforces the obligation on federal, state and territory governments to implement properly funded employment and education programs targeted to assist young Indigenous people overcome the intergenerational poverty that is a legacy of 'stolen wages'. The details and operation of such programs should be done in conjunction with Indigenous community representatives in each State and Territory.

Senator Andrew Bartlett

Australian Democrats

ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS

1.1 The Australian Greens support the findings of the committee's report, but make the following additional comments and recommendations.

1.2 A number of groups representing the interests and concerns of the Indigenous community clearly stated that they believe a Royal Commission is needed to ensure that the issues of concern are able to be fully and openly addressed (including the Aboriginal Legal Service of Western Australia, the National Tertiary Education Union, and Australians for Native Title and Reconciliation).¹ It is acknowledged that under ideal circumstances the Commonwealth, State and Territory governments would respond to this report and act to address this issue and implement the recommendations of this report, which would negate the need for a Royal Commission. However, given the concerns raised in evidence to the inquiry about the inadequacy of existing State government inquiries, and given that other State governments have been reluctant to consider these issues and even declined to provide evidence to the committee inquiry, the Australian Greens believe there are legitimate grounds to be concerned that some governments may not respond in an adequate and timely fashion.

1.3 Under these circumstances this could lead to a situation where there is no timely and effective means of ensuring justice is done outside of costly and drawn-out litigation by surviving claimants - despite the committee having found there is good reason to believe an injustice has been done and recommended action be taken to ensure recompense. The Australian Greens are also concerned that under current circumstances the state and territory Aboriginal Legal Services do not have adequate resources to help litigants pursue compensation in a timely fashion were this to become necessary.

1.4 To guard against this eventuality the Australian Greens put forward the following recommendations:

Additional Recommendation 1

1.5 The Australian Greens recommend that the Aboriginal and Torres Strait Islander Social Justice Commissioner assess the adequacy of Commonwealth and state government responses to the recommendations of this report; and advise the Commonwealth of whether adequate progress has been made after 12 months from the date of this report.

1 *Submissions* 30 and 60; Mr Gary Highland, National Director, Australians for Native Title and Reconciliation, *Committee Hansard*, 27 October 2006, p. 48.

Additional Recommendation 2

1.6 The Australian Greens recommend that, if Commonwealth and state governments have not responded adequately to the recommendations of this report within 12 months, a Royal Commission into Stolen Wages be established.

Senator Rachel Siewert

Australian Greens

APPENDIX 1

SUBMISSIONS RECEIVED

- 1 Ms Robyn Lucienne
- 2 Origins Supporting People Separated by Adoption
- 3 Australian Churches of Christ Indigenous Ministries
- 4 Standard Form Letter – received from various individuals
- 5 Kalkadoon.org
- 6 Mr Albert Richard Hill
- 7 Ms Moira Bligh
- 8 Dr Cameron Raynes
- 8A Dr Cameron Raynes
- 9 Professor Ann McGrath
- 9A Professor Ann McGrath
- 10 NT Working Women's Centre
- 11 Castan Centre for Human Rights Law
- 12 Ms Olive Murphy
- 13 Australian Catholic Social Justice Council
- 14 Ms Joanna Richardson
- 15 Queensland Synod of the Uniting Church in Australia
- 16 Ms P Henwood
- 17 Dr Thalia Anthony
- 17A Dr Thalia Anthony
- 18 Ms Pamela Meredith
- 19 Professor Anna Haebich
- 20 Action for Aboriginal Rights

- 21 Ms Yvonne Butler
- 21A Ms Yvonne Butler
- 22 Ms Thurlus Saunders
- 23 Ms Catherine Boyle
- 24 Ms Annie Cowling
- 25 Mr Craig Muller
- 26 Ms Lin Morrow
- 26A Ms Lin Morrow and Mr Andrew Dunstone
- 26B Ms Lin Morrow and Mr Andrew Dunstone
- 27 Ms Samantha Faulkner
- 28 Mr Conrad Yeatman
- 29 Mr Bruce Lillis
- 30 Aboriginal Legal Service of Western Australia (ALSWA)
- 30A Aboriginal Legal Service of Western Australia (ALSWA)
- 30B Aboriginal Legal Service of Western Australia (ALSWA)
- 30C Aboriginal Legal Service of Western Australia (ALSWA)
- 31 Mrs Stella Lamb
- 32 Ms Andrea Collins
- 33 Ms Alzira Conlon
- 34 Ms Muriel Conlon
- 35 Ms Laverne Fisher
- 36 Ms Pansy Colonel
- 37 Ms Annie Moffatt
- 38 Ms Eileen Walsh
- 39 Mrs Anne Byrne and Mr Bill Byrne

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- 40 Pastor John Andrews
- 41 Human Rights and Equal Opportunity Commission (HREOC)
- 41A Human Rights and Equal Opportunity Commission (HREOC)
- 42 Dr Susan Greer
- 42A Dr Susan Greer
- 43 Mrs Monique Bond and Mr Graham Bond
- 44 Mrs Marjorie Woodrow
- 45 Mr Les Ridgeway
- 46 Mr Marshall Saunders
- 47 Ms Denise Bond and Mr David Hinchley
- 48 Ms Lillian Willis
- 49 Dr Ros Kidd
- 50 Queensland Public Interest Law Clearing House Incorporated (QPILCH)
- 51 North Brisbane (and surrounding areas) Indigenous Community
- 52 Mr Leo Weldon
- 53 Cherbourg Historical Precinct Group
- 54 Centre for Philippine Concerns – Australia, Brisbane Branch and
Solidarity Philippines Australia Network
- 55 South Brisbane (and surrounding areas) Indigenous Community
- 56 Australian Capital Territory (ACT) Indigenous Community
- 57 Queensland Indigenous Community
- 58 Ms Christine Howes
- 59 Australians for Native Title and Reconciliation Queensland (ANTaR)
- 59A Australians for Native Title and Reconciliation Queensland (ANTaR)
- 60 National Tertiary Education Union
- 61 Mr Colin Graham

- 62 Sr Janice Howard OSU
- 63 Ms Ruth Hegarty
- 64 Ms Avriel Collins
- 65 Mr Reginald Coolwell
- 66 Ms Chloe Dynevor
- 67 Mr Winston Alberts
- 68 Ms Christina Ross
- 68A Ms Christina Ross
- 69 AWD Aboriginal Social Justice Group
- 70 Ms Dorothy Murphy
- 71 Mr Tom Wolkenberg
- 72 Ms Ruth Brown
- 73 Ms Christine Egginton
- 74 Liquor Hospitality & Miscellaneous Union
- 75 Indigenous Women's Program, Women's Legal Services NSW
- 76 Public Interest Advocacy Centre (PIAC)
- 76A Public Interest Advocacy Centre (PIAC)
- 77 Mr Robert Haebich
- 78 Australians for Native Title and Reconciliation (ANTaR)
- 79 The Aboriginal Trust Fund Repayment Scheme Panel
- 80 Australian Lawyers for Human Rights
- 81 Victorian Aboriginal Legal Service Co-operative Limited
- 82 Ms Lesley Williams
- 83 Ms Tammy Williams
- 84 Wampan Wages (Victorian Stolen Wages Working Group)

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- 84A Wampan Wages (Victorian Stolen Wages Working Group)
- 85 Ms Susanna Pritchard
- 86 Mr Phillip Wilson
- 87 Ms Betty Coconut
- 88 Mr Harry Callope
- 89 Mr Paul Tamwoy
- 90 Mrs V Raymer
- 91 NSW Stolen Wages Working Group
- 92 NSW Cabinet Office
- 93 Ms Theresa Blair
- 94 Law Institute of Victoria
- 95 Link-Up (NSW) Aboriginal Corporation
- 96 NSW Reconciliation Council
- 97 Ms Tanya Moir
- 98 Indigenous Law Centre, Faculty of Law, University of New South Wales
- 99 Ms Judith Burdon and Dr Barry Burdon
- 100 Ms Kelyn Flynn
- 101 Mr Alan Han
- 102 Ms Alison Greenhalgh
- 103 Ms Jennifer Tannoch-Bland
- 104 Ms Sally Johnson
- 105 Mr Milton David and Ms Marie Fisher
- 106 Ms Catherine Gordon
- 107 Ms Pauline Grey
- 108 Ms Mary Bellas

- 109 D McLeod
- 110 Northern Territory Government
- 111 Ms Mabel Hopkins
- 112 Ms Ruth Hamlyn-Harris
- 113 The Graham family
- 114 Queensland Police Service
- 115 Mr Melrose Donley
- 116 Queensland Government
- 116A Queensland Government
- 116B Queensland Government
- 117 Queensland Stolen Wages Campaign Working Group
- 117A Queensland Stolen Wages Campaign Working Group
- 118 Ms Marcia Carlo
- 119 Ms Merna Compton
- 120 Mr Joseph Button
- 121 Standard Form Letter – received from various individuals
- 122 Indigenous Women's Congress of Western Australia
- 123 Ms Margaret Marshall
- 124 Ms Betty Wyman
- 125 Ms Glenda Dawson
- 126 Department of Families, Community Services and Indigenous Affairs (FaCSIA)
- 126A Department of Families, Community Services and Indigenous Affairs (FaCSIA)
- 127 Ms Lauren Marsh
- 128 Mr John Wakely

TABLED DOCUMENTS

Documents tabled at public hearing in Perth, 16 November 2006

Mrs Oriel Green

- Correspondence to Constable RM Larsen, Protector of Aborigines, Yalgee, from the Chief Protector of Aborigines, 11 December 1929

Mr Craig Muller

- Additional material

APPENDIX 2
WITNESSES WHO APPEARED
BEFORE THE COMMITTEE

Brisbane, Wednesday 25 October 2006

Dr Ros Kidd, Private capacity

Queensland Public Interest Law Clearing House (QPILCH)

Mr Anthony Woodyatt, Coordinator

Mr Patrick Hay, Counsel instructed by QPILCH

Ms Yvonne Butler, Private capacity

Mr Robert (Bob) Weatherall, Private capacity

Professor Anna Haebich, Private capacity

Queensland Synod, Uniting Church in Australia

Reverend Doctor David Pitman, Moderator

Mr Andrew Johnson, Social Responsibility Advocate

Cherbourg Historical Precinct Group

Mrs Jeanette Brown, Secretary

Pastor Henry Collins, Member

Mrs Beryl Gambrill, Chairperson, Barambah Local Justice Group

Mrs Alexandra Hazel Gater

Ms Annie Moffatt

Mr Kenneth Bone

Ms Alzira Conlon

Ms Sandra Morgan

Mrs Ettie Gleeson, Private capacity

Mr Peter Noel Bird, Private capacity

Queensland Stolen Wages Campaign Working Group

Mrs Ruth Hegarty, Member, Executive

Mrs Vera Hill, Member, Management Committee

Mr Victor Gregory Hart, Member, Executive

Ms Tammy Williams, Private capacity

Mrs Lesley Williams, Private capacity

Queensland Government

Mr Michael Hogan, Assistant Director-General, Queensland Department of Communities

Sydney, Friday 27 October 2006

Human Rights and Equal Opportunity Commission (HREOC)

Mr Jonathon Hunyor, Acting Director of Legal Services

Mr Darren Dick, Director, Aboriginal and Torres Strait Islander Social Justice Unit

Dr Thalia Anthony, Private capacity

Public Interest Advocacy Centre

Mr Simon Moran, Principal Solicitor

Ms Charmaine Smith, Solicitor, Indigenous Justice Project

Ms Valerie Linow, Private capacity

Ms Marjorie Woodrow, Private capacity

Indigenous Law Centre, Faculty of Law, University of New South Wales

Mr Sean Brennan, Centre Associate

Mr Anthony Westmore, Coordinator

Dr Susan Greer, Private capacity

Australians for Native Title and Reconciliation (ANTaR)

Mr Gary Highland, National Director

Ms Christine Howes, President of ANTaR Queensland

Ms Sally Fitzpatrick, Member, National Management Committee; and Vice-President, ANTaR (New South Wales)

Perth, Thursday 16 November 2006

Dr Cameron Raynes, Private capacity

Aboriginal Legal Service of Western Australia

Mr Dennis Eggington, Chief Executive Officer

Dr Fiona Skyring, Historian

Ms Tahnee Davies, Managing Solicitor, Civil and Human Rights Unit

Mr Frank Chulung

Mr Arnold Franks, Private capacity

Mr Craig Muller, Private capacity

Mr Ted Carlton, Private capacity

Mr Button Jones, Private capacity

Ms Pansy Nulgit, Private capacity

Mr Alan Griffiths, Private capacity

Indigenous Women's Congress of Western Australia

Mrs Oriel Green, Member

Mrs Patricia Kopusar, Member

Mr Stephen Kinnane, Private capacity

Canberra, Tuesday 28 November 2006

Wampan Wages: Victorian Stolen Wages Working Group

Mr Joel Wright, Member and Indigenous Officer (Federal), National Tertiary Education Industry Union

Miss Dorothy Peters, Private capacity

**Australian Centre for Indigenous History, Research School of Social Sciences,
Australian National University**

Professor Ann McGrath, Director

Department of Families, Community Services and Indigenous Affairs

Mr Bernie Yates, Deputy Secretary

Mr Anthony Field, Manager, Legal Services

Mr Christopher Carlile, Acting Branch Manager, Strategic Policy Branch