

Submission to the Legal and Constitutional Reference (Senate) Committee: Inquiry into Indigenous Workers Whose Labour Was Controlled by Government (Stolen Wages)

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My Submission

With regard to Indigenous workers whose paid labour was controlled by Government there is a legal onus on the Government to repay to those workers and their descendants the full amount (+ interest) due to them.

A study of the published findings of historian, Ros Kidd, in her three books - *The Way We Civilize*, *Black Lives: Government Lies*, and *Trustees on Trial* - will leave members of the committee in no doubt as to the facts of the case and the fact that a great injustice has been perpetrated and continues to be perpetrated against Indigenous people in Queensland by the Queensland Government.

In response to the terms of the enquiry, as far as Queensland is concerned I would offer the following:

- 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;

Pastoral workers

- 1940: 1,982 workers received 40% of pastoral rate; each worker underpaid \$2214 pa relative to regulation or \$5109 relative to award.
- 1949: 4,500 workers at 31% of rate: underpaid \$3931 (regulation); \$7750 (award) pa.
- 1960: 4,600 workers at 65% of rate: underpaid \$4136 (award) pa.
- 1967: 5,000 workers at 70% of rate: underpaid \$4265 (award) pa.

Reserves workers

Based on calculation that 50% of inmates worked pre 1968; post 1968 from files.

- 1940: 3,121 workers each underpaid \$9,950 (to state minimum wage) pa
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- 1949: 3,454 workers: each underpaid \$10,875 (to minimum) pa.
- 1960: 4,310 workers: each underpaid \$8,998 (to minimum) pa.
- 1970: 2,500 workers: each underpaid \$8,110 (to minimum) pa.
- 1975: 2,500 workers: each underpaid \$13,978 (to award) pa.
- 1980: 1,463 workers: each underpaid \$11,490 (to award) pa.
- 1985: 901 workers: each underpaid \$5,923 (to award) pa.

The Bringing Them Home Report provides ample evidence of the lack of measures to safeguard them from physical, sexual and employment

abuses and in response to reported abuses. It is necessary only to go to a dinner where older Indigenous people stand up to speak - sometimes for the first time - of their histories, to be convinced that we are savouring the fruits of an evil regime and to realise it is time we who have benefited (through not being the products of systematic oppression, generational pain and exploitation) do something about redressing the imbalance.

- 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;

See Ros Kidd's Black Lives: Government Lies and Trustees on Trial

Wages:

- Queensland Government sold Aboriginal labour cheaply and failed to secure even discounted amount.
- Queensland Government always knew & was frequently warned pocket money riddled with fraud but refused to pay for regular audit inspections.
- Queensland Government established gross underpayment on reserves despite warnings insufficient for family maintenance.
- Queensland Government deliberately flouted law to underpay reserve workers after 1975.

Savings:

- Queensland Government always knew & was frequently warned of police fraud.
- Queensland Government often warned thumb print system corrupted.
- Queensland Government warned 1960s & 1970s system still open to fraud.
- Despite this knowledge Queensland Government refused to allow workers to check transactions.
- Over time the Queensland Government has seized bank interest, imposed a levy on savings, frozen vast amounts of desperately needed cash in investments & retained surplus interest.

Trust funds:

- Prior to establishment of Welfare Fund in 1943, Queensland Government often warned about using trust monies for government expenses.
- Often only a fraction of Provident Fund legitimately allocated to providing for rations & relief.
- Often only a fraction of Property Account distributed to next of kin.

Aboriginal Welfare Fund (AWF):

- Removals costs often charged to AWF & only partly repaid, if at all.

- 1940s: Director says cattle wages wrongly charged to AWF; also white salaries ·
- 1960s: Director says settlement wages wrongly charged to AWF.
- 1960s: Director says dept liabilities wrongly charged to AWF.
- 1970s/80s: Settlement wages increasingly charged to AWF.
- 1970s/80s: Auditors complain no effective accounting of cattle ventures.

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;

Bulk savings trust account - Queensland Aboriginals Account

From 1933 government froze most of savings in investments to earn extra interest:

- 1940 \$9.6M invested - interest bonus to government \$119,652 pa ·
- 1950 \$7.3M invested - interest \$127,366 pa to Welfare Fund ·
- 1960 \$10.4M invested - interest \$286,673 pa to Welfare Fund ·
- 1970 \$7.3M invested - interest \$143,544 pa to Welfare Fund ·
- 1975 \$2.7M invested - interest \$97,419 pa to Welfare Fund

Trust funds generally ·

- Aboriginal Provident Fund & Aboriginal Protection of Property Account

Listed separately only until 1938; after 1943 part of Welfare Fund:
(Misused by government & not recouped to 1938 (from data to hand) identifiable amount: \$10.33M) ·

- Aboriginal Welfare Fund (AWF)

From data to hand (incomplete); between 1943-1990: (Spending of doubtful legitimacy or not recouped \$93mil)

d. all controls, disbursement and security of federal benefits including maternity allowances, child endowment and pensions, and entitlements such as workers compensation and inheritances;

Pastoral workers underpayment

PLUS Pocket money: of the wages paid, up to 80% was retained by employers & much, possibly most, not paid to workers (see legal evidence below).

PLUS Aboriginal Provident Fund levy: 2.5% from married wage; 5% from single wages those not living on reserves.

Reserves workers underpayment

PLUS Settlement maintenance levy: by regulation 5% from married wage; 10% from single wage of those working off reserves. (Separate data available only until 1938: shows levy often averages over 13% & Palm Island levy at times over 25% of wage)

Since 1897 Protection Act Queensland government could declare any Aboriginal a ward of state & control every aspect of their lives. People were forcibly interned on reserves (1938: 7525; 1968: 8500). From 1904 all employment, wages & savings were controlled by government under compulsory labour contracts. From 1904 workers' wages went direct to police protector apart from "pocket money" retained by employer for distribution during work period. From 1910 government took levies from wages of people living on reserves.

From 1919 government took levies from wages of those not living on reserves. From 1919 government set pastoral wages at 66% of white wage. "Every Aboriginal" on a reserve must work for rations & shelter. In 1943 government set up Aboriginal Welfare Fund to receive wages levies & profits from reserve enterprises, to be used to develop enterprises on reserves. From 1950s government pays few shillings to a few key workers on reserves.

In 1968 government starts wage economy on reserves; workers paid 50% state minimum wage. From 1968 equal wages in pastoral industry; forced contracting ceases. From 1971 forced confinement on reserves ceases. From 1972 forced control over wages & savings (bank books) ceases, although people have to request to be free from financial management.

From 1979 government knows underpaying reserve workers is illegal; wage 72% of state minimum. In 1986 government paying reserve workers only 75% of award. In 1985 seven Palm Island workers start action in Human Rights Commission for legal wages. From 1987 government hands control of communities to Aboriginal councils; budget insufficient to cover award rates.

In 1996 government loses Human Rights Commission case on under award wages; refuses to pay suggested compensation of \$7000 to each of six workers. Workers commence federal court action; government capitulates in 1997. In 2000 Beattie government makes \$25 million available to pay all workers after losing several more cases on under award wages. Beattie government refuses to include mission workers in above payout.

- 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

See Ros Kidd's Trustee on Trial, ref Lousie Cobell and American experience.

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.

Queensland's \$2,000 - \$4,000 buyoff is an insult which nowhere near acknowledges the level of financial confiscation endured by Aboriginal families. The Queensland Government was constantly warned of systemic failures and of active and passive breaches of its duty as a legal trustee, but failed ever to implement the necessary checks to prevent massive financial loss to its wards over many decades. Aboriginal poverty is largely a construct of this system. Queensland Premier Peter Beattie's scare tactic that litigation will take many years and millions of dollars is solely determined by the government's willingness or otherwise to provide promptly all information gathered to date for independent or judicial assessment.

Governments as trustees of these monies have a fiduciary duty to protect all interests of their 'wards', to manage and apply any monies held for the benefit of their 'wards' and not to exploit them for their own financial benefit. It appears from extensive research that Governments have failed in this fiduciary duty and must fulfill their legal responsibilities to the people (and their descendants) whose money they took into their control and did not account for. It is no excuse for a Government to claim that they have no records, or that records have been lost, or that they have no idea how much money is involved. Any legal entity (trustee) that has control of the money of others has to abide by strict accounting procedures and maintain these in a secure manner; any dereliction of these duties is a legally punishable offence: this obligation applies to the Government just as it does to the private sector.

I urge this Senate Enquiry to hold Governments responsible to recompense these Indigenous workers (and their descendants) by repaying the full amount plus interest due to them.

Jennifer M. Tannoch-Bland