SENATE INQUIRY INTO INDIGENOUS WORKERS WHOSE PAID LABOUR WAS CONTROLLED BY GOVERNMENT

Submission made by Joanna Richardson, 27 July 2006

Introduction

This submission is made regarding the conditions of Aboriginal people resident in South Australia and whose lives were controlled by the provisions of the *Aborigines Act, 1934-39*, and its predecessor the *Aborigines Act, 1911*, in the period from early in the 20th century until 28 February 1963, when the *Aboriginal Affairs Act 1962* came into operation.

The submission is brief because the author is not aware of any direct research on the topic of collection and disbursement of monies paid for the benefit of Aboriginal people in South Australia, and does not have access to the files and records of the Aborigines Protection Board and Aborigines Department – the entities that completely controlled the lives of Aboriginal people in South Australia at that time.

The thrust of the submission is that there are sufficient indicators to show that, in South Australia, monies intended for Aboriginal people were not always paid to them, and on that basis a comprehensive and transparent investigation into past practices in South Australia **is** required, and I submit that this Inquiry make recommendations accordingly.

Background

From a Eurocentric legal perspective, the province of South Australia was formally proclaimed by Governor Hindmarsh at Glenelg on 28 December, 1836. In the Proclamation, it was stated:

> *"It is also, at this time especially, my duty to apprise the Colonists of my resolution, to take every lawful means for extending the same protection to the NATIVE POPULATION as to the rest of His Majesty's Subjects, and of my firm determination to punish with exemplary severity, all acts of violence or injustice which may in any manner be practiced or attempted against the Natives, who are to be considered as much under the Safeguard of the law as the Colonists themselves, and equally entitled to the privileges of British Subjects."*

The first Protector of Aborigines was appointed in 1837. After colonisation occasionally legislation was specific to Aboriginal people or of general application which made specific mention of Aboriginal people[1].

[1] For example the giving of evidence by Aborigines; e.g. Ordinance No. 8 of 1844; Ordinance No. 5 of 1846; Ordinance No. 3 of 1848; Ordinance No. 4 of 1849, the employment and instruction of Aboriginal prisoners; Ordinance No.11 of 1844.

In the late 19th and early 20th centuries the governments of South Australia enacted specific legislation restricting and controlling the lives of Aboriginal people. This process began in 1884 with *Ordinance No 12 of 1884 (SA) "An Ordinance to provide for the Protection, Maintenance and Up-bringing of Orphans and other Destitute Children of the Aborigines"*, with South Australia being the second jurisdiction in what was later to become the Commonwealth of Australia, to enact such legislation[2].

Ordinance No 12 of 1884 (SA) provided specifically for the control of the employment of Aboriginal children.

Section I provided:

> *"That it shall be lawful for any two Justices, with the consent of His Excellency the Governor and of either of the parents, if living and within the Province, but if otherwise then without such consent, on the application of the Protector of the Aborigines, to bind by indenture and put out any half-caste or other Aboriginal child, having attained a suitable age, as an apprentice, until he shall attain the age of twenty-one years, to any master or mistress willing to receive such child in any suitable trade, business or employment whatsoever, and every such binding shall be as effectual in Law, to all intents and purposes, as if the child had been of full age, and had bound himself to such apprentice: Provided that such two Justices, previously to executing such indenture, shall inform themselves, as fully as they can, of the child's age, which age shall be inserted in such indenture, and shall thereupon, for the purposes of this provision, be taken to be the child's true age without further proof: Provided also, that such Justices shall see that in the indenture due and reasonable provision is made for the maintenance, clothing, and proper and humane treatment of any such apprentice."*

The Ordinance was Parliament's response to concerns about Aboriginal children suffering from the effects of white settlement and the resulting control of large tracts of land which hitherto had provided for the nurture and sustenance, in every sense, of Aboriginal communities in those lands now known as South Australia.

In 1899 a move to pass the *Aborigines Bill* failed because of the provisions relating to the regulation of employment of Aboriginal people. This was an example of pure self-interest on the part of the SA State parliamentarians, many of whom were pastoralists with extensive northern properties and who relied on cheap Aboriginal labour. Although it is the subject of further research, it seems that Aboriginal "child slavery" was being practiced in the north under the guise of "employment", or "apprenticeships" entered into by the parents of Aboriginal children, and there had been some outcry about this abuse.

[2] Victoria passed the first legislation in 1869, *The Protection & Management of the Aboriginal Natives of Victoria 1869 (Vic)*, South Australia was followed by Western Australia in 1886, *The Aborigines Protection Act 1886 (WA)*, Queensland followed but not until 1897, *The Aboriginals Protection & Restriction of the Sale of Opium Act 1897 (Qld)*.

In 1911 the *Aborigines Act, 1911* was enacted. This statute comprehensively stripped Aboriginal people of their liberty and rights. Under section 17 the Chief Protector could confine "any aboriginal or half-caste" to a "reserve or aboriginal institution" and made it an offence "for an aboriginal or half-caste to refuse to be removed, resist removal, refuse to remain or attempt to depart." Material assistance provided by the Aborigines Department to Aboriginal people, such as blankets and rabbit traps, remained the property of the Crown under section 30. Under section 35 the Chief Protector was granted the curatorship of the property of Aboriginal people, and was entitled to take possession of, sell, sue, and exercise any power which that person might exercise for their own benefit. The Act required records of such transactions to be audited by Auditor General.

In 1921 a bill was introduced in the SA Parliament to amend the *Aborigines Act, 1911*. When Mr Hague, Commissioner of Public Works, introduced the *Aborigines (Half Caste Children) Bill* to the Parliament in 1921 he made the following points in his Second Reading Speech in the House of Assembly:

> *This Bill marks another attempt to solve the ever growing problem of the half-caste upon the Aboriginal Mission Stations at Point Pearce and Point McLeay. There are 90* ["officially resident" half-castes at the former] *and 81* [at the latter]*…and many more congregating at the stations, unwilling to work, refusing to be placed out…They seem to regard it as a permanent home...*
> *Attempts have been made by the Protector to apprentice some of the older ones out to tradesmen without success… It has now been decided to concentrate all efforts at education at regeneration on the younger children at the stations… to make determined efforts to apprentice them out and to exercise supervision over them whilst placed out…*
> *They must be taken away from their present environment and from contact with the older half-caste, and they must be taken in hand young…*

The Bill eventually lapsed through lack of support and was re-introduced two years later as the *Aborigines (Training of Children) Bill* which later the *Aborigines (Training of Children) Act*, 1923. It was described as "An Act to make Better Provision for the Care, Control and Training of Aboriginal Children, for placing Aboriginal Children under the Control of the State Children's Council, to amend the Aborigines Act, 1911, and for other purposes."

The *Aborigines Act 1934* came into operation on the 1st April 1937, repealing the *Aborigines Act, 1911* and the *Aborigines (Training of Children) Act*, 1923. It incorporated much of the two acts it repealed. The *Aborigines Act 1934* was subsequently amended by the Aborigines Act 1939, with one major change being the entitlement to seek exemption from the Act under section 11a (although exemption had the effect of isolating people from families), by way of a declaration, by the Aborigines Protection Board that person was no longer to be an Aboriginal person under the Act if they could establish they were of good reputation and living independently (paying taxes etc). In practice many such declarations were conditional and were revoked if it was shown the person was not acting in the manner thought appropriate by the Board or, because the

only assistance granted to Aboriginal people suffering hardship was that assistance available under this Act, in such times people who had been granted exemption had to seek revocation of the exemption in order to gain that assistance.

Under the *Aborigines Act, 1934-39* the Aborigines Protection Board was created to replace the Chief Protector and continued to have the broad powers and duties that had formerly been granted to the Chief Protector. For example, under section 7 the duties of the Board included the apportionment of moneys at disposal of Board at its discretion, and, with approval of Minister, it was empowered to purchase stock and equipment to loan to Aboriginal people. However, no person shall, except with approval of Minister, acquired title in the goods and chattels loaned. The Aborigines Protection Board had the duty to apply monies, distribute blankets, relief and assistance; to provide, as far as practicable, food, shelter etc for aged and infirm Aborigine people; to provide, when possible, for the custody, maintenance and education of the children of Aboriginal people; to manage and regulate the use of reserves and to exercise general supervision and care over matters affecting welfare of Aboriginal people and to protect them against injustice, imposition and fraud. Under section 30 all blankets etc issued by or under direction of the board to any Aboriginal person remained the property of the Crown.

As a result of this legislation in the mid 20th century in South Australia Aboriginal people fell very broadly into three groups – those in remote areas, those on missions and reserves, those who lived outside missions and reserves, some exempted and some not. In relation to those in remote areas the policy was effectively one of segregation. For those on reserves and missions the policy of the Aborigines Protection Board and the Aborigines Department was to encourage employment so that Aboriginal people were no longer maintained at the expense of the State.

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". 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.

For those who remained on reserves at, for example, Point McLeay and Point Pearce, which establishments engaged in farming operations using the labour of the residents, and were managed by officers of the Aborigines Department, research is required to establish if they were paid, or paid properly, for the labour they were required to contribute.

The same applies to boys confined to Campbell House Boys Farm near Pt McLeay in the late 1950's. The Minutes of the Aborigines Protection Board are clear that boys were sent to Campbell House for "training" and it operated as a farm – it is not clear whether the boys were paid for their labour.

Terms of Reference

To the extent resources permit we address the terms of reference below.

(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;

Not known.

(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;

An independent investigation of the arrangements made by the Aborigines Protection Board and Aborigines Department, with the knowing compliance of the governments of the day, is required in South Australia.

The investigation must also include an examination of the management and disbursement of funds, including Commonwealth monies, paid to the religious and non government bodies for the benefit of Aboriginal people.

The author is aware that Mr Bartlett, Secretary of the Aborigines Protection Board and head of the Aborigines Department had voiced concern about the misuse of pensions etc by missions. He considered Commonwealth monies being paid to the missions (once Aboriginal people were granted Commonwealth payments) were paid into the general funds of the religious institutions that operated the missions, and not then necessarily used for the benefit of the people entitled to those payments.

The author is also aware that any Aboriginal person who challenged the decisions of the Aborigines Protection Board and Aborigines Department, including decisions about withholding from them monies to which they were entitled, was considered a trouble maker and threatened with denial of support and assistance.

(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;

From earlier examination of the records of the Aborigines Protection Board and Aborigines Department it is clear these entities held funds on trust for many individuals.

Under the *Aborigines Act, 1934-39*, records were required and those records had to be audited by the Auditor General.

The Minutes of the Aborigines Protection Board hold many entries noting that, for example, child endowment received by the Board on behalf of children should remain in trust so that the Aborigines Department might use the funds to purchase clothes and other necessities for those children.

The Aborigines Protection Board was charged with the duty of protecting Aboriginal people "against injustice, imposition and fraud", but greater examination of records is required to determine whether or not that was done, and whether or not the Aborigines Protection Board and the Aborigines Department were the perpetrators of injustice, fraud and imposition.

Also see below the discussion regarding abuse of consumer rights under hire purchase schemes.

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

In the Minutes of the Aborigines Protection Board dated 2 May 1962 it is recorded that the Board had determined that henceforth Commonwealth pensions were to be paid directly to "natives" at Pt McLeay and Pt Pearce Reserves, except for those who are "full-bloods, and natives who have committed their pensions on hire purchase". It is implicit that until May 1962 all federal benefits payable to Aboriginal people including maternity allowance, child endowment and pensions, had been paid by the Commonwealth directly to the State Government. It is also implicit that until February 1963, when the *Aborigines Act, 1934-39* was repealed, all federal benefits payable to "full bloods and natives who have committed their pensions on hire purchase" continued not to be paid to the people who were entitled to these payments.

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. In the case of medical expenses, payments of child endowment were withheld from mothers to pay hospitals for the cost of their child's delivery.

In the case of hire purchase arrangements, some were arrangements which the Department had effectively compelled people to enter into. Examples of this compulsion include the requirement that children who had been removed from their families would only be returned when the family could show their living conditions satisfied certain standards, including adequate furniture. Families had no option but to purchase second hand furniture, and because they were living in remote or regional areas, the purchase of that furniture was arranged by officers of the Aborigines Department and hire purchase instalments withheld from child endowment that had been paid by the Commonwealth to the Aborigines Department. In the mid 1950's the establishment of hire purchase arrangements attracted a lot of discussion within the government of the day. For newspaper articles it appears the Playford Government was a firm supporter of the schemes, seeing it as a positive thing for the South Australian economy. However, often when the furniture was delivered it was broken and of poor quality – but the Aborigines Department took no steps to remedy that situation, took no steps to protect Aboriginal people as consumers.

Again, the Secretary of the Aborigines Protection Board, Mr Bartlett, had concerns about the misuse of pensions etc by missions, but the author is not aware of what steps, if any, were taken by the Board or the Aborigines Department to investigate or remedy that situation.

(e) previous investigations by states and territories into official management of Indigenous monies;

There has been no investigation into the official management of Indigenous monies is South Australia.

(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;

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.

It is the author's opinion that all records should be controlled by a qualified neutral body. This body must be adequately resources by the State Government to index the material, and ensure its security. It must also transparently undertake the role of balancing access with privacy.

(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;

No commitment has been made by the South Australian Government.

To the extent that the governments of the day were directly responsible for, permitted, or did not stop abuses perpetrated against the Aboriginal peoples of South Australia then the South Australian Government has a responsibility to repay or compensate those who suffered under those 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.

This is a matter about which the Indigenous communities of Australia must be consulted.

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