SUBMISSION

TO THE

SENATE INQUIRY INTO STOLEN WAGES

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Submission prepared on behalf of:

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ABSTRACT

This submission is made by the Queensland Public Interest Law Clearing House Incorporated (**"QPILCH"**). QPILCH is an independent, non-profit, non-governmental organisation established to coordinate and deliver pro-bono legal services throughout the State of Queensland. QPILCH services are provided pro bono from member lawyers throughout the State ranging from large national law firms to small local practices, as well as barristers and law students.

QPILCH provides and co-ordinates advocacy and advisory services in individual cases before the Courts. It also participates in matters of wider public concern, as in the present case, through representation and submission to government and public authorities.

This submission pertains to the circumstances which existed in Queensland under various enactments from the 1890s to the 1970s. These enactments established and sanctioned a profoundly unjust system by which the legal rights of Indigenous persons were dramatically curtailed and their human rights plainly violated. The purpose of the submission is to explain some of the legal workings of the Acts and highlight the injustices which have occurred as a result.

The submission bears principally upon items 2, 3 and 7 of the terms of reference. Particular emphasis is placed upon "the responsibility of governments to repay or compensate those who suffered … financially under the 'protection' regimes". It is intended, by this submission, to highlight the fact that those people affected by the Acts are yet to receive substantive justice by way of repayment of wages or adequate compensation.

LEGISLATIVE HISTORY

Between 1897 and 1971 successive State governments in Queensland presided over a system of compulsory withholding of wages earned by Indigenous Australian workers. This system was established under a series of Acts and corresponding regulations, under which Indigenous persons were required to work on a permit system, usually in exchange for little more than subsistence rations and trivial sums of "pocket money".

The Protection Acts were:

- *The Aboriginals Protection and Restriction of the Sale of Opium Acts 1897*;
- *The Aboriginals Preservation and Protection Act 1939*;
- *The Torres Strait Islanders Act 1939*;
- *The Aborigines and Torres Strait Islanders' Affairs Act 1965*;
- *The Aborigines Act 1971*;
- *The Torres Strait Islander Act 1971*;
- *Community Services (Aborigines) Act 1984*; and
- *Community Services (Torres Strait) Act 1984*.

These Acts were written in what is to modern ears offensive and racist language. The authors wish to make it clear that while in discussing the Acts we sometimes use their terms, we do so critically, not meaning in any way to adopt the racist thinking underpinning them

The Aboriginals Protection and Restriction of the Sale of Opium Acts 1897 – 1939

State regulation of Aboriginal income officially commenced under *The Aboriginals Protection and Restriction of the Sale of Opium Act 1897*. The preamble to that Act describes it as "an Act to make Provision for the Better Protection and Care of the Aboriginal and Half-Caste Inhabitants of the Colony …". The same protectionist intent is evident throughout the terms of the Act. The Act established the office of "Protector of Aboriginals". A Protector could permit any Aborigine to be employed "by any trustworthy person",[1] under the supervision of the Protector.[2]

The Act was amended in 1901[3] to include provision for a minimum wage for Aborigines employed under a permit.[4] The amendments also provided that a Protector might direct employers to pay the wages of Aborigines to himself or some officer of the police.[5] The Act required the Protector or officer of the police who received such wages to "expend the same solely on behalf of the Aboriginal or female half-caste to whom they were due, and shall keep an account of such expenditure".[6] By s 13 of the Act, the Protector was required to take general care, protection and management of the property of Aborigines in his district. This included taking possession of, retaining, selling or disposing of any property of an Aborigine, subject to the obligations expressed as follows:

> "provided that the powers [conferred by s 13 of the Act] shall not be exercised by the Protector without the consent of the Aboriginal, except so far as may be necessary to provide for the due preservation of such property. The Protector shall keep proper records and accounts of all monies and other property and the proceeds thereof received and dealt by him under the provisions of this section, and shall for such purpose be deemed to be a public accountant within the meaning of The Audit Act of 1874 …"[7]

The Act was amended again in 1934[8] to provide the Protector with more extensive power to cancel any employment agreement,[9] and more specific powers to investigate any complaint made by the employer or employee including any complaint made by the employee of ill-treatment.[10] This was presumably due to complaints of widespread fraud under the system, which were raised in State Parliament as early as 1919.[11]

[1] Section 12, *The Aboriginals Protection and Restriction of the Sale of Opium Act 1897*.
[2] Ibid s 16.
[3] *The Aboriginals Protection and Restriction of the Sale of Opium Act 1901*.
[4] Ibid s 12(1).
[5] Ibid s 12(2).
[6] Ibid s 12(2).
[7] Ibid s 13.
[8] *The Aboriginals Protection and Restriction of the Sale of Opium Acts Amendment Act of 1934*.
[9] Op cit n 3 (as amended), s 15(1).
[10] Ibid s 15(2).
[11] Kidd, R., *Aboriginal Wages and Trust Funds in Queensland*, FAIRA Occasional Papers No 1, undated, p. 3.

There was a wide regulation making power under the Acts, including as to the control of Aboriginal labour, employment and trading transactions.[12] In particular, s 26(4) of Act (as amended) allowed for regulations as to contribution from the wages collected into a Welfare Fund.

In 1990, the then Minister for Family Services and Aboriginal and Islander Affairs, on 2 August 1990 said in State Parliament:

> "Regulations under the Act allowed for specific deductions to be made from Aboriginal wages by their employers. Those deductions were then provided to the Protector for banking. From 1919, those regulations stipulated that 75 per cent of single men's wages be automatically docked, while married men and men with families lost 33 per cent to 50 per cent. Boys under 18 lost 80 per cent. The remaining money was then kept by the employer, who rationed it out to Aborigines as pocket-money. A further separate deduction was made from the wages of single men—5 per cent—and married men—2.5 per cent—for the relief of natives. That was called the Aboriginal Provident Fund. Those events are certainly not the issues being investigated."[13]

The Aboriginals Preservation and Protection Acts 1939 – 1964

In 1939, the 1897 Act and all subsequent amending Acts were repealed and replaced by *The Aboriginals Preservation and Protection Act 1939*. This Act (subject to amendments) remained in force until 1966 and retained and expanded upon the essential system of regulated employment established under the earlier Acts. The new Act retained the system of reserves and district Protectors established by the earlier Act. Any contracts and permits entered into under the old Act were also expressly preserved.[14] The 1939 Act also preserved the wide regulation making power including for the control of employment of Aborigines,[15] and for the "care, custody and education" of Aboriginal children.[16]

The Act also expressed the same protectionist intent as did the preceding legislation. It provided that "the purposes of this Act shall be the preservation and protection of Aboriginals in the State of Queensland".[17] An office of the "Director of Native Affairs",[18] was also established, to whom Protectors were responsible.[19] Section 5(3) then provided as follows:

> "**Exemption**. The Director may, by writing under his hand in the prescribed form grant exemption under provisions of this Act to any Aboriginal who in his opinion, ought no longer be subject to this Act, and thereupon such Aboriginal shall no longer be subject to this Act.
>
> Provided that such exemption may be granted subject to such conditions as the Director may impose, including a condition that all money or property belonging to such Aboriginal and held in trust by a Protector shall continue to be held in trust by such Protector for such time as may be determined by the Director." (emphasis added)

The system of employment under permit was also continued under the 1939 Act,[20] subject to a prescribed minimum wage.[21] Aborigines in employment continued to be subject to the supervision of

[12] Op cit n 3 (as amended), s 26.
[13] Hansard, 2 August 1990, the Hon. A. M. Warner., Minister for Family Services and Aboriginal and Islander Affairs.
[14] Section 3, *The Aboriginals Preservation and Protection Act 1939*.
[15] Ibid s 12.
[16] Ibid s 12(2).
[17] Ibid s 5(1).
[18] Ibid s 6.
[19] Ibid s 8(2).
[20] Ibid s 14(1).

the Protector who had power to investigate complaints and cancel any employment agreement.[22] The Protectors retained their power to direct employers to pay the whole or any portion of the wages of Aborigines either to themselves or some other person.[23]

The 1939 Act provided few real or independent measures to ensure the probity of administration of accounts held by Protectors. Provision was made for the regulation of the funds in the following terms:

> "Trust funds. Providing for the establishment of such trust funds as may be necessary for the control of the savings of Aboriginals, estates of deceased and missing Aboriginals and unclaimed monies."[24] (emphasis added)

Additionally, the Protectors were obliged and empowered to manage the property of Aborigines and to keep proper records and accounts of all monies dealt with.[25] Protectors were again deemed to be public accountants within the meaning of the *Audit Act*.[26]

Other more general protective measures included a power for the Director to make or cause to be made, such inspections, investigations and enquiries as he thought fit regarding the administration of the Act.[27] The Director was also required to provide an annual report in writing to the Minister.[28] The powers of the Director included the appointment of the Director as legal guardian of every Aboriginal person in the State under the age of 21 years, regardless of whether that person had surviving parents or relatives.[29] Section 22 of the Act empowered the Director to move any Aborigine to a reserve and keep the Aborigine there.

There was also a provision for the Executive to appoint a visiting Justice of the Peace to inspect the conditions of Aborigines on reserves.[30] The visiting Justice of the Peace was empowered to investigate complaints by Aborigines on reserves, and report to the Director concerning the condition of all buildings, accommodation, sanitation and discipline of Aborigines on reserves.[31]

The 1939 Act provided for the establishment of a "Welfare Fund":

> "for the general benefit of Aboriginals and the maintenance of such fund by the payment thereto of monies earned by the sale of produce of reserves under the control of the State, proceeds of undertakings conducted on such reserves, contributions by Aboriginals as may from time to time be prescribed, unclaimed monies and such other monies as may from time to time be prescribed."[32] (emphasis added)

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[21] Ibid s 14(5).
[22] Ibid ss 14(7) and 14(10).
[23] Ibid s 14(6).
[24] Ibid s 12(10).
[25] Ibid s 16(1).
[26] Ibid s 16(1).
[27] Ibid s 6(3).
[28] Ibid s 6(2).
[29] Ibid s 18.
[30] Ibid s 10(1).
[31] Ibid s 10(2).
[32] Ibid s 12(9).

Regulations under the 1939 Act

Regulations were made under the Act on 23 April 1945.[33] Regulation 6 provided that all Aborigines employed under the Act had to contribute a certain percentage from their earnings to the Welfare Fund.[34] The regulations also provided for the payment of various other monies into the Welfare Fund, including:

> "The difference between the amount of savings bank interest credited to the individual trust accounts of Aboriginals and the total amount of interest credited to the total amount of all the trust accounts either from investments in bonds, inscribed stock, or otherwise."[35] (emphasis added)

Regulation 10 required that all contributions payable to the Welfare Fund from the earnings of Aborigines to be deducted from the wages of Aborigines by the Protector and be "duly accounted for".

Regulation 12 provided that:

> "(1) The Director shall establish with the Commonwealth Savings Bank of Australia a trust fund or trust funds into which shall be paid all monies being the wages, property or savings of Aboriginals. Interest at the current rate fixed at any time by the Commonwealth Savings Bank shall be credited to the individual accounts in such trust fund or trust funds.
>
> (2) A complete record and account of all such monies deposited to the credit of such fund or funds shall be kept and such monies shall be credited to the particular Aboriginals to whom they belong.
>
> (3) The Director in his capacity as trustee for any Aboriginal on whose behalf money is held may withdraw from such fund or funds sums as are required by the said Aboriginal or as is necessary for payment of his just debts, payment of which has been duly authorised by the Director or a Protector." (emphasis added)

In fact separate accounts were established and there was a Commonwealth Bank passbook issued for each worker under the scheme. By regulation 17(2), Protectors and Superintendents were responsible to the Director for the administration and control of reserves and for the welfare and discipline of Aborigines on reserves.

Beyond prescribing minimum rates of pay[36] and maximum working hours,[37] the regulations also contained various quite specific controls on aspects of life on the reserves. Regulation 28(2), for example, provided that:

> "every Aboriginal who, without reasonable excuse, proof of which shall lie on him, refuses to work when required to do so by the Protector, Superintendent or any officer under his direction, or found to be evading such work, shall be guilty of an offence."

Regulation 59(12) also required that female domestic employees were to be allowed a room in their employer's residence.

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[33] *The Aboriginals Regulations of 1945*, gazetted on 23 April 1945.
[34] Ibid r 6.
[35] Ibid r 9.
[36] Ibid r 58.
[37] Ibid r 68.

By regulation 73(1), employers were to keep a pocket money book to record particulars of all monies actually paid to employees (as wages or pocket money) as opposed to wages paid to the savings accounts. A receipt by signature or thumbprint was required for each such payment to employees. The receipt was to be given in the presence of an independent witness. The pocket money book was to be made available by the employer for inspection by Protectors. If the employer did not, with the consent of the Protector, pay pocket money weekly, a proper record was to be kept of all such monies due and payable.[38] These monies were due and payable on demand by the employee. The pocket money book was supposed to be produced by the employer to the Protector and the expiration of employment agreements and the employer was liable to be sued for monies remaining due.[39]

Regulation 74(1) provided that employers were to pay expenses of an employee's travel to the place of employment and, on completion of employment, back to the reserve. Regulation 75 provided that deductions from wages could be made in only limited circumstances.

The Aborigines and Torres Strait Islanders' Affairs Act 1965

This Act, proclaimed into force on 28 April 1966, was described as "An Act to Promote the Well-Being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islands". It repealed the 1939 Act.[40]

The 1965 Act continued the reserve system,[41] but abolished Protectors.[42] The office of the Superintendent was continued, as were contracts, agreements and permits under the old Act.[43] Also continued was the system of visiting Justices, who were obliged to report every three months on the conditions existing on reserves.[44]

The Act established the category of "Assisted Aborigines"[45] and established the officer of the Director of Aboriginal and Islander Affairs, who was responsible to the Minister.[46] The Director had power to conduct investigations, inspections and enquiries as were necessary for the administration of the Act,[47] and was obliged to report in writing to the Minister each year.[48]

The position of District Officer was created.[49] A District Officer was charged with the well-being of Aborigines in the district for which he was appointed.[50] The District Officer could, if he was satisfied that the best interests of the Assisted Aborigine required it, undertake and maintain the management of the

[38] Ibid r 73(2).
[39] Ibid r 73(4).
[40] Section 4, *The Aborigines and Torres Strait Islanders' Affairs Act 1965*.
[41] Ibid s 4(2)(a)(ii).
[42] Ibid s 4(2)(b).
[43] Ibid s 4(2)(b)(vi).
[44] Ibid s 15.
[45] Ibid s 8.
[46] Ibid s 10.
[47] Ibid s 10(3)(b).
[48] Ibid s 10(6).
[49] Ibid s 12(2).
[50] Ibid s 5.

property of any Assisted Aborigine within his district.[51] Powers provided to the District Officer in this regard corresponded with the powers of the Protector under the old Act.[52] Equally, each District Officer was obliged to keep proper and accurate records and accounts and was deemed to be a public accountant within the meaning of the *Audit Act*.[53]

When a person ceased to be an Assisted Aborigine, the District Officer was, as soon as practicable, to pay all monies which he was holding on behalf of that person to the Aboriginal Protection of Property Account to be held for that person and disposed of at that person's discretion.[54]

The regulation of employment of Assisted Aborigines was not provided for directly in the 1965 Act, but was, by s 60 of the Act, subject to a regulation making power.[55] By s 60(15), the regulations could also provide for the establishment and maintenance of a welfare fund to be known as the Aborigines Welfare Fund for the general benefit of persons having "a strain of Aboriginal blood". Regulations could also be made for:

> "the establishment of such trust funds as may be necessary or desirable for management and control of property of Assisted Aborigines or Assisted Islanders and the estates of deceased or missing Assisted Aborigines or Assisted Islanders and unclaimed monies".[56] (emphasis added)

The 1965 Act was amended in 1967 and a new section, s 10A was added. This provided that the Director of Aboriginal and Islander Affairs was constituted a corporation sole, "The Corporation of the Director of Aboriginal and Islander Affairs". The corporation was to have perpetual succession, be capable of suing and of being sued and of proving in any court of competent jurisdiction debts or sums of money due to it, and, as trustee or as beneficial owner dealing with any property.

Regulations under the 1965 Act

The *Aborigines and Torres Strait Islanders Regulations of 1966* repealed the previous regulations but not so as to affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations.

The Aboriginal Welfare Fund was continued in existence under the name of the Aborigines Welfare Fund.[57] Monies which were to be paid into the Aborigines Welfare Fund included:

> "the difference between the amount of savings bank interest credited to the individual trust accounts of Assisted Aborigines and the total amount of interest credited to the total amount of all the trust accounts either from investments in bonds, inscribed stock or otherwise."[58]

Regulation 5 provided as follows:

> "Trust Funds.

[51] Ibid s 27(1).
[52] Ibid s 28(1).
[53] Ibid s 28(4).
[54] Ibid s 33.
[55] Ibid s 60.
[56] Ibid s 60(16).
[57] Regulation 4, *The Aborigines and Torres Strait Islanders Regulations 1966*.
[58] Ibid r 4(a).

> (1) The Director shall establish with the Commonwealth Savings Bank of Australia a trust fund or trust funds into which shall be paid all monies, being the wages, property or savings of assisted persons. Interest at not less than the current rate fixed at any time by the Commonwealth Savings Bank shall be credited to the individual accounts in such trust fund or trust funds.
>
> (2) A complete record and account of all such monies deposited to the credit of such a fund or funds shall be kept and such monies shall be credited in a separate account, to each particular assisted person to whom they belong.
>
> (3) The Director in his capacity as trustee for any assisted person on whose behalf money is held may withdraw from such a fund or funds such sums as are required by the said assisted person who are necessary for the payment of his just debts …"

The District Officer or Manager could by notice in writing to an employer of an assisted person, require that the whole or part of the wages due to that person be paid to him "as Trustee for and on behalf of such assisted person"[59] (emphasis added). Employers were required to maintain an exact record of all wages and other monies due to the employee and to make any payment in the presence of an independent witness who was to sign such payment.[60] The Director had power to recover wages owing from employers.[61]

The Aborigines Act 1971

This Act was "to provide for the conduct of reserves for Aborigines and for the admission thereto of persons who wish to reside there; for the grant of assistance to Aborigines who seek it …"

The 1971 Act repealed the 1965 and 1967 Acts, and management of property under the repealed Acts was deemed to be management of property under the new Act.[62] The Corporation of the Director of Aboriginal and Islander Affairs was continued.[63]

Sections 37 and 38 provided for the management of property and required the District Officer to keep proper and accurate records and accounts. Once again, the District Officer was deemed to be a public accountant under the *Audit Act*.[64]

There were once again wide powers to make regulations, including as to the Aborigines Welfare Fund and for the establishment, maintenance, management and control of such trust funds as may be necessary or desirable for the management of the property of Aborigines.[65]

[59] Ibid r 73.
[60] Ibid r 96.
[61] Ibid r 98.
[62] Sections 4(6) and 37, *Aborigines Act 1971*.
[63] Ibid s 8.
[64] Ibid s 38(3).
[65] Ibid ss 56(14) and 56(15).

The Community Services (Aborigines) Act 1984

This Act repealed the 1971 Act,[66] but provided that the management of property under previous legislation was to continue unless terminated under the 1984 Act.[67]

The Aborigines Welfare Fund was also continued under the 1984 Act as was the corporation sole, now known as "The Corporation of the Under-Secretary for Community Services".[68]

The Under-Secretary was authorised to continue the facilities established under the repealed Acts for the acceptance or money deposited by Aborigines to their savings accounts. The Under-Secretary was also authorised to establish new facilities of like nature. The savings accounts are again referred to as trust accounts.[69]

Money deposited was repayable at call upon written authority of the person, "on whose behalf the money is so held".[70] Regulation making power existed in relation to trust funds[71] and the Aborigines Welfare Fund.[72]

Summary

This legislative history in Queensland may be conveniently summarised into four separate periods:

- **1884 – 1965** – legislation emphasised protection and preservation of Aborigines and Islanders. The lives of most Aborigines and Islanders were subject to the reserve system, under the direction and control of the Department. People subject to the system could only work with the approval of the Department. Deductions from earnings for relief/settlement maintenance and/or welfare contributions commenced in 1919. The 1939 Act provided for the Welfare Fund which was established in 1943.
- **1965 – 1971** – new legislation abolished the system of compulsory deductions for welfare and other purposes. The system of management of wages and property only continued for those persons who were 'assisted'. This category generally included all persons normally resident on reserves.
- **1971 – 1984** – new legislation abolished the status of "assisted persons" but permitted continued Departmental management of the financial affairs for persons who requested that it continue.
- **1984 – Present –** new legislation provided a more active role for Indigenous and Islander Community Councils and Co-ordinating Councils. The Welfare Fund remains in existence and is maintained by the Aboriginal and Islander Affairs Corporation in accordance with s 5(8) of the 1984 Act (now known as *The Aboriginal Communities (Justice and Land Matters) Act 1984*).

[66] Section 4, *Community Services (Aborigines) Act 1984*.
[67] Ibid s 5.
[68] Ibid s 8.
[69] Ibid s 72(2)(a) and 72(2)(b).
[70] Ibid s 72(4).
[71] Ibid s 82(13).
[72] Ibid s 82(15).

THE QUEENSLAND STORY

Essential features of the scheme

The essential features of the scheme established under the above Acts were that:

1. Indigenous persons were required to work at the direction of a Protector or other government official. By 1939, it had become an offence for an Indigenous person to refuse to work without "reasonable excuse".
2. Wages earned by these workers were paid into personal savings accounts.
3. Workers received "pocket money" only, as well as basic provisions like rations.
4. From 1939, a percentage of each worker's wages was exacted and paid into the Welfare Fund.

Because of the terms of reference of this inquiry, we have limited our review of the legislation to those matters concerning work and wages. We acknowledge that for many Indigenous people under the scheme, regulation of these aspects of their life were the least distressing aspect of their regulation. Poor treatment by employers in the way of food, shelter and conditions – including insufficient accommodation of and protection of female workers – often in remote rural areas, severe limitations on the rights to travel and marry, and dreadful poverty and health conditions were endemic. Leprosy and tuberculosis were common illnesses in the middle of last century on reserves.

In one respect, at least, this is relevant to the current inquiry. When assessing the compensation offered by the Queensland Government, it is the full picture of oppression and suffering which Indigenous people remember, not just financial injustice.

Further, many Indigenous workers had family members, now deceased, who worked under the scheme. They are painfully aware that for that older generation of workers, conditions were considerably worse than those they experienced themselves. For those persons, inability to recover compensation on behalf of those deceased is particularly distressing.

It appears that monies paid into savings accounts and the Welfare Fund by workers who are now deceased have been lost. There is no provision in any of the legislation for payment of those monies to the estates of deceased workers. It is unclear what has happened to monies held for workers who are now deceased. The numbers of such workers would be significant over the more than 80 year lifespan of the scheme.

The Queensland Aboriginal Account

The compulsory system of personal savings accounts was progressively introduced under the Protection Acts between 1894 and 1933. The system is thought to have covered nearly all Indigenous workers by about 1919. Each personal savings account was administered and controlled by Protectors and officers on settlements. The Protectors were most commonly local police officers.

Although the scheme applied to all Indigenous workers whether or not they were resident on reserves and settlements, changes in the legislation meant that by 1966, the collection of wages by the State was predominantly limited to people living on reserves and settlements ("assisted persons") who were under the control of the Department.

In 1933, under the Government's "Savings Bank System", the individual savings accounts were amalgamated into a fund which became known as the Queensland Aboriginal Account (**"the QAA"**). The account was held at the Commonwealth Savings Bank and was administered from Brisbane. The Department thus became totally responsible for the integrity of the Savings Bank System.

Government records from the 1930s and 1950s respectively reveal total funds of between £270,000 and £720,000 then existing in the QAA.[73] The Consultancy Bureau Report of March 1991 estimated a balance of about $750,000 remaining in the QAA reduced from balances of nearly $2.5 million in the early 1980s.[74] Thereafter, the total amount of funds in the QAA is said to have gradually diminished due to the establishment of community banking facilities in the 1980s.[75] By 30 June 1991, the balance was reduced to about $350,000 and to $154,000 by 30 June 1992 as more Indigenous communities handled their own banking arrangements.[76] The present status and balance of the QAA is not publicly known. Equally, the picture as to the State Government's spending and distribution of the monies in the QAA is far from complete.

The origin of funds finding their way into the QAA varied and is thought to have included:

- sums from individual worker and community savings accounts;
- Aboriginal Child Endowment accounts (held in individual names);
- the Assisted Persons Estates Trust Account; and
- Queensland Native Creations Account (Queensland Aboriginal Creations).

Monies in the QAA were generally used for:

- everyday withdrawals and trading needs as required by Aboriginal people (in the form of cash, cheque or purchase orders for goods and services);
- loans to various authorities and individuals;
- investments in inscribed stock (shareholdings); and
- cash advances.

From 1933 interest earned on the QAA was not dealt with consistently. Interest earned was in part to fund purchases of "Christmas cheer" on settlements and was otherwise paid to and used for other Government revenue purposes.[77] During the 1940s, Aboriginal workers received interest at between

[73] Queensland Department of Family Services and Aboriginal & Islander Affairs, *Aborigines Welfare Fund and Savings Bank Accounts – A Discussion Paper*, 23 July 1993, p 9.
[74] The Consultancy Bureau, *Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts*, March 1991, p 16.
[75] Op cit n 73, p 9.
[76] Ibid.
[77] Op cit n 74, p 17.

2% - 3.5%, though any interest above that (deemed "surplus interest") was credited to the Welfare Fund.[78]

Wages paid were:

- below award rates;
- subject to normal income tax; and
- subject to further impost in respect of the Aboriginal Provident Fund.

Between 2.5% and 5% of gross wages was deducted and paid to a fund named the "Aboriginal Provident Fund" (the balance of which was later transferred to the Welfare Fund). Similar imposts were made on Social Security benefits. The Provident Fund was set up under the very early legislation as a trust fund to provide relief for workers and their dependents when in need or unemployed.[79]

The legislation generally required that any wages paid to Indigenous workers be specified in individual employment agreements, together with sums agreed as pocket money. Until 1969, however, Indigenous workers in settlements and reserves often did not receive wages but instead were issued with rations and pocket money. Between 1969 to 1983, workers on reserves or settlements were paid "training allowances" instead of wages.[80] In 1983, higher minimum wage rates were introduced, however, it became Departmental policy to limit the number of Indigenous persons employed.[81]

The Welfare Fund

The Aborigines Welfare Fund (**"the Welfare Fund"**) was established pursuant to the 1939 Act, although the Fund does not appear to have been set up until 1943.[82] The Welfare Fund derived income from various sources including (up until 1966) statutory contributions from Indigenous workers under the legislation; surplus interest earned on monies deposited into workers' savings accounts, and from the Institutional Child Endowment Account. The Welfare Fund also received monies generated by retail stores operated in Indigenous communities. Indigenous people dying without a will had their assets sold and the monies were placed in the Welfare Fund.

The sources of money which found its way into the Welfare Fund included:

- for workers not residing at settlements/reserves/missions, between 2.5% and 5% of gross earnings was deducted from wages and credited to the Provident Fund and then transferred to the Welfare Fund;
- for workers who were resident on settlements/reserves/missions but employed outside those settlements a further deduction of 5% to 10% of gross earnings was made to be applied to settlement maintenance;
- income from sales of produce from Aboriginal reserves (ie: timber);

[78] Op cit n 74, p 12.
[79] Kidd, R., *You Can Trust Me – I'm With the Government*, 1994, published at www.linksdisk.com/roskidd/site/Speech3.htm
[80] Op cit n 74, p 6.
[81] Ibid.

- unclaimed money of deceased and missing Aborigines;
- institutional child endowment;
- rents on houses and quarters on settlements and for people in transit;
- interest from investments made with funds from Aboriginal savings;
- some direct payments from State Government funds;
- (from 1960s) money from other trading enterprises (eg: livestock, farming and retail stores);
- (from 1980) some money from Commonwealth State Housing Agreement funds; and
- sale of Welfare Fund assets.

Monies in the Welfare Fund were used for:

- Aboriginal welfare (including food, housing, medical expenses);
- funding economic enterprises on reserves, including subsidising losses from trading activities;
- training initiatives on communities; and
- general Government purposes not related to Indigenous people or communities.

Statutory contributions to the Welfare Fund ceased in 1966, however, the Welfare Fund remains in existence today pursuant to s 5(8) of the *Community Services (Aborigines) Act 1984* (Qld). From about 21 November 1990, the Queensland Government commenced paying interest on the Welfare Fund.[83] It appears that no interest had previously been credited to the Fund.[84]

Administration of the Funds

Withdrawals from the savings accounts, and later the QAA, were restricted in amount and were usually not allowed in cash, but by issue of vouchers to pay for goods or services. Approval from a Protector was necessary for a withdrawal. Due to widespread illiteracy in the Indigenous communities, signing withdrawals was a somewhat haphazard business. It is evident that this system was unreliable and readily susceptible to fraudulent practices. Caxton Legal Centre research has shown that withdrawals were made from an individual's account and witnessed on the same day by the same person at the different locations of Townsville and Brisbane (Caxton research is no longer available). Another fraudulent practice was discovered by investigations by the *Queensland Aboriginal and Torres Strait Islanders Legal Services Secretariat* (**QAILSS**):

> "It is the consistent evidence of Claimants that instances of fraud occurred regularly in the administration of their property. An example often given by Claimants relates to requests made for withdrawal of funds.
>
> Claimants suggest that requests were seldom made due to the difficulty of obtaining approval for such withdrawals. However, when such requests were approved, the sum actually *withdrawn* was often greater than the sum *requested* and the difference

[82] Ibid.
[83] Op cit n 73, p 9.
[84] Hansard, Estimates Committee D, Energy and Aboriginal & Torres Strait Islander Policy, 14 July 2006, per the Hon. J. Mickel, Minister for Energy and Aboriginal & Torres Strait Islander Policy.

> misappropriated by the person drawing on the funds. This also demonstrates the factual invisibility of fraud in the records."[85]

In October 1990, the State Minister for Family Services and Aboriginal and Islander Affairs commissioned independent report from The Consultancy Bureau, on matters including the Aboriginal Welfare Fund, the QAA and the savings accounts. Significant findings of the Consultancy Bureau were:

- fraud by Government officials on savings bank accounts was a fairly regular occurrence;
- there were well-documented cases of misappropriation, with indications of a large volume of undetected fraud;
- there was generally a lack of adequate control systems;
- record keeping systems were poor, and records for 20 – 30 years from the 1940s were missing, as was comparatively recent material;
- record keeping systems were not properly understood by Departmental staff; and
- large amounts of money had passed through the various accounts, but assets were not adequately accounted for or identified. [86]

Whilst these factual findings have not been challenged by either Government or community bodies, it is notable that the Report, which was commissioned with much fanfare in on 2 August 1990,[87] was only made public after a Freedom of Information Act application was made by Lesley Williams on 22 April 1993. Parts of the report were withheld from public view, for example, the Report at page 8 notes that "Documented cases of fraud which were noted from Departmental files are listed in Attachment 1.4". Attachment 1.4 was withheld on Crown Law advice. This absence of Government transparency is regrettable.

The Consultancy Bureau Report investigation was impeded by the wholesale failure of the funds' administrators to make and/or to retain proper administrative and accounting records. [88] In particular, records in relation to the QAA have proven almost impossible to trace. The dearth of appropriate records for the Account has been acknowledged by the Queensland Government, at least to some extent:

> "if someone is able to establish a claim against the Savings Bank accounts, then that claim will be met. However, this remains particularly difficult because many of the records relating to these accounts were held (and are still held, to the extent that they continue to exist) on Communities throughout the State".[89]

In addition to fraud and maladministration of the funds, both the aggregated and individual savings accounts and the Welfare Fund have been used variously as if they were general Departmental funds. Large sums from the Welfare fund have also from time to time been used to fund general Government

[85] Queensland Aboriginal and Torres Strait Islanders Legal Services Secretariat, *Document prepared for the purposes of negotiations, containing demands of claimants in relation to the savings accounts and wages project*, 11 October 2000, at 24.
[86] Op cit n 74.
[87] Hansard, 2 August 1990, the Hon. A. M. Warner., Minister for Family Services and Aboriginal and Islander Affairs.
[88] Op cit n 74, p 9.
[89] Op cit n 73, p 6.

projects, for example, the cost of building the Redcliffe Hospital and other public hospitals was met from the Welfare Fund by the Bjelke-Petersen Government.[90]

THE RESPONSIBILITY OF GOVERNMENT TO THOSE WHO SUFFERED FINANCIALLY

The responsibility of the Queensland State Government towards those who suffered financially under the Protection Acts is both a legal and a moral one.

Responsibility at law

Powerful arguments exist favouring a view that the maladministration of the QAA and savings accounts constituted a breach of trust and/or a breach of fiduciary duty owed towards workers under the scheme.

The existence of a trust is supported by several factors, and most obviously by the fact that Protection Acts expressly adopted the language of a trust. The words "trust" and "trust account" are frequently used in the legislation. There are also express provisions stating that the wages shall be held and spent solely on behalf of the workers to whom they were due. The regulations under the 1939 Act spoke of "individual trust accounts of Aboriginals".[91] Workers were issued with individual bank books evidencing their savings accounts held on trust for them by the Government. The legislation sets out in detail the obligation to keep proper records and account of all the monies dealt with under the Acts. Furthermore, the stated intent of Protection Acts is the protection of a vulnerable people. There are no special avenues of redress for workers denied monies due to them under the Protection Acts. These are all circumstances which are redolent of obligations normally associated with trusts, including duties of utmost good faith, loyalty and fairness.

Often there are no acceptable records. As a trustee, the State has failed in its fundamental duty to account to the Indigenous persons on whose behalf the monies were held.

The Protection Acts otherwise established a system by which the relationship between State and workers was one of respective control and dependency. These elements are classic indicia of a fiduciary relationship.

To date only one claimant has filed legal proceedings (in 1996) against the Government. The Government defended the claim and the matter was settled in 1999 on confidential terms.

Since 2002, QPILCH has received applications from 30 individuals who have wanted either full advice on the impact of the offer on them or who wanted to reject the offer and take legal action. Most of these matters have been referred to law firms for pro bono assistance. It is understood that a number are still being investigated, with requests for information from the Government being slowly answered. QPILCH

[90] See research by Kidd, R., *The Way We Civilise*, 2000, University of Qld Press, St Lucia, p 252.

is aware of other approaches to the Queensland Government by individuals which have not received any substantive response.

Moral responsibility

The law of trusts is renowned as difficult, indeed arcane. Irrespective of the legal position, there is a compelling moral imperative to provide justice to the people and communities that worked under the Protection Acts.

Under the Protection Acts:

- Indigenous people were forced to work and did not have free access to their wages;
- the wages of workers were quite literally stolen by the very Government officials charged with their protection; and
- the State has failed to keep proper records of individuals' accounts and balances.

The people affected by these laws and practices are among some of the most vulnerable in society. No doubt this is the reason the injustice occurred and has remained unaddressed for so long. To expect them to marshal the resources to bring an equity action in the Supreme Court to prove loss in terms of English law and rules is to place an unacceptable burden on people who have already suffered tremendously at the hands of the State. The lack of records means that potential claimants are confronted by the requirement to prove their case, despite never having had access to their records, and the records not being properly kept by Government.

PRESENT POSITION

At the present time, Queensland and New South Wales are the only States to have taken steps to compensate people affected by the work system established by protectionist legislation. There have been many statements from the Queensland Government acknowledging the legacy of abuse and deprivation of rights that took place under the Protection Acts. In 1990, the then Minister for Family Services and Aboriginal and Islander Affairs said in Parliament:

> "Not only did the preliminary investigation reveal the need for closer scrutiny, it also unearthed many of the now unacceptable policies and practices of previous Governments in this State in relation to Aboriginal and Islander people. Those practices were ignored, supported or tolerated by the community generally and allowed those unusual events to take place without controversy or questioning. They deserve our condemnation and represent a shameful period in our history.
>
> …
>
> However, what is most disturbing is evidence of apparently illegal practices in relation to those accounts. These instances deserve special investigation.

[91] See also regulations under the 1965 Act, in particular regulation 5(2) which spoke of monies belonging to the individual Aborigines on whose behalf they were held.

> According to departmental records, it does appear that, after the depression, Aboriginal funds were raided in order to cover financial shortfalls in the then sub department of Native Affairs. The records highlighted – *"… the difficulty of providing for the needs of the sub-department in the financial year 1930-31. It divulged that the money required to meet the shortfall was raised from native funds."*
>
> That memo stated also that finance for the very same financial year was transferred to the department's standing account from native accounts.
>
> Numerous other examples confirm the use of Aboriginal funds to augment departmental coffers. However, no evidence suggests that funds were ever reimbursed to Aboriginal accounts up to this day. No evidence exists of any investigation of those accounts, despite the existence of critical reports within the department. There is no evidence of any will be successive Governments to make restitution to Indigenous Queenslanders … While State Archives is continuing to search for records, it is apparent that relevant policy documents for the period 1943 to 1981 have been removed from file."[92]

The Queensland Compensation Fund

In May 2002, the Queensland Government announced that $55.4 million would be allocated compensate workers under the Acts. Compensation payments were to:

- Group "A" claimants - eligible to be paid $4,000 if they were born before 1952 and worked under the 1897 and/or 1939 Acts;
- Group "B" claimants – eligible to be paid $2,000 if they were born before 1957 and worked under the 1939 and/or 1965 Acts.

Whilst the numbers of workers affected throughout the life of the Protection Acts would at least be in the tens of thousands, estimates made in 2002 by the Queensland Government put the numbers of surviving workers affected by the scheme at 16,400.[93] The Government estimated that there would be 11,400 eligible Group A claimants and 5,000 Group B claimants. These estimates were based only on census data – no inquiry was been made to identify the number of people affected in any accurate way.[94]

The establishment of this scheme for compensation was unprecedented in any Australian jurisdiction. The failure of the Beattie Government to adopt a more inclusive and consultative approach before setting up the scheme, and the low levels of compensation offered are the likely factors in the lower than expected community interest in the fund.

Lack of consultation

From 1997, strong representations by Lesley Williams (an individual who worked under the Protection Acts) and the Caxton Legal Centre (a Brisbane based pro-bono community legal service) were made to both the present Labour Government and its coalition predecessor to establish a non-legalistic inquiry that would give workers an opportunity to tell their story on the public record and to recommend a

[92] Op cit n 84. See also Hansard, 16 May 2002, the Hon. P. D. Beattie., Premier and Minister for Trade; and the Hon. J. C. Spence, Minister for Families and Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services.
[93] Hansard, 16 May 2002, the Hon. P. D. Beattie., Premier and Minister for Trade.

formula for compensation. It was contended that if an inquiry were to investigate these 80 years of forced labour, thus involving Indigenous workers and their families, an informed, engaged community would be more supportive of the decisions made as to appropriate ways to address past injustices.

The Beattie Government ultimately rejected calls for an inquiry on the grounds that it would be too costly and open-ended. In place of an inquiry, the then Minister Judy Spence convened a one day symposium in 2000 at Rockhampton which produced no concrete proposals or consensus.

Inadequacy of Compensation

In announcing the compensation fund, Premier Beattie acknowledged that the figures of $4,000 and $2,000 were arbitrary, not based on any assessment of how much each worker was owed.[95] At present, there has been no commitment or attempt by the Queensland Government to quantify wages, savings and entitlements that should be in the Queensland Aboriginal Account or in the Welfare Fund. Nor has there been any attempt to quantify the level of fraud and monies missing or misappropriated whilst under official management.

The amounts of compensation available do not provide a just or adequate level of compensation to workers affected by the Protection Acts. Based on the 2002 national average wage of $35,782,[96] the sum of $4,000 represents marginally more than 11%. The sum of $2,000 represents approximately 5.6% of the 2002 national average income. Thus, if a worker worked for only one year under the Acts, by today's standards that worker receives only a small fraction of the value of wages confiscated under the Protection Acts. Most people worked under the Protection Acts for many years. They have been held out of their money for decades in circumstances where they are at law entitled to claim interest on their monies at a trustee's rate.[97]

The potential for injustice is usefully illustrated by way of a hypothetical example. Regulation 74 (as Gazetted on 30 April 1966) of the Regulations to the 1965 Act provided a minimum weekly wage for a Male cook was $21.00. This was similar to and adult general farm labourer, who would receive a minimum of $20.00 per week. These minimum rates applied if the worker was not covered by an Award.

Based upon the above rates, the minimum wages paid to a male cook who worked for three years between 1967 and 1969 would amount to gross $3,276. Allowing for a 50% reduction for expenditure and tax, the worker's account would have had a balance of $1,638 as at 1970. Depending on the applicable interest rate, the cook's account would have the following present day balances:

[94] Op cit n 93.
[95] Op cit n 93.
[96] Australian Bureau of Statistics, National Regional Profile, ABS cat. No. 1379.0.55.001.
[97] Modern practice is to award a commercial rate of interest between 8% - 10%, compounding where the breach of trust has been serious or fraudulent. See for example *Hunters Beach Investments Pty Ltd v Braams* (2001) 38 ACSR 701; *Hagan v Waterhouse* (1991) 34 NSWLR 308; *Gordon v Gonda* [1955] 2 All ER 762.

Assumed average interest rate (compounding) for period of 36 years[98]	Capital of $1,638 plus interest paid quarterly	Capital of $1,638 plus interest paid annually
4 %	6,864.23	6,722.24
6%	13,977.32	13,345.20
8%	28,362.12	26,155.87
10%	59,060.29	50,634.97

This basic example, based on average interest rates only, does not displace the need for a true actuarial or forensic examination of the Government records. It is intended merely as a simple and conservative demonstration of the potential for workers to be significantly short-changed under Government's compensation scheme.

At the same time the Queensland Compensation Fund was announced, the Commonwealth and State Governments were offering grants of between $7,000 - $14,000 to persons buying their first home. To qualify for such a grant, a person need only have purchased (and in some circumstances built) their first home. The level of compensation offered to workers, many of whom worked for years under the scheme, contrasts poorly with the grant available to homeowners. Ironically, many people who worked under the Protection Acts could not afford to buy or build their own home.

In exchange for this small compensation, a claimant in Queensland must release the State from:

> "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".

It must be acknowledged that the steps taken in Queensland to compensate workers go beyond those of any other state. However, it remains the position that workers have been offered very little in return for the surrender of their common law rights. This along with statements made during the announcement of the Compensation Fund suggest a primary policy emphasis on protecting State revenue, rather than providing real and substantive justice to workers affected by the scheme. The Premier said, on announcing the compensation scheme:

> "We know that the monetary offer may not meet the expectations of all potential claimants. Indeed, historian Dr Ros Kidd has said they should qualify for as much as $500 million. Without researching each case individually and intensively, it is impossible to say for certain how much each worker is 'owed' … QAILSS [Queensland Aboriginal and Torres Strait Islanders Legal Services Secretariat] has said it has some 4,000 potential litigants waiting in the wings to sue us … If we resisted every one of these cases, this could cost Queenslanders $100 million or more in legal expenses."[99]

The inadequacy of the scheme is perhaps best reflected by the fact that it has been substantially undersubscribed: Indigenous people have simply not participated. The most recent information from the Queensland State Government is that as at 30 April 2006, $35.4 million of the $55.4 million

[98] Since deregulation in 1981 until June 2006, Reserve Bank retail deposit and investment interest rates on $10,000 invested annually average at 8.21%.

allocated to the compensation scheme remains unspent.[100] A total of 8,765 claims were received, assessed as 8,606. Of those, 5,486 (64%) were assessed as eligible and 3,210 were ineligible. Applications for compensation ended on 31 December 2005.

The inadequate level of compensation means that to this day those who worked under the Protection Acts are still being deprived of what was taken from them. The amount of compensation offered is seen by many as an insult. When monies in the Welfare Fund have been used to fund departmental and general government programs, the small amount of compensation fails to acknowledge the economic contribution made by workers under the Acts to the economy of the State across a period of 80 years.

THE FUTURE OF MONIES PRESENTLY HELD BY THE STATE

The Government is yet to announce what is proposed for the balance funds of $35.4 million set aside for compensation. The Welfare Fund remains frozen under *The Aboriginal Communities (Justice and Land Matters) Act 1984* (Qld). The balance of the Welfare Fund was approximately $9.897 million as at 30 June 2006.[101] The combined balance of the remaining compensation money and the Welfare Fund is $45.297 million.

These funds remain in limbo despite an aging population of surviving workers who are directly aggrieved by the compulsory taking of their wages. There are even more who have been indirectly aggrieved in terms of the families left behind by deceased workers who were never paid their due entitlements.

In 2002 the then Queensland Minister for Aboriginal and Torres Strait Islander Policy announced in State Parliament that:

> "the distribution of the welfare fund, which is currently $8.6 million, will be progressed next year, but that money will not be used for individual reparation payments. Consultations with Indigenous Queenslanders have already produced some valuable suggestions about what to do with the money, including an educational scholarship program; history kits for schools; an oral histories collection; monuments; and other projects that will acknowledge the contributions of Indigenous workers to the development of this state."[102]

In 2006, the Ministerial position remains:

> "For 2006-07, the government is considering a consultation process in relation to the strategic and operational use of the unspent funds from the Indigenous wages and savings reparation process and the Aborigines Welfare Fund." [103]

In 1993, the former Premier, the Hon Wayne Goss MLA, stated that a Board of Trustees to administer the Welfare Fund had been approved by Cabinet, and a program of consultation would start in 1994. These proposals were never implemented.

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[99] Op cit n 93.
[100] Hansard, 10 May 2006, the Hon. P. D. Beattie., Premier.
[101] Op cit n 84.
[102] Hansard, 16 May 2002, the Hon. J. C. Spence, Minister for Families and Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services.
[103] Op cit n 84.

One excuse for inaction is a "take me to you leader" mentality. It will never be that all Indigenous people agree on how to apply the monies. The same can be said for almost any issue of public importance. There is no uniformity of opinion on whether Australia should become a republic or whether Toowoomba should use recycled sewerage. The situation cries out for:

1. consultation with Indigenous people at a grass roots level; and
2. a thoughtful strategy to apply the monies in a way which will both recognise their historical origins and benefit Indigenous people.

As to the *first* point, the Consultancy Bureau investigation was short and preliminary; it aimed to see what information was available. The Report recommended that a number of further investigations be undertaken (see page 29 of the Report). Those recommendations have not been acted upon. To be accepted as genuine any inquiry ought be open and allow Indigenous people affected by the Protections Acts to tell their stories and give their vision on what should happen to the monies.

As to the *second* point, it is not the authors' place to determine how the monies should be used. That should properly come out of sincere consultation with the Indigenous people of the State. That said, the circumstances suggest that elements of any program for applying the remaining monies could include:

- provision of tangible restitution to surviving workers affected by the Protection Acts;
- provision of tangible recognition and benefits to the families of deceased workers;
- provision of a lasting constructive legacy to counter the socially destructive legacy of the Acts;
- programs to build wealth and social capital in Indigenous communities; and
- programs to contribute to public understanding and awareness of the significant contribution made by Indigenous people to Australian society and the economy under the work schemes.

Previous suggestions for the use of available monies have included:

- to benefit young Indigenous people, particularly in finding work and accessing education;
- to fund a memorial to the past;
- to establish an Indigenous museum in Queensland that presents Indigenous culture as alive and vibrant;
- to create an Indigenous run enterprise-promoting body in Queensland; and
- to develop a series of culture centres along the lines of the Maori centres in New Zealand which promote local community activity across the country and strong community networks.[104]

One further suggestion is provision of a Gold Health Care Card delivering private health care. This would not only provide something tangible and beneficial to the persons immediately affected by the scheme, but would benefit communities generally and reduce dependency on the public health system.

CONCLUDING SUBMISSION

It is hoped that by this Inquiry, the issue and legacy of "Stolen Wages" will be publicly recognised and addressed.

We urge the Senate committee:

- to honestly acknowledge past practices preliminary to addressing them;
- to tour major centres in all states and territories to listen to the voices and hear the stories of people who worked under the various protectionist schemes;
- to recommend that governments Australia-wide visit or revisit the issue of compensation to all those affected by the protectionist schemes;
- to recommend that governments Australia-wide find new ways to talk with and consult Indigenous Australians; and
- develop new ways to manage and administer Indigenous issues.

JEAN DALTON SC

Chambers

PATRICK HAY

Chambers

[104] Caxton Legal Centre Inc, *Aborigines Welfare Fund and Individual Accounts*, undated.