

5 October 2006

Ms Jackie Morris
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA VIC 2600

Dear Ms Morris,

RE: Stolen Wages

Please find attached the submission of the Victorian Aboriginal Legal Service Co-operative Limited in response to the Inquiry into Stolen Wages. If you have any queries please contact Greta Jubb (03 9419 3888 or gjubb@vals.org.au).

Yours faithfully

Victorian Aboriginal Legal Service Co-operative Limited

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VALS' submission to the Senate Legal and Constitutional Committee in response to the inquiry into Stolen wages – 29th September 2006

Thank you for the opportunity to comment on the inquiry into stolen wages. The Victorian Aboriginal Legal Service Co-operative Limited (VALS) is a member of the Wampan Wages: Victorian Stolen Wages Working group (wampan wages means pay back wages).

Parliament is to be congratulated for holding a Senate Inquiry into Stolen wages and extending the due date for written submissions. Similarly, congratulations are extended to the Queensland and New South Wales Governments for introducing models to ensure justice for Indigenous Australians denied wages, etc. Having said this, VALS believes that there is room for improvement with these models.

Allegations

It is alleged that:

- From 1900 to 1980s it was the practice of Australian State/Territory Governments to withhold wages and other payments from Indigenous Australians who were under the care and protection of the Government. Payments withheld included child endowment, pensions and soldiers entitlements.

For instance, VALS has anecdotal evidence that:

- A young male placed in an institution in the Bendigo region never received what he was told was his 'pocket money' (ie: child endowment).
- A young male went to war and upon returning home did not receive any land. The Aboriginal reserve where his mother was born (Coranderrk) was subsequently sold so that land could be given to non-Indigenous ex-servicemen.

According to the nephew of the now deceased serviceman "[t]his caused some anger amongst both Mum's family and other Indigenous families in the area. Coranderrk was considered a special place to many families (as they had strong ties to the place) and this was a real setback to many local Aboriginal people".

- The money was used as public revenue or disappeared through fraud or negligence and constituted mishandling of trust money.
- Indigenous Australians' fundamental human rights were violated when the wages/payments they were entitled to were withheld. The failure of current Governments to recognise and adopt responsibility for past injustices is a denial of Indigenous Australian's human rights.
- The disadvantage that Indigenous Australians experience today (ie: low socio-economic status that contributes to welfare dependency and the over-representation of Indigenous Australians in the criminal justice system) is a direct result of the practice of the Government withholding payment.
- The practice of stolen wages has implications in terms of economic, social, cultural, civil, political and historical (ie: link to dispossession and stolen generation) context of the issue of stolen wages.
- The silence of the Federal Government in terms of lack of a response to the issues of stolen wages is deafening, especially in the context of the following policies: mutual obligation/Shared Responsibility Agreement (SRA). The zeal towards SRAs is out of touch in the face of historical justices. Economic policy development should not be devoid of context
- This silence is embarrassing in the International arena (ie: in light of the Declaration on the Rights of Indigenous peoples).

Potential of the Inquiry

The Senate Legal and Constitutional Committee should not take the mandate to inquire into the issue of stolen wages lightly and understand the enormity of the task. The Indigenous Australian community has high expectations about the Inquiry as the Inquiry has the potential to be a catalyst for:

- Revealing if it was Government practice to deny Indigenous Australians in Victoria their wages/entitlements.
- Revealing if the above practice did take place, to what extent it took place.
- If the above practice did take place, revealing how justice can be achieved for Indigenous Australians today.
- Giving the issue of stolen wages a national focus and media attention (recent attention has only been in Queensland and New South Wales).
- Advancing the cause of reconciliation.

How to meet Indigenous Australian's expectations

Ongoing High Level Consultation / Flexible Timeframe

In order to meet Indigenous Australian's expectations of the Inquiry the Committee should consult the Indigenous Australian community as much as possible. After all, Indigenous Australians have valuable knowledge that the Committee would benefit from learning. VALS acknowledges that consulting with Indigenous Australians in an appropriate manner will be a challenging task given the timelines the Committee is working under (ie: Report by 7 December 2006). VALS is concerned about the shortness of this timeframe and requests flexibility about the Reporting date if required.

VALS argues that benchmarks of appropriate consultation process with Indigenous Australians are:

- Accessible (ie: not just rely on written submissions which are arguably inaccessible forms of communication for many Indigenous Australians).
- Ensure that it is not necessary to have written a submission to be invited to a Public Hearing.
- Having Public Hearings in both metropolitan and regional areas in each State.
- Publicised widely.
- Acknowledge that Indigenous Australians may have experienced the practice of stolen wages, but do not know to call their experience 'stolen wages'.

Model

In the event that the Inquiry leads to the establishment of a fund to compensate Indigenous Australians the following best practice should be incorporated in the model:

- A statement acknowledging that Indigenous Australians are the traditional owners of the land and the ways they have contributed to the nation of Australia (ie: fight in wars). This statement may be included in a document such as a Constitution for the fund.
- A statement acknowledging past injustices in relation to the issue of stolen wages and an explicit apology from the Government, and/or even the employer.

- A commitment to partnership between Indigenous and non-Indigenous Australians.
- Indigenous Australians are appointed at a Management level and Indigenous Australian Governance models adopted.
- An Indigenous Australian Employment/Traineeship Strategy, particularly in relation to the panel that assesses applications.
- A Cultural Awareness Training Strategy which involves ongoing training not just a once off training event.
- A Communication Strategy.
- A Community Education Strategy for both the Indigenous and non-Indigenous Australian community (ie: about value of Indigenous Australians).
- An accessible feedback process.
- A free ongoing de-briefing process for those who make applications as traumatic memories will be relived through the process (ie: counseling, especially counseling provided by Indigenous Australians).
- A free ongoing financial planning process.
- An independent Evaluation process.
- No time limit to access the funds.
- In the event that a time limit is applied to access the funds Indigenous Australians should be consulted about the use of the excess funds. Such funds should be used to benefit the Indigenous Australian community.
- The funds should provide recompense/restitution in the following manner:
 - payment of exact amount of the wages the individual is entitled to (ie: award rate of wages, not a rate paid to Indigenous Australians that is less than the rate for non-Indigenous Australians doing the equivalent job);
 - Adjustment of the wages to the current value of money;
 - Interest;
 - Superannuation;

- Compensation which includes payment of money in acknowledgement of the pain and suffering caused by the withholding of wages;
 - Adequate funds, as opposed to token funds; and
 - Funds provided to descendants of deceased.
- There should be no mutual obligation requirements or ties attached to the money (ie: children are to be sent to school, the money is not to be spent on alcohol, no public comment can be made etc).
 - A simple and accessible application process that is not bureaucratic or barriers.
 - Free assistance during the application process (ie: advocates to assist with the process, toll free phone number).
 - Accessible locations of offices and where this is not possible, outreach is performed.
 - Place the onus on the Government to prove that people did receive payment, rather than require individuals to prove that they did not receive payment.
 - Establish an avenue for non-Indigenous Australian employers to make admissions that they were aware that payments were denied to their non-Indigenous Australian employees (ie: a formal register). This will streamline the process as the investigation process will not need to be as stringent.
 - If the onus is on Indigenous Australians to prove their entitlement then there should be a culturally sensitive process. For instance, a flexible process that gives due consideration to oral evidence and does not contain prejudices in favour of written evidence which is a western value.
 - A low threshold of proof required to prove the merit of the application given that documents that prove the practice of stolen wages have been lost or even deliberately destroyed.
 - A potential source of the funds could be revenue raising (ie: along lines of the proposed levy in response to the Ansett collapse).