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STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Indigenous workers whose paid labour was controlled by government

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

Wednesday, 25 October 2006

Members: Senator Payne (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Brandis, Kirk, Ludwig, Scullion and Trood

Substitute members: Senator Moore for Senator Ludwig

Participating members: Senators Allison, Barnett, Bernardi, Bob Brown, George Campbell, Carr, Chapman, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fierravanti-Wells, Fifield, Heffernan, Hogg, Humphries, Hurley, Johnston, Joyce, Lightfoot, Lundy, Ian Macdonald, Mason, McGauran, McLucas, Milne, Murray, Nettle, Parry, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Bartlett, Brandis, Crossin, Moore, Payne, Siewert, Trood and Webber

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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Committee met at 9.05 am

CHAIR (Senator Payne)—Good morning, ladies and gentlemen, and welcome to this hearing of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into Indigenous workers whose paid labour was controlled by government—or, as it has come to be known, the stolen wages inquiry. The inquiry was referred to the committee by the Senate on 13 June 2006 for report by 7 December 2006. The inquiry will consider, amongst other things, the approximate number of Indigenous workers in each state and territory whose paid labour was controlled by government; the measures taken to safeguard Indigenous workers from abuses; what trust funds were established from Indigenous earnings, entitlements and enterprise; and commitments by state and territory governments to quantify wages, savings and entitlements missing or misappropriated under official management of Indigenous moneys.

The committee has received 113 submissions for this inquiry. All of those submissions have been authorised for publication and are available on the committee's website. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is, indeed, unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

The committee does prefer that all evidence is given in public. But, under the resolutions of the Senate, witnesses do have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer with regard to the ground which is claimed. If the committee does determine to insist on an answer, a witness may request that the answer is given in camera. Such a request may of course also be made at any other time.

The committee has given permission for today's proceedings to be filmed by the *7.30 Report*. We have also given permission for some other members of the media to be present in the room today. I would ask that those members of the media who are present in the room respect the proceedings of the committee and the sensitivities and presence of the witnesses in so recording the proceedings.

[9.08 am]

KIDD, Dr Rosalind Mary, Private capacity

CHAIR—Welcome. Do you wish to give any additional details to your appearance here today?

Dr Kidd—I am here to speak about the evidence particularly in Queensland on the stolen wages.

CHAIR—Dr Kidd has lodged a submission with our committee, which we have numbered 49. Do you need to make any amendments or alterations to that submission?

Dr Kidd—Not that I am aware of.

CHAIR—Please make an opening statement to the committee and then we will go to questions from members.

Dr Kidd—I would start by acknowledging the traditional owners of this country but also the elders who are here today and those who are not present but who have been very much affected by the stolen wages. I would like to thank Andrew Bartlett for his work in getting this committee of inquiry established and for his energetic pursuit of information, particularly in Queensland but in other states as well.

It is my view that the stolen wages, which of course I know mostly from the Queensland evidence, are definitely a national issue; that the labour of Aboriginal people in every state was controlled by the governments. Their wages in most cases were taken into trust by governments—and I include the Commonwealth government, which controlled the Northern Territory from 1911 to 1978.

What I have learned from the intensive research into records here in Queensland shows the questions that I would urge the committee to keep in mind when they come across gaps in material that has been produced so far for the other states. With regard to the way that Queensland controlled the trust funds, the labour, the child endowment and workers compensation, from my brief look at other states, it looks very much like those same patterns were followed in the other states. As you will see from the submission, my writings on the other states have relied on just a few texts which I had time to look at. There will be other evidence. I think more evidence has already been received in submissions since I put mine in. So if there are errors or further material for the other states, I would urge the committee to keep that in mind.

I see this inquiry as a watershed at the moment in our battle for stolen wages. I think we need to take on board the controls of Aboriginal labour and the confiscation of Aboriginal earnings and entitlements. In coming to a new understanding of how we see ourselves as a nation, we need to understand the critical role of Aboriginal labour in the industrial development of Australia. I think how we respond now that this issue has become public, not only nationally but internationally, will be a major indication of our maturity as a nation. We should be past the point of merely going into denial that these things happened. We should be big enough to make some sort of proper acknowledgement of the level of not only labour but financial confiscation and also to make proper reparations.

I note that our Prime Minister recently made the second of a huge multimillion dollar offer to assist farmers who are undergoing terrible circumstances in the drought, and I have absolutely all sympathy for the farmers. But if the \$500 million, which I think was the second part of the offer, had arisen in terms of stolen wages, I can imagine that the governments might well have been saying: ‘Well, this is taxpayers’ money; we can’t afford to pay that sort of money. We would have to start sacking teachers and nurses.’ This has been said before for Queensland. So I guess when we are speaking about sums of money, we should keep it in the context of what can easily be found for other things that do need addressing.

CHAIR—Thank you very much, Dr Kidd, for your submission. Courtesy of Senator Bartlett, I am also in possession of one of your books. Thank you for the opportunity to examine that. Let me start with a couple of brief questions. Given your experience in the matter and particularly the experience you had in the process of the Palm Island case before the then Human Rights Commission—I think that is what it was called—could you perhaps describe for the committee from your perspective what the challenges are if you are an Indigenous Australian who wants to pursue legal or other action for wages that are owed?

Dr Kidd—Speaking mainly for Queensland—but, as I say, it seems to be the same situation in the other states and the Northern Territory—the main difficulty for an Aboriginal person pursuing money which is their own is the matter of documentary evidence. Our courts quite naturally rely and privilege documentary evidence above oral testimony, it would seem, and everybody who was caught up in this system was not given documents. In fact, in the Queensland case, people did not get any evidence of what was even in their bank

accounts until about 1968, despite frequent recommendations by auditors and internal inquiries that people be allowed to see what was being done with their money, as a way of minimising the fraud that the government knew was happening.

So, if you were an Aboriginal person and you were sent out to work, often for decades, you did not even know what wage you had been contracted for. You signed a contract, but many people were not able to understand contracts because they had never been given the education to do so. You had no idea, in Queensland for instance, that the government was taking levies out of your wage. You had no idea that an employer might be, by law, supposed to pay you a percentage of your wage in your hand, because most people, we know and the government knew, did not get that.

You went to a police protector or to your superintendent on a mission or settlement and said, 'I'd like to get some money to buy a pair of trousers or to buy some food for my child.' That official could often refuse you and did often refuse you. The files are full of these letters of request, and many of those letters saying, 'This man cannot have this money,' would have written in pencil at the bottom a balance in the savings account, which could be the equivalent of several thousand dollars.

By the time you get to the current day and you begin to learn about the system, which I think most people only learnt about since I did my research and started writing about it, and you seek to perhaps find out what your situation was or the situation of your parents and grandparents, all you can do is apply to the department and say, 'Have you got my records?' In many cases the department will say, 'No, we've lost them,' and that is seemingly the end of it.

That is why, as you will see from my book, I have been working on in the last 18 months reversing that onus of proof. My view was to say that the government in its close and comprehensive handling of Aboriginal moneys was a banker—there is no doubt it was the banker for those moneys—and that it should have legal duties as a banker. The knowledge we have of the banking mismanagement of government is that it was not only negligence and refusal to implement basic safeguards that were recommended but also misappropriation of the money itself, which frequently its own officers complained about.

I think that is where the focus should be. It is up to a government to account for its management. It should not be up to an individual to rely on a few scraps of paper which may have survived. We know that one-third of the people who applied for the recent Beattie offer were turned down because the government did not have their paperwork anymore. It is not people's fault if the government has lost their paperwork. They were never given it, and if the government does not have it now that should not be yet another loss. It should not be a denial of justice on top of a denial of wages.

CHAIR—We have the Queensland government coming later this afternoon—and I appreciate the point that you make. I suppose from my reading and preparation for this inquiry and this hearing it is hard to see where a government is actually going to go to deal with this in light of the observations you make about missing documentation and things like that. I understand the reception of the so-called Beattie offer was not a particularly positive one from those to whom it was supposed to apply in many cases.

Dr Kidd—No, certainly it was not. The idea is of paying \$2,000 to people who were under 50 or \$4,000 to people older than 50 as full and final reparations for moneys that might have gone—their own moneys that were lost over decades. This includes child endowment, which we know was misused for capital works. This includes pensions, about which even before they became available in 1959 the government said, 'How can we divert these to revenue?' In 1974 I think the government's own paperwork was saying how many hundreds of thousands of dollars that they have managed to divert to revenue overall. So you need to be very cautious of the government saying that it cannot find records. For people to be expected to take \$4,000 as final payment—which it would be if the government demanded an indemnity, which it did—means you have nowhere else to go if you have signed off on that money.

CHAIR—It sounds to me from what you were saying just then that, although a government, and I do not make any reference to a specific government, may say, 'We don't have records pertaining to individual people'—say, to Marise Payne—'or money of theirs that they might be owed,' you say that it is probably possible through the other flows of funds through government to track whether revenue was sent, how it was diverted and what was done with it, which would give some indication at least in terms of volume and quantum.

Dr Kidd—Absolutely. When I did my research—I do not have any accounting background—

CHAIR—That makes two of us.

Dr Kidd—You can do a lot with a calculator.

CHAIR—Yes, although usually mine ends up the wrong way, but that is neither here nor there.

Dr Kidd—You just do your sums. For instance, the under-award wages, which was that period between 1975 and 1986—it was illegal to underpay after 1975. The government discussed this; the government was told it at the highest level of legal advice. The Queensland government discussed this in cabinet: ‘We know we are breaking state law and we know we are breaching federal law; let’s keep going.’

In that period, which is definitely within this stolen wages inquiry—it is money that people still have not got. It was not easy and it took time to work out how many employees on settlements in each of those years. I took a standard award wage—I do not know whether it was general labour or whatever I took at the time; I think the union movement gave me that—and I found on all the documents how much wage was being paid. You just do your sums. You say, ‘Well, X amount of people by X amount of missing dollars.’ I think the amount came in today’s terms to about \$180 million.

The government did make out a payout—it was basically forced into a corner to do so. There was \$40 million paid to people who claimed it, in lump sums of \$7,000, and even at that time the government knew that many people had lost far more than that \$7,000. So, yes, one of the things I would urge perhaps the committee to look at recommending is a forensic audit, even for Queensland and for New South Wales, where there is a multitude of paper. They do not have to start looking for anything else. The government here has been collecting material since about 1995. As Beattie said, he spent \$1½ million and they are collecting this to defend themselves against actions by the people they were supposed to protect and whose money they have lost. But that is what he said to parliament. So that could certainly be done.

Senator TROOD—Thank you for coming, Dr Kidd. I have a question in relation to your research. When you were doing your research into the Queensland files, did you look at or get access to any of the financial records that might provide us with this information?

Dr Kidd—The administrative records, which I looked through, are full of finances, because controlling people’s money was one of the major focuses of controlling people. There is no doubt about it. So all of the material in my book, if you get a chance just to flick through the figures in it, is available on the administrative files. I did not go into the files that are retained by Treasury, for instance, which would have another dimension, but the finances of the department, the budgeting of the department, is all on files that I looked at.

When I did my research I was just seeking to understand what system we had in Queensland in the 20th century, and that included running missions and treatment of women and the whole spread, so I had no particular financial focus. That was just part of what came through. But it is an area I have focused more on because, after the stolen generation cases and the reaction to the *Bringing them home* report, I thought there has been a massive injustice here and perhaps the finances might provide an area where there was not room for governments to say, ‘Well, we were trying our best.’ If you are discussing the fact that you probably should not be taking this money out of trust funds, there is no room to discuss whether you meant well or anything else. That is the only reason I have worked on the finances.

There is a mountain of information on the administrative files. Treasury files would have further information. I do not know what section of government over the period actually looks at budget but that would have further information. Even all those materials are in the department’s files—what I loosely call the Aboriginal department; it changed names over time.

Senator TROOD—So there is material that you have not looked at but which you think would probably provide information on the paper trail that would be necessary to affirm these entitlements.

Dr Kidd—All of the material I talk about in the book, which is very much financially focused as well as legal, I could identify on a file—assuming it is still there. There was one very significant file that I looked at in 1990 when I did my research. I made many photocopies. It was all around under-award wages. It covered a period of probably 30 years. It occurred to me a year or two ago that, if I went back and had a look, whether there would be other aspects of that that never stood out to me at the time. On the department’s website, that file now charts one year only. I have no idea what has happened to the rest of it. I suspect most of it will be in Crown law because any government department can ask for material back from archives and then say it is subject to whatever it is—legal investigation or something like that—and nobody else can get it.

Senator CROSSIN—I also want to start, Dr Kidd, by paying my respects to the traditional owners of this land and recognise so many people who have come here today. I also want to take this opportunity—I have

read your book and it is a great piece of research over many, many years, you deserve to be publicly acknowledged for probably throwing your whole life into getting some recognition of this issue.

I come from the Northern Territory and so in the lead-up to this inquiry I have been trying to get a bit of a handle on what might have happened in the Northern Territory. I know that is not an area you have closely looked at but it would seem that there are two sorts of stolen wages here; money that was actually government moneys in terms of child endowment or superannuation payments, but also moneys from the private sector. I am thinking about the Indigenous people at, say, Kalkarindji, involved in the Vestey's meatworks walk-off. In my mind I am trying to work out if, in fact, there are two categories. Has your research confirmed that—that is, wages you would need to recover from private sector business, which will be a lot harder to do now because, for example, Vestey's does not exist any more, and wages that were held by a State or Territory government?

Dr Kidd—Yes, there are the two categories of entitlement for people. What I have looked at though is the person themselves and said, 'There is no division of money which is legally for that person and should be in their pocket.' It is their money and that is what I am looking for. Some of it certainly came from Commonwealth entitlements, child endowment, pensions et cetera, workers compensation, I am not sure how that works, it is through a state board, I think, and there is the private money. But when you say the difficulty of getting the private money back, my focus has been on government responsibility and I use the term to encompass the Commonwealth government in the Northern Territory for instance. Whatever government has control of wards of state, they are the guardian of those wards of state and I think you will find all the legislation sets them up precisely to take control to protect Aboriginal interests.

So, for me, that is where the focus of responsibility—legal liability lies. It is with the government whose duty it was to protect those interests and the government which, in undertaking that duty, decided it would control every aspect of an Aboriginal person's life. It would send them to work, it would set the contracts, it would set the wage rates. It had a legal duty even in the Northern Territory to pursue moneys that were not paid. If you contract somebody out to work, you are legally in charge of what that person goes through in their working period because, as a government, you are their guardian.

So this is where I am focusing on the negligence of governments in allowing people to be constantly cheated of their money, in knowing that they were being constantly cheated. In most cases, they have no idea whether they were paid at all and they have not done anything about it. I think there is a legal liability to do that rather than for people to be pursuing the money from Vestey's. If Vestey's was contracting people under the imprimatur of government controls and Vestey's was not bothering to pay people, then the government was allowing Vestey's to get away with that. That is the position I take. I am looking at the fact that people were controlled, who was controlling them and what were their legal responsibilities in undertaking that control.

Senator CROSSIN—You suggest we should at least recommend a forensic audit be undertaken in Queensland and New South Wales. Would you see those two states as being the start? What sort of resources would be needed to actually try and sort through some of these files?

Dr Kidd—In terms of being the start, I know New South Wales now has compiled a lot of research. On the other hand, Western Australia, I believe, has a massive archive already put together for people over there. It depends what sort of spillover effect you would have. I only mentioned Queensland because we do have the material here. The government has been accumulating it. The legal service here, QAILSS, was accumulating material for many years as well. That could be a representative search of how government controls operated and at which points that money was lost. If that were just representative for what you would need to try and uncover for other states, then that would be useful.

In fact, each state and the Northern Territory ran a system, and I guess it is actually their responsibility to explain what they did with all this money. Why hasn't it ended up in Aboriginal pockets? Hundreds of thousands of Aboriginal people worked across Australia across all of the 20th century, and somebody else got their money. That is why there is poverty. It is quite simple. Think about your grandfather's generation and your father's generation. If none of those people had ever got their money in their pocket beyond not even enough to live on, you would think somebody should be made accountable for where that money went.

Senator CROSSIN—I understand the current Queensland government have made an offer. That surely must be some recognition that they accept responsibility for this.

Dr Kidd—Yes, they admitted that was a painful system and that there was suffering and things like that. That would have been all right if there had been an honest and equitable attempt at reparations, but to say to a

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

My own belief is that because of the exposure over the years of their own material, which is all that I am doing—I only write about the government's own material—the government were trying to head off a disaster. I think in being so mean-spirited they have created a bigger disaster. They said: 'There is \$4,000, but you have to sign away all your legal rights under any aspect of the protection legislation. There is \$4,000 but, if you happen to be dead on the day that we made the offer in May 2002, you do not qualify. There is \$4,000, but it is only if we have found the records, and we have lost so many records we really do not know what has happened.' This is a constant line they use, and I think my material puts the lie to it.

I think it was an atrocious abuse of a possibility to actually do something useful. If the government had, for instance, not demanded the indemnity and had said, 'Here's \$4,000 as a token of our sorrow about what you have suffered,' then it would have been honourable. In fact, it was just a stupid political decision, because many people would not even have thought about litigation if they had not been so insulted by the way they made the offer. I really believe many people would have said, 'Okay, it's not enough, but you haven't stripped us of our dignity in saying we are only worth \$4,000.' That is my understanding.

Senator CROSSIN—I suppose the point I am trying to make is that at least there has been an acceptance that this occurred. Sometimes with governments you do not even get to that first barrier, do you? Some governments just flatly refuse to admit that it ever occurred or that they ever had any responsibility in relation to the situation. I suppose the threshold point is that there has been an acceptance that there was some wrongdoing. What we are now disputing is how just that settlement is.

Dr Kidd—With respect, I have been through over 100 years of the government's material. I started with material from about 1840. I have seen the way they operate and I have seen what happens when you get a pile-up of negative publicity. I have seen their own discussions on how to hose it down. To be honest, that is all I think they were doing. I think that, if my material had not come out, they would never have made an offer at all. I think they were backed into a public position and they have sought to get their way out of it as best they can. I really believe that is the only reason the offer was made.

Senator BARTLETT—I want to touch on the issue of the maternity allowance, child endowment, pensions and that sort of thing. It seems that—certainly in Queensland but, from at least your initial examination, it appears to be fairly similar in a number of states—state governments, as is their wont, thought: 'This is some money we can get from the Commonwealth and use to offset money we would otherwise spend.' The idea is basically to take the money and reduce the amount of expenditure on infrastructure or whatever by the same amount. Do you think the Commonwealth was aware of that at the time or became aware of it over time? It is usually something Commonwealth governments of all persuasions get rather irritable about. I presume they all got as irritable about it 40 years ago as they do now.

Dr Kidd—I believe they were aware of it. It would appear that in both the Western Australian government and the Northern Territory department's section the Commonwealth government was concerned about endowment being wrongly used. One of the researchers I worked with—and this is in the submission—said that the Commonwealth had queried the fact that in Western Australia the endowment was going directly to pastoral managers in many cases and to the missions as a bulk endowment. They said there is absolutely no way of knowing whether any of that money was actually spent on the children.

In Queensland I have not passed material charting a Commonwealth government concern about what the Queensland government was doing. I have no doubt there must be paperwork between the state and the federal government on that issue. I do know that at one point with the Palm Island endowment they were saying, 'We've got that much money we don't know what to do with it.' That was the phrase that was used. They said their main concern was what the Commonwealth might do if it found out they were holding that money. To me, that said quite clearly that they knew—

Senator BARTLETT—Was that the Queensland state protector making that statement or the Palm Island administrator?

Dr Kidd—It was said at a meeting with the director of the department. I think the minister was there at that meeting. It will be in *Trustees on trial*. Certainly the superintendents were talking about how much money they had up their sleeves for Palm Island that they had not spent.

But the other part too, Andrew, is that, for me, the Commonwealth government, in distributing endowment and pensions, was distributing taxpayers' money. There should have been procedures in place to ensure that the states distributed the money. Most of them, as far as I can see, asked to receive that money in bulk and distribute it. It was the Commonwealth government's duty to make sure that the states were not misusing that endowment. I do not know what procedures they had in place and how much they had suspicions, but I would have thought it was their duty to follow that through and make sure it was not being misused.

Senator BARTLETT—Taking at face value for the moment all of what you have said—which I think is not an unreasonable thing to do—obviously there is growing talk about legal action. As the chair mentioned earlier, you had that experience with the Palm Island case, which was much more recent and much more clear-cut in terms of breach of federal law. There was lots of handy documentation of advice from Crown law at a state level saying, 'We know this is illegal.' Despite what would seem to be cut and dried, absolute gotcha type of evidence, it still took, as I understand it, 10 years across different governments.

Dr Kidd—It was.

Senator BARTLETT—There were appeals through to the Federal Court and even then there was probably not as full a resolution as you would think would meet the standards of justice. Given that—and there are lawyers next to you who may be able to answer this better—what are we looking at if people are seriously thinking of going down this pathway? If their claims are for things that happened further in the past, with weaker records and, one would guess, a similar level of government intransigence, how long would it take and what sort of trauma would be involved? From my reading, you were targeted a fair bit yourself in the Palm Island case, and that would be less than what I imagine the people whose entitlements were at stake would have gone through. That is probably a bit of thinking aloud, but do you see there being really no other option? What other options can we take to avoid going down that path?

Dr Kidd—It would be nice to think that the governments, on reading the sort of stuff I have written—and certainly similar things can be written with the other states—in each state, the Commonwealth and the Northern Territory would say: 'Yes, we do see that this happened. We are a capitalist society. We did take money and you did not get it. You worked but it has never got through to you. We will make a reparation that you think would be reasonable.' My understanding is that most people are not asking for all of the money that they might totally be entitled to across generations. Most people seem to be suggesting that a single payment—whether it be \$40,000 or \$50,000, which is less than a year's wage for many people, would be sufficient. I do not believe, from all the work I have done in the Queensland government's material, that governments operate that way. I am cynical. I think it is pragmatic. My view is, that unless the government are forced to, they will make the least possible move that they can get away with. That is the way it is going to operate, and that is indeed what happened at Palm Island. Their hand was forced by the evidence that they fought to keep out, but I finally got in and they had to make some sort of payment.

Given the four years that have passed since the Beattie government's offer of May 2002, litigation is the only way we can apply pressure on governments. I would like to think that the Senate committee would apply pressure. I could see that happening perhaps in the wider aspect of informing the general public. If there is enough outrage in the general public, or even just understanding in the general public, which the Senate committee might be able to generate, that might pressure governments as well. I do not think governments are going to react without pressure against them. With litigation, I would assume we would get some way down the track until they are willing to speak properly and on equitable terms.

CHAIR—I am not sure that those people who are at the back of the room are able to hear all of the proceedings adequately, so I ask senators and Dr Kidd at this stage to please make sure you are speaking directly into the microphone. Not everybody had the benefit of hearing your question, Senator Bartlett.

Senator MOORE—I think we have established the fact that people know this is an issue and no-one can run away from that. What I am interested in is the current situation. You had this documentation and there has been a community campaign which has had its ups and downs for the last few years. What is the current situation in terms of discussion between the people who are pursuing some change and the Queensland government? Is there any dialogue? If so, what? In terms of the process, what is occurring now?

Dr Kidd—I am not privy to the latest of the dialogue. I think the Stolen Wages Working Group, which is appearing later today—

Senator MOORE—I will be asking the same question.

Dr Kidd—I know that the working group and representatives have tried constantly to set up a dialogue with various ministers. We have had a revolving chair of ministers here in Queensland. I think at one of the meetings they met with a new minister who said, ‘And what’s it all about?’ They have not been able to budge them, as I understand it. The government says, ‘Yes, let’s have a meeting, but the figure is final. There is no discussion on the figure. We may well discuss the fact that \$30 million-odd has not been allocated out of that \$55 million.’ My understanding is that the government will not listen to what the people are saying and the people are saying: ‘You promised that for stolen wages. You promised that to individuals who had been cheated of their money. That is where we want that residue to go.’ I believe the government is saying, ‘Actually, that is not what we have in mind.’ As far as I am concerned, it has been a dialogue with one party with their ears firmly closed.

Senator MOORE—Your submission is that you have been very careful not to offer any recommendations, which is unusual when witnesses come to such a hearing. I know that in response to other questions you have mentioned things you would like to have happen. If you could make a recommendation, what would your recommendation or recommendations be?

Dr Kidd—I guess I mainly suspect that the committee is not in a position to demand action. In not being able to demand action, I am thinking about what is going to happen if people say, ‘We’d like you to do this’ and governments say—well, what governments usually say. So I guess that is why I did not go down that path.

But what I would like the committee to do is two things. One is to work as hard as possible to uncover and to speak with people in the other states, outside of Sydney and Brisbane. I know there is a major financial restriction on that. But there are people in other states only just learning about it. I was talking on radio with ABC Darwin and people rang in and said that was the first they had ever heard of it. They are really excited, not in the sense of a getting a dollar back, but just saying, ‘Yes, that happened to me and that happened to my dad.’ It is validations for lifetimes which have been denied across generations. To the extent that the committee can open up this level of discussion right around Australia, that would be fantastic. I have forgotten what the second thing was.

Senator MOORE—You can come back to it.

Senator SIEWERT—I have a couple of questions and I will see how I go for time. You have done a really useful summary of the numbers at the back of your submission, because one of our terms of reference is about identifying the numbers involved. Given the various levels of documentation around Australia, how accurate do you think your summary of numbers here is?

Dr Kidd—It is a guesstimate. You have to forgive me, but I wrote this in a bit of a rush in July and a lot has happened since, but I think you will find that those figures occur earlier on for each state and would be sourced then to the writing. Most of the writings I used—in going to their references, they were using primary documents. So, no, it is just a suggestion and, I would say, probably hugely understated because you are looking at people sent out to work over a 70-year period. Many people were quite elderly when the system came in, or elderly in terms of an Aboriginal life span, and you are looking at a shorter life span, so you have to multiply across generations more so than you would for a white worker who was well fed, well housed, not overworked and not physically and sexually abused. So, if anything, I would say those numbers would be understated.

Senator SIEWERT—One of our terms of reference is also to look at what has happened overseas and you touch on that in your submission. I am just wondering what action has been taken to address these issues anywhere that we could look at as an example of what government has done as a response to this situation.

Dr Kidd—There are probably people that know a lot more about that than me. I know the Canadian case. There was a major reparations program suggested, I think, a year or two ago for children removed to what they call residential schools, and that was very similar to the removals here in Australia which separated children from their parents. Those payments are slightly different than stolen wages, but they were cash payments to recognise the pain of separation and how that wrecked people’s lives. There was also a major program of support, of counselling and of re-establishing families, so it did not just throw the least amount of dollars. It really tried to address the problem.

In terms of what I call stolen wages—well, it was not my word, but it is a very good label—both the Canadian and the United States governments have recognised that their federal governments, because it was federal governments that ran the programs, were legal trustees for money and property taken in trust. They do not question it. They questioned it prior to about the mid-1930s and it is in my book there. But since then they

have said, 'No, if you took that money into trust, you have the same trust liabilities as any other trustee, including the fiduciary duty,' which is that wider duty of care and responsibility as well.

In both of those jurisdictions, there have been successful cases against the government for people merely saying, 'We want an accounting of our money in the first instance. You are the trustee; you are supposed to have the records. You show how you have handled our money,' and that is how those have worked there.

Senator SIEWERT—So it has been up to individuals or groups of individuals, for example, to take action to recover moneys rather than the government recognising, as you have said, their responsibility, but they have not taken the step then as to how they would address that as a program. Is that right?

Dr Kidd—No. At this stage, my understanding of Canada is that the litigation has been by various tribes for their own tribal management. In the US at the moment there is the massive class action of 500,000 people, which includes 200,000 deceased account holders. They have won that action at every stage in the court. There is apparently about \$40 billion at stake. At this stage it is in the Senate, because the Senate has said with compound interest applying, that money is just increasing day by day. The Senate has demanded the Bush administration make a settlement suitable to the claimants and the Bush administration is still stalling, so that is where that sits. But I just have a lead claimant out here in Australia. She said, 'Everybody in the US knows about it.' In fact, apparently this case of individual Indian money—it is not tribal money—takes up 80 per cent of the department's time in trying to fight it. They have spend \$100 million trying to fight it and they have lost and they are still losing. So that is where that is.

There will be a settlement. She has been going for 10 years on her case. That is what I believe we will end up doing too. We will have to get some of the way down the track to force a settlement, because my understanding of governments—and I would love to be surprised about it—is that that is the only way they will actually do something equitable rather than just what suits them.

Senator WEBBER—In light of the time, I will try and keep this brief. But I want to place on record, particularly as I am from Western Australia, a thankyou for the documentation you have given us about what is happening in my home state, or what has happened. Some of us are aware of it, but I do not think there is a lot of national awareness of the significance of the issue. You have said in your earlier comments, and you say in your submission:

Records for Queensland and Western Australia suggest Commonwealth authorities knew of the misapplication of endowment and pensions ...

How widespread was that? Can we just say that that applied right across the board on the numbers you have given us?

Dr Kidd—As far as I remember the Western Australian bit, it was relating to the Kimberley. Was that where I started to talk about that?

Senator WEBBER—Yes.

Dr Kidd—That was Mary Ann Jebb's work. Her work is an absolutely fantastic resource and it is all based on primary records. She would have to be the one that would answer how widespread that was. But certainly that was a point I picked up, which was something in looking at government liabilities I was interested in terms of the Commonwealth.

Senator BRANDIS—I have two things. Dr Kidd, I read some of your very interesting book *Trustees on Trial*. You seem to rely—I am referring in particular to the conclusion and to some remarks you just made to my colleague Senator Webber—very heavily on Justice Finn's work about the fiduciary relationship between the state and people in the position of the Aboriginal people in question here. I do not know the answer to this but you might: how widespread is the acceptance of Justice Finn's thesis that there is a fiduciary obligation in the received sense from the state to people in the category of the Aboriginal people with whom we are concerned? Or is this merely a contestable legal principle?

Dr Kidd—There are two parts to that. I do not think there is, as far as I understand it, an accepted position in terms of the fiduciary duty between the states or between, let us say government, because—

Senator BRANDIS—When Justice Finn, then Professor Finn, gave the paper to which you refer at a conference down at QUT, I remember thinking at the time—this was about more than 10 years ago—that this was fairly path-breaking stuff. That is not to say it is wrong, but I just wonder how settled it is as a legal principle.

Dr Kidd—The other aspect of Justice Finn is that his name is all over all the other cases, internationally as well.

Senator BRANDIS—That is because he is the expert on fiduciary duty.

Dr Kidd—He is the expert. Given that he was regarded as the expert and that all the other judges—nationally and internationally—go to him, I figured that what he had to say was useful. I think you will find that in the conclusion I work more towards that statement—I think that is where you have picked that up—to reinforce the argument I made through the book and through the material to say that, in light of a fiduciary duty as it is accepted in case law—in all these other cases that I work through—there is a case that could be made in Australian law. You will notice that there is also that matter of fiduciary duty in those four recent cases where the High Court—and they were not relating to Aboriginal matters at all—has said, ‘We go down that fiduciary duty path only when there is an economic interest.’ Of course, that is what this is. In terms of Justice Finn saying he believes that could hold for governments which controlled Aboriginal lives, I guess I have used that at the conclusion as the icing on my staggering through all of that case law, much of which, as you will see, mentions Finn with great approval right through to saying, ‘Yes, he says that too.’

Senator BRANDIS—I think it is a very powerful argument. Did I hear correctly earlier that you thought the Queensland government had been dishonest in relation to this matter?

Dr Kidd—Which part of the matter?

Senator BRANDIS—I had just come in and you were answering some questions—I think it may have been to Senator Moore—and you talked about the state government.

Dr Kidd—Dishonest? Where do we start!

Senator BRANDIS—I want to invite you to elaborate—

Dr Kidd—I am not being flippant.

Senator BRANDIS—on the proposition in your own words—I do not want to put words in your mouth—about the honesty or otherwise of the state government in relation to this matter.

Dr Kidd—In looking at specifics, it is my view that, if you are acting illegally and know you are acting illegally, it is being dishonest if you are refusing to admit in public that that is indeed what you are doing. In terms of, say, the Palm Island inquiry, where their stand in 1996 was that there was no legal incumbency on them to be paying an award wage in that period, I thought that was illegal; I do not think I have ever used the word ‘dishonest’, but they are not very dissimilar. When the government is holding the legal advice that says, ‘You have absolutely no grounds to avoid paying an award wage’ and when the government has copies—

Senator BRANDIS—Just pausing there, how long ago was that legal advice?

Dr Kidd—The legal advice was given in 1979. It is in the book. In 1979, a worker from Yarrabah took action, supported by one of the unions—I have forgotten which, though it does not matter—saying, ‘It is illegal to underpay me because the Racial Discrimination Act says you cannot underpay me because I am an Aboriginal worker.’ The legal advice from senior counsel and the Crown Solicitor—

Senator BRANDIS—I am just having difficulty understanding that notion. Why would you need the Human Rights and Equal Opportunity Commission’s support? If there is a minimum wage, there is a minimum wage.

Dr Kidd—You should perhaps ask the government.

Senator BRANDIS—We will. It is not a discrimination question; it is an industrial relations question.

Dr Kidd—Yes, exactly.

Senator BRANDIS—If there is a minimum wage, there is a minimum wage and it should not matter whether you are black, white or green.

Dr Kidd—The minimum wage was something that government had always managed to ignore. They never paid it—did not bother—as you will see in the detail there. After the Racial Discrimination Act 1975—and that is why the human rights commission was triggered—it was illegal to underpay on the basis of race and it was at that point that several people on Palm Island, in 1986 as it happened, applied to the human rights commission and said: ‘We are being underpaid. Isn’t this a breach of the Racial Discrimination Act?’ For some reason, it was lost in bureaucracy and it was restarted in the mid-1990s again under the human rights commission to say that the Queensland government did not pay the legal rate of wages. My evidence was to

say, 'And here is the legal advice you had, knowing it was illegal.' My evidence provided several copies of cabinet discussions in the early 1980s where Queensland cabinet said, 'We know we are breaking state industrial law and we know we are in breach of the federal Racial Discrimination Act, but we will still keep underpaying people.' Now, if that is not dishonesty, I am not sure what is.

Senator BRANDIS—Is that still the position of the Queensland government? Has it moved on from that or is it still seeking to defend that position?

Dr Kidd—No. The findings in the human rights commission came down against it in late 1996. The Borbidge government said, 'We don't take any notice of human rights commission findings,' after the Brandy case. The people started action in the Federal Court and the government caved in and it made the payment. The suggested payment by the commission was \$7,000 for the discrimination, and the government offered to make that payment to anybody who had worked in that period. They ultimately paid out \$40 million, but many people, as the government well knew at the time, were owed far more than that.

Senator BRANDIS—Were those payments made without prejudice—in other words, without any concession of a liability to make them?

Dr Kidd—Yes. They were made without prejudice as far as I understand. They were also made conditional on signing away your legal rights. There were two people—

Senator BRANDIS—You would expect that if it was a settlement.

Dr Kidd—You expect that if the people concerned have their full records and know exactly what they are signing away, and the government knew people did not have this.

Senator BRANDIS—I see.

Dr Kidd—The government knows it in this recent offer as well.

Senator BRANDIS—All right. This is my last question. Are you aware of what the current legal advice is to the state government—how recently it was taken, who the author of it was and what it says?

Dr Kidd—No, I do not know. The last legal advice I heard about, which was in the late 1990s, suggested the government should be very, very worried about being found in breach of a fiduciary duty, that they should be very much concerned with the US class action which had made exactly that finding against the government.

Senator BRANDIS—You have not seen that advice, but you have heard about it?

Dr Kidd—It was leaked to the newspapers in the late 1990s. It is in the book there somewhere. You would probably be able to trace it in the *Courier-Mail*.

Senator BRANDIS—All right. We will ask the state government about that. Thank you, Dr Kidd.

CHAIR—Thank you very much. Dr Kidd, on behalf of the committee may I thank you very much for your submission and the material that you have provided to the committee today, and most particularly for your appearance here this morning. It has been of great assistance to the committee. We have enjoyed having the opportunity to discuss these issues with you.

[10.02 am]

HAY, Mr Patrick David, Counsel instructed by QPILCH, Queensland Public Interest Law Clearing House Inc.

WOODYATT, Mr Anthony Hamilton, Coordinator, Queensland Public Interest Law Clearing House Inc.

CHAIR—Welcome. The Queensland Public Interest Law Clearing House has lodged a submission with the committee which we have numbered 50. Thank you very much for that. Do you need to make any amendments or alterations to your submission?

Mr Hay—I do not believe so.

CHAIR—Thank you. I am going to invite you to make a brief opening statement in relation to your submission. We will go to questions at the conclusion of that.

Mr Hay—Thank you. I intend to use the brief time available to outline some of the key points in QPILCH's submission. Before I do that, I pass on the apologies of my co-author of the submission, Jean Dalton SC, who has commitments to the court today and is unable to be here.

CHAIR—Thank you.

Mr Hay—On behalf of QPILCH I thank the Senate for taking an interest—a vital interest—in this issue. It is very positive that the inquiry has been established on a national level and has nonetheless taken the time to visit Queensland. QPILCH's interest arises from the fact that it has over the years had approaches from numerous members of the Indigenous community seeking assistance to obtain justice on this issue. It is not our intention to pass comment on any individual case or to enter the political fray, but it is felt that, as a legal organisation that has had some approaches, we can make some contribution to assist this inquiry.

The submission provides a historical snapshot of the terms and operations of the laws as they were in Queensland. Unfortunately I do not have the encyclopaedic knowledge that Dr Kidd has of the history in Queensland. A lot of the sources for our submission were secondary sources, such as research done by Dr Kidd and other papers such as the consultancy bureau report in 1991.

The submission commences by briefly outlining the laws in Queensland, commencing with the Aboriginals Protection and Restriction of the Sale of Opium Act 1897. This was the first of what I refer to generally as the protectionist, or protection, acts under which the wages of Indigenous persons in Queensland, earned through their own labour, were paid to—and placed under the management of—protectors, as they were referred to. The protectors were most often local police or other government officials throughout Queensland.

In the early 1900s regulations to the legislation provided that most—and in some cases as much as 75 per cent—of a worker's wages would be paid to the protector, with the remainder being kept by the employer to be paid out as pocket money. The moneys paid to protectors was initially to be paid into and kept in individual trust accounts administered by the protectors. Even the 1897 act required the protectors to keep proper records and accounts of all moneys and other property that they received under the act. Fraudulent dealings with the workers' moneys became a recognised issue in the early 1900s. Dr Kidd in her research has referred to instances as early as in 1919 when the issue of fraud was raised in state parliament.

Amendments were made to the act in 1934 to give the government more specific powers to investigate complaints of ill-treatment under the acts. It is not clear whether any practical measures in Queensland were taken to prevent fraud or to investigate complaints. The system was continued and developed under the Aboriginals preservation and protection acts 1939 to 1964. These acts also expressly referred to and used the terms of trust—that is, moneys were to be paid to the protectors and held as trust funds. Not only did these acts expressly provide for the establishment of the trust funds; they obliged the protectors to keep proper records and accounts of all moneys received by them under the acts.

There were very few measures in the legislation to ensure independent supervision of the practices under the act. The office of Director of Native Affairs was created under these acts and the director had power to investigate complaints, as could visiting justices of the peace. However, I think it is evident that these measures were either not implemented or ineffective at preventing fraud. Regulations to the 1939 act are a good example of the basic operation of the scheme in Queensland. I have cited regulation 12 at page 7 of the submission. You will see the emphasis that I have drawn in regulation 12 to the focus of this legislation, specifically providing for trust funds and providing for circumstances under which these moneys were to be

administered as trust funds. In fact, bank passbooks were issued to each worker—of course, they were held and administered by the protectors and government officials.

Under the regulations to the 1939 act, it was also in fact an offence for an Indigenous person to refuse to work under this system. The same basic framework, though with some administrative changes, was continued under the Aboriginal and Torres Strait Islanders Affairs Act 1965. The regulations to this act also provided for the establishment of such trust funds that were necessary or desirable for the management and control of Indigenous workers.

The act again referred to the creation and maintenance of trust funds, in those very terms. The system continued under the Aborigines Act 1971, but came to an end under the Community Services (Aborigines) Act in 1984. When I say that they came to an end, I mean to say that the confiscation of wages and other moneys under the acts was wound up pursuant to the 1984 legislation. Nevertheless, the act continued the management of existing funds in the same manner as had been provided for in previous acts.

Virtually all the legislation then, and the regulations, referred to the funds as trust funds, and the moneys were to be administered and accounted for accordingly. In 1991 the Queensland government commissioned a report by the Consultancy Bureau which identified not only widespread fraud in relation to the funds but a wholesale failure to keep proper records and accounts of the wages paid to the government by Indigenous workers throughout the history of the legislation. It appears then that the very basic requirements of the legislation for the accounting of these funds was not followed by the government throughout most if not the entire life of the protection acts.

Some of the changes in the legislation are notable. Up until 1933 there had been a system of individual savings accounts for each Indigenous worker. As I said, a bankbook was issued in respect of those accounts. In 1933, these accounts were amalgamated into a single fund called the Queensland Aboriginal Account. That was centrally administered from Brisbane. It is not known publicly—certainly not that I am aware of—whether the records for this account are complete, and there has never been, to my knowledge, a thorough investigation of the records of the Queensland Aboriginal Account.

The 1939 act provided for the creation of the Aborigines Welfare Fund. This was a separate fund for the general benefit of Aborigines, supposedly. The fund was in fact established in 1943. It was started with the transfer of funds from an earlier separate fund called the Provident Fund and then received income after that from a variety of sources. In addition to a percentage of the wages that were taken from Indigenous people, a major source of funds was the interest earned on the Queensland Aboriginal Account itself. The welfare fund also received funds from retail stores operated in Indigenous communities and from the deceased estates of workers who had died intestate.

In 1991 the report by the Consultancy Bureau made a number of findings. I have outlined or summarised the findings in my submission, so I will not go over those in great detail. We think that it is the responsibility of the Queensland government to account for and repay the wages taken from those people—at least, those people who are still alive—who worked under the acts. Whilst I make no particular comment and I wish to be careful not to make any comment that could in any way influence cases that may be brought in the future, I think I can say generally that the circumstances give rise to at least fairly contestable claims for breach of trust and breach of fiduciary duty by the Queensland government. This is a matter of equity—or, should I say, inequity—brought about by the confiscation of the moneys in the first place and then the failure to hold them in accordance with the legislation.

The wages and the other moneys extracted under the protection acts was not the government money; it was money that was taken from a very vulnerable, if not the most vulnerable, sector of the community, from people who were sometimes minors—that is, children—and who were very often illiterate. They were very vulnerable people. The money was taken under the pretence and express statements in the legislation that it would be held on trust for them and their benefit. On the other hand, the state government exercised or had the power to exercise complete control over the administration of the accounts. Under its control, records were either not kept or those records that were kept seem to have been destroyed. People were defrauded of their moneys and, from time to time, the moneys were expended on projects that were properly projects for general government revenue. The trust fund should not have been applied to general projects that were not particularly for the benefit of the Indigenous people whose money it was.

Any worker, Indigenous or otherwise, would expect that if their wages were to be taken by the government and held on trust that the trust would be administered faithfully and for their benefit. In that sense, and as lawyers, we see the situation as an equity issue that would not be accepted in any other sector of the

community. We think there is a considerable and contestable argument that affected workers are entitled to seek a full accounting from the Queensland government. I understand that there is conjecture about that, but there is yet to be a case brought before the courts, to my knowledge, in any Australian state or territory relating to this issue. It is certainly unprecedented that a case of this type has come before the courts involving widespread governmental abuse in the face of legislation that made it expressly clear that the moneys were to be held in trust. The fact that the scheme had such features like individual bankbooks also strongly supports an argument that there was an intention in this legislation for a true trust fund to operate.

Therefore we think that at minimum the state government in Queensland has a duty to account either pursuant to trust obligations or to a general fiduciary obligation. The duty to account has some potentially far-reaching significance for the Queensland government, I would suggest—that is, if the Queensland government is liable at law to provide an accounting to an Indigenous worker for the funds that were taken from them, in that sense, the obligation and the onus is on the government to provide a full accounting. The significance of this in evidentiary and cost terms is that the government will be forced to conduct a full investigation of its records potentially in respect of every individual who wishes to bring a claim and is found to be entitled, so there is potentially a massive task for the Queensland government if this issue continues to be ignored.

CHAIR—Mr Hay, we need to have some time to ask you questions and we are fast running out of that.

Mr Hay—Certainly. I will very briefly address the present day position. There has been an offer from the Queensland government of between \$2,000 and \$4,000. This represents between about five per cent to 11 per cent of the average wage at the time the offer was made. Dr Kidd has already pointed out that that is seen by many simply to be an insult. We urge the senators to listen to what the Indigenous witnesses before this committee have to say and to engage with their parliamentary colleagues in the state parliaments because the situation cries out for—and this is the basis for our recommendations in the submission—a proper consultation process with the Indigenous community and a practical decision to be made for the allocation of moneys that are existing from the welfare fund and left over from the government's compensation fund. As I understand it, that is about \$45 million but the government would have the figures on that. I am happy to answer questions.

Senator CROSSIN—Mr Hay, I understand there are about 30 individuals who have sought further advice in respect of the Queensland government's offer. Have any of those individuals looked at an actual amount for the just and fair payment that would be due to them? Can we take one example of someone who, say, with your help or with someone else's help has done the sums, so to speak?

Mr Hay—I do not believe so. I am not able to say what has happened in those 30 cases. The great difficulty facing any potential claimant, of course, is that the government holds all the records. The records are incomplete and would have to be reviewed extensively for that particular individual in order to come to any appreciation of how much is owed to that individual. As I say, if the government has a duty to account, it is the government's job to conduct that review.

Senator CROSSIN—So we are not aware if anyone has requested the government to do that? I guess where I am coming from is that I am just trying to work out an amount. Four thousand dollars seems incredibly inaccurate, and unfair, but what is the average amount? Has some person X actually said, 'When I get my paperwork and work out what I was owed, it is really \$65,000,' for example? Do you have any idea of the difference we might be talking about here?

Mr Woodyatt—We do not. As Patrick mentioned earlier, there have been a couple of cases that have commenced that have started the process of trying to ask for an account from the government, but they have not gone through. And the government has defended one action at least, so the opportunity has not come where the government has been required to produce an account. In that particular case, which I was the solicitor for, we asked for records, through FOI and through the discovery process, and the complete record was never produced. And even if—

Senator CROSSIN—Are they there to be produced, do you think?

Mr Woodyatt—That is the problem. In the particular case I am talking about, which was settled, records were even forthcoming after the case had finished.

Senator BRANDIS—When was that?

Mr Woodyatt—It was in the mid-nineties. I think the proceedings were filed in 1996. All through that process the state government would put the rider on its production of documents that they could not assure us that this was the complete record. So you could even have got to the court stage of the litigation and had the government say, 'Actually, we have found some more,' at the door of the court. So whilst a lot of records were

obtained, it still was not possible, at that stage, to show whether there had been fraudulent activity or misappropriation through those records. So it is extremely hard for individual claimants to prove how much was there, if anything.

Senator CROSSIN—So we are almost in the same situation as we were with the stolen generation then, really, aren't we, where one of the first steps arising from that HREOC report was that there were organisations set up around this country and access was given to libraries and archives so people could just track their families. Are we at that stage, even, where people need to be given access to records and governments need to be coerced into making those records available, so people can find out what their basic entitlements might be?

Mr Woodyatt—The Queensland government has made the records that it has access to available. It has created an archive within the former department; I am not sure where it is now. But, again, there is a mass of records. There are millions of these very complex documents that are these huge folios, ledgers—it was a very complicated accounting system that was employed. In these ledgers there will be one line of a person's name and then the amount that was deducted or whatever, referring to other folios that had the amounts that they had earned over a period; there were payment records and expenditure records. Imagine if people had been working 30 years or more; the records were spread across many, many volumes of books. It is very hard to find those individual records.

Senator CROSSIN—Is it realistic then for us to expect that we would be able to track everybody's record or should governments come up with a system whereby people would get a general payment?

Mr Woodyatt—In the nineties there were a lot of public meetings held of people who worked under the scheme and the general view often came out that a political solution was the best way forward because of the difficulty in obtaining records.

Senator CROSSIN—So that was to strike a payment people were satisfied with and felt was a fair and just compensation?

Mr Woodyatt—That was possible, I think. That was the opportunity that was missed in the unilateral approach. Rather than a proper consultation, the government has ended up where people are justifiably unhappy with the offer that was made.

Senator CROSSIN—If in fact a case was to be pursued, what are some of the legal barriers that people will encompass then?

Mr Hay—The principal barrier would be obtaining the information. Again, that would be a matter of disclosure from the government to the individual concerned. That is a big task for both sides of the litigation to work through. There are legal issues, obviously, in relation to the trust and fiduciary duty. They would be the principal issues in the case. However, as I have said, a case of this nature is fairly unprecedented.

Senator CROSSIN—With governments, but not with corporations. People go to jail if they are heading up a corporation and they have this sort of poor record keeping.

Mr Hay—It is the fact that the government is on the other side of the potential litigation that adds a further element to the proceedings.

Mr Woodyatt—All litigation is risky, no matter what the strength of the case. Obviously, mediated solutions are often preferable.

Mr Hay—An important question is why should these people in fact be forced down the road to litigation when there is a significant body of evidence already available? It has been documented well by Dr Kidd in Queensland and it has been accepted by announcements in state parliament in Queensland that this system did constitute a large failure to Indigenous people. Why should they in those circumstances have to pursue litigation?

Senator BRANDIS—Just on that point about the litigation, though, if the defendant is a government, the government is going to have more resources than any other litigant you could imagine. If there are a lot of documents to be waded through, that is their problem, isn't it? It is their obligation to identify and locate the documents or to explain why they cannot be located if they are not. They have more resources than anyone else. Why is that a problem for anyone other than them?

Mr Hay—It is a problem for the government.

Senator BRANDIS—Yes, but why is it your problem or the claimant's problem?

Mr Hay—I think the problem that has been encountered to date is that the information has not been coming through in a consistent way. It has been provided slowly and is incomplete. So for a claimant, when there are potential gaps in the record, to go before the court, it is obviously very difficult then for them to prove their case.

Senator BRANDIS—Mr Woodyatt, you were the solicitor in this case, were you?

Mr Woodyatt—Yes.

Senator BRANDIS—Were you involved in that case, Mr Hay?

Mr Hay—No, I was not.

Senator BRANDIS—Perhaps I will ask these questions of you, Mr Woodyatt. Where was the case—in the Supreme Court?

Mr Woodyatt—Yes, in the Supreme Court of Queensland.

Senator BRANDIS—What was it called?

Mr Woodyatt—The plaintiff was Lesley Williams.

Senator BRANDIS—Williams and the state of Queensland?

Mr Woodyatt—Yes. Lesley Williams is giving evidence this afternoon before the committee.

Senator BRANDIS—Was he suing—

Mr Woodyatt—This is a woman.

Senator BRANDIS—Was she suing on behalf of a class of claimants?

Mr Woodyatt—No. She was the sole plaintiff.

Senator BRANDIS—And was that case settled?

Mr Woodyatt—It was, yes.

Senator BRANDIS—On confidential terms?

Mr Woodyatt—Yes.

Senator BRANDIS—And you encountered all these problems with disclosure, did you?

Mr Woodyatt—That is right.

Senator BRANDIS—Do you have a view to offer about the model litigant rules and whether they were observed by the government in that case?

Mr Woodyatt—There is no indication that they did not observe their responsibilities.

Senator BRANDIS—Mr Hay, going back to your evidence, you said that in 1933 the Queensland Aboriginal Account was established. What happened to it?

Mr Hay—The only information I have in relation to that is what is in the Consultancy Bureau report in 1991. There has been no record of what is left in that account. I cannot answer that question. That is probably a better question to address to a representative of the Queensland government.

Senator BRANDIS—You do not know?

Mr Hay—I do not know.

Senator BRANDIS—Presumably, at some stage, the money in it was disbursed to people who were entitled to it; if it was not disbursed, it was paid into another form of government account; or, theoretically, it could still exist.

Mr Hay—It may well be the case. The Consultancy report did address that point but not in great detail. It was a preliminary investigation.

Senator BRANDIS—Mr Hay, you used the word ‘equity’ several times. Am I right in understanding that you are not just talking about equity in the kind of vague rhetorical way in which people use the word in common speech but using the word in the technical sense that this is an equitable claim invoking the principles of law known as equity?

Mr Hay—It does have legal significance, yes.

Senator BRANDIS—That is what I thought.

Mr Hay—That is the way we would perceive a claim.

Senator BRANDIS—Indeed. Are you satisfied from a professional point of view that the statutes of the Queensland parliament that established these trust funds established trust funds that were trusts in the technical sense of the term? You know how sometimes statutes might call something a trust fund but it is still an open question as to whether or not the money in it is a trust in the technical sense. Have you looked at that?

Mr Hay—There is a historical distinction between a trust in the true sense or in the technical sense, as you said, held by government and a political trust where an individual beneficiary may not have any rights against the government in that sense. In this situation—

Senator BRANDIS—You have looked at this question, have you?

Mr Hay—I have had a brief review of the cases, but it goes back a long way. In fact, the cases that make the distinction between a true trust and a political trust are old cases.

Senator BRANDIS—Are they referred to in your submission?

Mr Hay—No, they are not. As I said, I wish to be somewhat careful, but even those cases that make that distinction state that where it is clear in the terms of the legislation that it was intended to be a trust fund in the true sense then that will be acknowledged by the courts. I have not gone down to investigate all the cases in a detailed way. Each case will depend on its own particular facts as to how those cases apply.

Senator BRANDIS—Up to a point, though. I am talking about the statutory definition. If you have a statute that creates a structure and calls it a trust, that would enable you to, at least in a preliminary sense, form a legal view as to whether the word is being used in the technical sense of the law of trusts or is being used in a broader political sense.

Mr Hay—That is right. It seems arcane in this situation that the language of the statutes throughout was replete with the words ‘trust funds’ with obligations on the government to maintain those funds in a particular way—individual bank books, particular accounts—as opposed to holding the money in consolidated revenue, for instance. I think there are features of these circumstances which do indicate an intention in the legislation for there to be a true trust. It is a matter to be potentially litigated.

Senator BRANDIS—It is an arguable point, but it is the point of view you are advocating to us this morning?

Mr Hay—Yes, it is. It would be sad if there were not to be a better solution to this issue and people had to go down that road.

Senator BRANDIS—I am not unfamiliar with the dilemma of a lawyer in a parliamentary proceeding trying to dodge between offering technical, professional views and making rhetorical advocacy claims.

Mr Hay—I do not mean to.

Senator BRANDIS—I am talking to you as a lawyer. Your position is that, in your professional judgement, the trusts established by the statutes are trusts in the technical sense?

Mr Hay—There is certainly a contestable claim in that respect.

Senator BRANDIS—All right. Thank you. That is very circumspect of you. But I suppose you would go on to say, wouldn't you, that even if they are political trusts, or not trusts in the technical sense, that alone is sufficient to create a very arguable claim that they attract the broader fiduciary obligations of which Justice Finn has written?

Mr Hay—If there was a trust, certainly an incident of any trust is a fiduciary obligation between the trustee and the beneficiary. Aside from that, the circumstances do involve classic indicia of fiduciary duty existing on its own, whereby there is complete control exercised by one party over another party who is vulnerable. Vulnerability and control are classic indicia of a fiduciary duty, and the courts have said that the circumstances in which they will recognise such a duty are not closed. To be fair, if I may say, it is not my intention to be circumspect, but each case would have to be looked at according to its own particular features.

Senator BRANDIS—Indeed. So, to sum it up, these moneys were either trust moneys in the technical sense or, if they were not, they were moneys which attracted the broader fiduciary obligation of which you have just spoken?

Mr Hay—Yes.

Senator BRANDIS—All right. You said something about how the onus of proof would be on the government. What is the legal basis of that assertion?

Mr Hay—Premised on the establishment of either a trust or a fiduciary duty, then a trustee always has a duty to account to the beneficiary for its funds. In that sense, my observation was that the duty would be on the government to provide that accounting. The duty would be on the government to go through the records, analyse those records and then provide the account to the claimant.

Senator BRANDIS—So you are not to be understood to be saying that there is any difference between this case and an ordinary case in which the burden of proof initially to establish the claim lies upon the claimant?

Mr Hay—Yes. They would have to establish, of course, a duty to account first. Once they did that, the task is for the government.

Senator BRANDIS—What about the tracing of the moneys. What if a person or the descendant of a person were to say, ‘I can prove that my grandfather worked at a particular place and was subject to this scheme,’ but there is not sufficient direct evidence of specific payments against his name in the government’s accounts. How do we deal with the tracing of claims issue?

Mr Hay—That is a very difficult element. The tracing of claims would only be able to occur if the records were complete, I suspect.

Senator BRANDIS—So for people or their survivors in that position, one would have to have in a sense what you might loosely call a political solution—there would have to be a bucket of money, rather than a claim through a definable, identifiable fund in an account?

Mr Hay—In respect of a tracing claim, yes.

Senator BRANDIS—Thank you.

Senator SIEWERT—I am not sure if you were here when Dr Kidd, in response to a question from Senator Crossin, was talking about where wages were held by private companies and pastoralists and their responsibility versus the government’s. Dr Kidd’s position, if I am quoting her right, is that ultimately responsibility comes back to government because they are the protectors and because of all the issues you have just been talking about. Do you support the view that the focus should really be on government in this inquiry?

Mr Hay—Yes, we do, both for the legal reasons that I have referred to and also for pragmatic reasons. As I was discussing with Senator Brandis, there may well be difficulties for a lot of claimants in establishing consistency in their records. I do not wish to enter the political fray but I still think there is an obligation on government to provide a proper accounting circumstance.

Senator SIEWERT—We have already had a lot of discussion about the issue of litigation. I asked Dr Kidd about examples from overseas and she said—and I think you were here for that answer—that the US government spent at least \$100 million on a recent case. In your opinion, how much would government need to spend to defend these cases?

Mr Hay—I can only speculate about that, but it would be very significant simply because, as Tony has said, of the records. Whilst they are not complete, they are nonetheless extensive. They are old ledgers. In one particular ledger, and they are large, I understand, there might be one handwritten entry for a particular individual, but there would be hundreds of those ledgers. So I expect the task for the government and the public cost of defending claims would be very significant.

Senator SIEWERT—You cannot put a figure on it?

Mr Hay—I certainly cannot put a figure on it.

Senator SIEWERT—It would be—

Senator BARTLETT—Tens of millions of dollars.

Mr Hay—Yes. If there were a number of claims it would be in the tens of millions.

Senator TROOD—As I understand it, some of the 30 people who have come to you for advice, or perhaps all of them—it is not entirely clear to me as yet—have been referred to firms for pro bono work in relation to their cases. Is that the situation?

Mr Hay—Yes, that is the situation. Tony, who manages QPILCH from day to day, may be able to answer that.

Mr Woodyatt—Yes, that is in fact the case.

Senator TROOD—Are the records of these 30 people—I do not need names, of course—reasonably intact as far as you know or are these likely to be difficult cases?

Mr Woodyatt—That is something that I cannot answer because, whilst we do an initial assessment to see that the case has legal merit, it is up to the firm that has taken those matters on. They are in various stages of progress, and I do not get a report back until the matter is completed. But they are in various stages of investigation by the firms.

Senator BRANDIS—His point is that, once they bring themselves within the class, the onus of proof is on the government anyway.

Senator TROOD—I understand that. I am just trying to get a sense of the process in relation to these particular claimants and indeed whether any of them are, as far as you know, proceeding towards lodging proceedings or have done so. Do you know the status of any of these cases?

Mr Hay—No, I do not. But I do know that other people have sought legal assistance directly, not through us, and I know of one firm that does have significantly more cases under consideration than the ones that we have referred to them.

Senator TROOD—I think that this is question for you, Mr Hay. There is obviously a question about the legal responsibility of the Queensland government in these circumstances, and we can discuss the extent to which it might be in breach of trust or in breach of fiduciary duty or whatever it might be. But I wonder whether or not from your investigations you can provide us with any insight as to why these failures occurred. There clearly has been a failure, whether it is a technical legal failure or a failure of accounting. Whatever it might be, there has been a failure of government policy here. How does one explain this failure? You refer in your evidence to maladministration of the funds. Does it go further than that? Was there misfeasance or malfeasance? Does it reflect the culture of the times? Was it bad bookwork on the part of the government? Is there any sign of a conscious policy decision taken by a government at some stage to subvert the intention in relation to these acts? Can you provide us with any insight into that matter?

Mr Hay—That is something that is historical that I am not particularly able to comment on. What I have noted is that there were strong measures in the legislation and the regulations to provide for independent supervision of this system, which operated throughout Queensland. You had individual protectors or officials dealing with these accounts from day to day. I do not know to what level that was ever supervised by any independent body.

Senator BRANDIS—I have one short question arising from that. We have talked about equitable claims. Might there not be a common law claim? What about moneys had and received? If these people had an entitlement to these moneys as wages and they were paid into an account, why can't they be recovered—subject to limitations issues—by an action for moneys had and received?

Mr Hay—Possibly, although—

Senator BRANDIS—Has anyone looked at that?

Mr Hay—I have not looked at it. I do not know whether anyone else has. There may be a difficulty with that in the sense that the money was taken pursuant to legislation sanctioning that very thing occurring.

Senator BRANDIS—I understand. Thanks.

Mr Hay—There may also be a limitation point on that.

Senator BRANDIS—I said 'subject to limitation' in my question.

Mr Hay—Yes; sorry.

Senator BARTLETT—I have two quick questions. Is there anything in a legal sense that makes a difference to a descendant of someone who has died as opposed to people who are still alive? Are there still the same issues of fiduciary duty and a legal entitlement?

Mr Hay—I have not looked at that specific issue in detail, but I would think that in cases where the individual is no longer alive there is unlikely to be a claim.

Senator BARTLETT—So their descendants do not have any right to—

Mr Hay—I am uncertain.

Senator BRANDIS—They might well retain a right, surely.

Mr Hay—Yes. Notionally the rights exist and are transferred to the estate.

Senator BARTLETT—The other question is that some evidence has been put forward that similar sorts of practices occurred with institutions—church-run institutions particularly—at the time. Have you looked at that or have you had people approach you with regard to that?

Mr Woodyatt—We have not.

CHAIR—Thank you very much for your submission, which has been very helpful to the committee, and for your evidence this morning. Thank you for attending.

[10.50 am]

BUTLER, Ms Yvonne Brenda, Private capacity

WEATHERALL, Mr Robert Eric (Bob), Chair, Centre for Indigenous Cultural Policy

CHAIR—Welcome.

Ms Butler—Firstly, I would like to pay my respect to the elders here and to the traditional owners of this country where I am going to give this evidence. I am from Townsville and my submission is about me, my immediate family and my community of Mount Garnet.

Mr Weatherall—I am here as a confidant for Yvonne.

CHAIR—Ms Butler, you have lodged a submission with the committee, and we thank you for that. We have numbered that 21. Do you need to make any changes, amendments or alterations to that submission?

Ms Butler—No.

CHAIR—I invite you to make an opening statement and then we will ask some questions.

Ms Butler—My submission is about my grandfather being stolen from his land in the late 1800s. He worked on three cattle properties, one as far away as the Northern Territory. He retired in 1946. He was 74 years old. He died in 1947 aged 75. He had £621 in his account. The family have never inherited that money.

Senator BRANDIS—How much did you say it was?

Ms Butler—It was £621.

Senator BRANDIS—In what year?

Ms Butler—It was in 1947. He was 75 years old when he passed away. My father was under the protection act from the age of 10 to when he died in July 1967 when he was 76 years old. He retired two years prior to his death. My mum was born on a cattle station—the station where her father was taken to. She retired in the early eighties. She is still alive today. She is 84 years old. My three older sisters left school as 12- and 13-year-olds and worked on cattle stations.

I left school in 1965. I was under the protection act even though I had completed year 10. Even that was a struggle; I had to work on a cattle station during my school holidays to get my textbooks to go to high school, because in those days Aboriginal children were only allowed to complete primary school—just to be able to write their names so they could get away from the fingerprinting system that was in place at the time. My mum raised six children. My dad practically lived on the cattle station. He came in once a year. Both of them worked very hard. As children, when we started work, we worked very hard. We still have not received our moneys. I have been offered the \$4,000 four times. I refused to take it because it is laughable. It is an insult to my people.

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

I have assets from my working life—a house, cars, boats. We saw nothing of that for our parents and other family members from their working lives, and I have not worked as long as they have. I suffered malnutrition from the age of eight. I spent two years in hospital, and that was because of my parents. My illness was malnutrition; I have those medical documents. All I want is justice and what is owed to us. And it is not taxpayers' money; these are wages that every working Australian earns each week. That is all I have to say.

CHAIR—Thank you very much, Ms Butler. Mr Weatherall?

Mr Weatherall—I would like to welcome the inquiry and basically say that I think it is way overdue with regard to addressing the issue of stolen wages in this state and indeed across Australia. However, I am concerned and I want it recorded that the inquiry is very limited with regard to providing Indigenous peoples—throughout the community of Queensland, at least—access to be able to come down to tell their stories or make their inquiries. I would encourage some other process being put in place so that Aboriginal

people throughout the state have an opportunity to tell their story—so that our history here is recorded and they have the opportunity to basically give their comments to the inquiry itself. Thank you very much.

CHAIR—Thank you very much. In relation to how the Senate inquiry process operates, I understand and acknowledge the point that you make. It is a necessarily restricted process by virtue of the time and the capacity we have. What we have tried to do with today's hearing is put together a representative group of witnesses as far as possible, drawn both from communities and from people who are regarded as experts in the area, who can assist the committee with our deliberations. We are having another hearing in Sydney on Friday, and it seems quite clear to me that the committee will be required to have at least one if not more hearings after that. So we are doing our best within the constraints that we operate under. Each of us on the committee comes from different parts of Australia. We have committee members from Queensland—in fact, I feel rather outnumbered by our one, two, three, four Queensland senators! We have committee members from Western Australia, and I am from New South Wales and Senator Crossin is from the Northern Territory. So trying to put all of that together and get the most effective inquiry process happening can be a challenge. We are doing our best, but I do understand the point that you make, and thank you for making it.

Ms Butler, I think the most telling thing that you said and one of the most telling lines in your submission was your offence at any reference to reparations in this area being described as 'taxpayers' money', when indeed you are talking about money that is owed to you, that was earned by you and members of the community. I think that that point is made very well, right at the beginning of your submission. Could you tell us a little more about your experience with the offer that has been made by the Beattie government and your efforts to deal with that and for you and others to seek an equitable—to use that language which has been used today—acknowledgement in relation to this experience? Can you tell us some more about your experience?

Ms Butler—Well, \$4,000 for someone who has worked a lifetime is laughable.

Senator BRANDIS—That is ridiculous: \$4,000. Is that the maximum of the offer?

Ms Butler—Yes.

Senator BRANDIS—That is ridiculous.

CHAIR—I guess I am trying to get a sense of how you are managing this process. I can read your words, and I have done that, and I can read the words of other people, but I am just wondering what you have been doing in terms of talking to government, talking to lawyers—there are lawyers everywhere: trust me—and talking to the sorts of people who are working in this area.

Ms Butler—We have had meetings with ministers—Liddy Clark, John Mickel, Linda Lavarch—and just seemed to get nowhere.

CHAIR—I understand. We will go to questions from my colleagues.

Senator WEBBER—Ms Butler, your submission is a very powerful one. Thank you for sharing with the committee what is a very painful and, unfortunately, not unusual story. I am from Western Australia and we have not even started to look at the issues there of the way people were treated and what happened to their money. One of the issues you touch on in your submission is the length that your family had to go to to try to access what was their money and some of the things that your family had to do. I was wondering if you could actually describe that for the committee for the record.

Ms Butler—You had to go to the police station and, if he was having a good day, he would probably give you a couple of pounds. There were times when he was away, so you just did without. But most of the time it was always, 'You don't have any money in your account.' There was a limited amount of money—£10 a month—that mothers could draw on and you could not go above that. There was one clothing order for winter, so you were allowed two pairs of items, and one clothing order for summer—so two clothing orders per year. I have old ledgers here from when my family were getting weekly wages sent to the police station. It was like three times a year.

On 15 November 1955 my father had supposedly withdrawn seven times in that one day. That is unbelievable because any Aboriginal person that lived under that protection act was lucky enough to get one withdrawal. The first entry was for £4 11s. Then the withdrawals were for £3 6s, £13 10s 3d and £5 11s. The last withdrawal on that day was for £25 8s 6d. That was a lot of money in those days. I even saw a withdrawal for £91. My sisters' provident fund accounts—they were 12 and 13 years old—had withdrawals of £6 15s. I have shown these ledgers to Dr Elouise Cobell, who has banking experience, and she could not make sense of

them. These withdrawals were done by police officers. We had cases like this in 1968 in my home town. One police officer had 62 charges.

Senator BRANDIS—What was he charged with? Misappropriating money?

Ms Butler—Yes, taking money from accounts. It was learned from cattle station diaries that people were out on cattle stations whilst he was doing that.

Senator TROOD—Was he found guilty of those offences?

Ms Butler—Yes. He was put in Townsville Correctional Centre for one year.

Senator BRANDIS—Was he required to make restitution of the money that he stole?

Ms Butler—I do not know. I was in hiding from the police. I was a runaway slave when this court hearing was going. That is another reason I refused to take the \$4,000 and sign that indemnity agreement—because this guy was handling the accounts. It was mentioned in state parliament by Mr Wallis-Smith, who was from the Atherton Tablelands area. He took this case to parliament. I do not think the four people this officer was charged in relation to got their full amount of money. And this was one police officer. He would have had access to about 40 different accounts. These four people could read and write and sign their names. The majority of Aboriginal people in that township would put a cross for their names and give a fingerprint. This guy was handling my father's account when he died. His account was frozen for two years prior to his death. This officer kept losing his medical certificate.

CHAIR—Thank you, Ms Butler.

Senator BRANDIS—I want to get a sense of the relationship between the size of the offer, the \$4,000, and the size of the claim. Did I understand you correctly to say that \$4,000 was the maximum to which any individual was offered?

Ms Butler—The Beattie government's offer?

Senator BRANDIS—Yes.

Ms Butler—Yes.

Senator BRANDIS—So nobody could get more than \$4,000. Is that right?

Ms Butler—Yes.

Senator BRANDIS—Did you say before that in your family there was some money standing to an account to the tune of about £600? What was the figure you gave?

Ms Butler—In my grandfather's account?

Senator BRANDIS—Yes, your grandfather's account. How much was it?

Ms Butler—£621.

Senator BRANDIS—What year was that?

Ms Butler—1947.

Senator BRANDIS—And that was just the amount at a particular time. By that I mean there would have been more, presumably, over time. So that is just a snapshot of the account, as it were?

Ms Butler—I beg your pardon?

Senator BRANDIS—Was that the total amount of the claim on behalf of your grandfather or would it have been a proportion of it, so just some of it?

Ms Butler—That was the amount that was on his file. I was lucky enough to get my family's files in March 2002, prior to Dr Kidd speaking out in May 2002.

Senator BRANDIS—I hate to think what £621 in 1947 in today's values plus compound interest would be worth. It would be more than \$100,000, I dare say. I find the suggestion that these claims should be settled for such an almost insultingly small sum of money utterly ridiculous. If you cannot make out the claim, that might be a problem for you. But if you can make out a claim, then why shouldn't you be entitled to all of it? You say you are, don't you? So you say you are entitled to the full amount with interest?

Ms Butler—That was an inheritance. The protector of Aboriginals was supposed to split that money up for 11 family members. My sister who is still alive has never ever received hers. I think it was £56 4s 9d.

Senator BRANDIS—Let me get this straight. It is \$4,000 for each descendant—is it not?—and \$4,000 for each original claimant? Given the amount you talked about, the amount in your grandfather's account, and given that he had 11 children—did he?—was it \$4,000 to be offered to each of the 11 or was it \$4,000 to be split between the 11?

Ms Butler—That is what I need to find out from the government. It is whether that inheritance was paid to my grandfather's two daughters and my three older sisters and cousins. A lot of them have passed on.

Senator CROSSIN—You have detailed some of this on page 5 of your submission. Have you ever tried to do any work on what the £623 3s 4d would be worth in today's money.

Ms Butler—No.

Senator CROSSIN—In your submission you say that somewhere there is actually a letter from the Director of Native Affairs to the Protector of Aboriginals Ingham of 13 October 1947 that does state that there is this money and you are due that inheritance. Is that correct?

Ms Butler—Yes.

Senator CROSSIN—But you are suggesting that perhaps your mother had money withheld from her—unless it was ever paid—and that she had £17 10s withheld because she had been overpaid maternity allowance.

Ms Butler—Yes, because full-blood Aboriginal women were not entitled to maternity allowance.

Senator CROSSIN—So there is no evidence she was ever paid any maternity allowance, let alone that she was overpaid maternity allowance? I guess you do not know the answer to that.

Ms Butler—No.

Senator CROSSIN—And a number of those 11 people are now not living?

Ms Butler—My mum and my sister are the only two not living.

Senator CROSSIN—Taking the nine who are alive, you are not aware that any of those have received money?

Ms Butler—I beg your pardon?

Senator CROSSIN—You are not aware that any of the nine who are still living received money?

Ms Butler—No.

Senator CROSSIN—In fact, they probably have not. Is that correct?

Ms Butler—Yes. You understand it is my grandfather's inheritance to 11 family members?

Senator CROSSIN—Yes, that is right. I am just trying to verify for the record that, of those 11, two are no longer living, and that of the nine that are living, to your understanding none of those nine have received any of that money.

Ms Butler—No.

Senator CROSSIN—There are two other interesting things that you put in your submission. One that I have had my attention drawn to was that the Commonwealth Savings Bank held the Chief Protector of Aboriginals Queensland Aboriginals Account, which evidently was opened in 1933. I am assuming that somewhere the Commonwealth Bank may have records of that account, or details of the transactions of that account. Is that an account that you understood was opened up in the Queensland government's name, on behalf of the government?

Ms Butler—Yes. There is a diagram from that government Consultancy Bureau of the different accounts they had set up.

Senator CROSSIN—The other thing I want you to talk to me about was you say that in October 2004 you went to a meeting of DATSIP. What is that an acronym for?

Ms Butler—The Department of Aboriginal and Torres Strait Islander Policy.

Senator CROSSIN—And there are a whole lot of different groups in Queensland that have benefited from this money—the Townsville City Council, £80,000; Toowoomba City Council, £100,000. So there is evidence that moneys that were kept from Indigenous people have been disbursed to either local government or other government entities, such as these city councils or hospital boards. Is that correct?

Ms Butler—Yes.

Senator CROSSIN—So we do have evidence that the money has been misappropriated and given to other government entities?

Ms Butler—Yes, it was a QAILSS—Queensland Aboriginal and Islanders Legal Services Secretariat—document that I found with those city councils, and a radium institute, receiving those sums of money.

Senator CROSSIN—Do you know if, at the time, say Townsville City Council would have known what account that money was coming from? Is there any evidence in what you have done to prove they might have known it was coming from that account? Or do you think they probably thought it was just a grant from the Queensland government.

Ms Butler—I do not know.

Senator CROSSIN—In your discussions about the \$4,000, how is that relayed to you? Is it in the form of a letter? Do you get invited to come in and meet with the Aboriginal affairs department or whatever it is called in Queensland?

Ms Butler—No, I received a letter stating that I was eligible. I received the fourth letter last month, by registered mail, advising me that the offer will close on 31 December this year.

Senator CROSSIN—I see: there is an end date to the offer.

Ms Butler—Yes.

Senator CROSSIN—What have you done to reply? You have written back? You have returned to sender?

Ms Butler—No, I just have not responded like I have with the other three.

Senator MOORE—You would have been pleased the Toowoomba City Council got that money, Mr Weatherall!

Mr Weatherall—I was very disappointed that they all got the money without the consent of the people who actually owned the money.

Senator MOORE—Thank you; I wanted to get that on the record. Just by way of a general statement: there was considerable public awareness when this offer was made and media comment about how people felt about it, and subsequently there has been a community campaign around the issue in Queensland. I would like to know, from your perspective, what is happening now. The offer was made. There was detailed information in the community and in the media about what was in the offer. People's feelings about that were put in and there has been mixed media coverage about what has been going on. But at this point in time, when we know that the offer is coming to a close in December—and that has also been in the media—what dialogue or discussion has there been between people in the community and the government? What exactly is happening now? I am asking you both, but I am particularly interested in your views, Ms Butler, as you have done so much work and research about your claim and you know so much about your family history, about you as a Queensland citizen. What discussion or processes are operating now with you and your government?

Mr Weatherall—Everybody is familiar with the offer, the limitations on the amount offered to Aboriginal people and the indemnity as well, indemnifying the government. There is a working group, and I understand they are going to be here—

Senator MOORE—They are, later today.

Mr Weatherall—I am sure that they will give you an update—a very recent update, anyway. Previously it has been mentioned by Ros Kidd and one of the others who have been here. The campaign in Queensland has been established by Aboriginal people. They have been very instrumental in trying to bring it to the fore and trying to get government to sit down at a roundtable and negotiate and try to progress a better deal, something that will be equitable and that will give just and fair compensation or reparations to Aboriginal people. It has not progressed all that far in trying to have the Premier come back to the negotiating table. Obviously the people went through the unions, they went to the churches, they went to the lawyers, they went to people and places like that, but without a lot of satisfaction.

They are still travelling and working with people in other states and identifying issues there that are similar. They are travelling throughout this state meeting with Aboriginal people and listening to their stories, trying to inform them as well and getting feedback, to make sure that Aboriginal people are very familiar with what the campaign is trying to do. It has got an enormous amount of publicity. I think their continued pressure on this, with the help of New South Wales and other states, brought about this inquiry. It really did deserve to have an

inquiry into it. I would like to leave it at that because I drifted out of that and got involved with other stuff. Other people are looking after that now.

Ms Butler—We are looking at the international arena. There are solicitors in New South Wales who are interested in going overseas with this issue. It is time for mainstream Australia to wake up. There has to be social change, a big change—

Senator BRANDIS—I don't know that it requires that much. It just requires the government to pay its debts.

Ms Butler—Yes.

Senator BRANDIS—That does not require social change. It means the government obeying the law.

Ms Butler—Yes. But when?

Senator BRANDIS—Good question.

Senator MOORE—I will ask Senator Brandis during the next round of witnesses!

Senator BRANDIS—Maybe there is big social change in Queensland!

Senator TROOD—Ms Butler, you have been offered \$4,000 and you have rejected that offer three times, as I understand it.

Ms Butler—Four times.

Senator TROOD—Four times now. Have you sought any legal advice about your claim and about your situation?

Ms Butler—Yes.

Senator TROOD—Are you intending to lodge a claim in relation to that money?

Ms Butler—Yes.

Senator TROOD—Have you begun those proceedings as yet?

Ms Butler—Yes. My solicitors are in Sydney. I was lucky enough to find 1,700 documents from my family.

Senator TROOD—So you have documentation which allows the claim to be traced reasonably clearly. Is that right?

Ms Butler—Yes.

Senator TROOD—Can you tell us what the state of the proceeding is? Are you near to getting a hearing date or are we in the very preliminary stages of the claim?

Ms Butler—I would rather not say.

Senator TROOD—That is fine.

Senator BARTLETT—We have the Stolen Wages Working Group here later on this afternoon and I will ask them this as well, but one of the statements that has been made in the public arena from the state government side of things, with the putting forward of this offer, was that it was agreed to by representatives from QAILSS—the Queensland Aboriginal and Islander Legal Services Secretariat—for example, and they went out with it. Do you have any comments with regard to the process surrounding the putting forward of the offer and what might loosely be called the acceptance of it? It obviously has not been accepted by a lot of the people it was aimed at, but it was accepted by some people who are described as agreeing to it on behalf of the Indigenous community.

Mr Weatherall—It was very unfortunate, I think, that Aboriginal people got themselves caught in that situation and went out to try to sell the government's proposal. It caused a lot of confusion with Aboriginal people. In fact, the people who went out for those consultation processes got over and above what people are being offered at this particular stage with regard to the offer of the \$2,000 and \$4,000. People were getting some enormous consultancy fees at that particular stage. That was also taken from the amount offered. I think it was about \$200,000, but I will stand to be corrected with regard to that consultation process.

Senator BARTLETT—Whether in your personal circumstance or as a comment more widely for other people affected, what is your understanding of the reason for the decision to exempt the descendants of people who had passed on at the time of the offer being made? Was it just that it was too difficult to determine the eligibility of people who had passed on or was there just no reason other than: 'This is the offer; take it or leave it'?

Ms Butler—I was not in the campaign then, but Bob may be able to answer that.

Mr Weatherall—Basically, the offer was thrown on the table and they said, ‘This is what you are going to get. That is it. Take it or leave it.’ There were no negotiations by Aboriginal people with regard to that. The government just came along and said that was it; there were no further negotiations with the Premier or the state. The only other negotiations that have been going on are with regard to DG’s. I think people may have met with Liddy Clark and members of government—that type of thing. There was nobody there who you could sit down with who had some real responsibility and could take anything up and negotiate it so that you could start a process that you could be a part of and get some kind of equitable reparation out of. That still is the case. It has been dealt with by the Premier through the media and there is no communication, basically.

Senator BARTLETT—I am not sure if you want to answer this, Ms Butler, and you do not have to if you do not want to, but it seems to me, from submissions to this inquiry let alone from what I have been told individually, that, with the exclusion from the offer of people who had passed on, the lack of recognition for many people was as insulting or hurtful as their own circumstances. We know that a number of people who did accept \$4,000 have used it to pay for headstones for their parents’ graves, for example. It is a bit of an open question, but are you able to give us an indication of how much of a continuing concern the failure to have the offer apply to people who have not survived is?

Ms Butler—We see it as our inheritance. What is wrong with us asking for our inheritance?

Senator BRANDIS—You should not have to ask. If it is yours, it is yours.

Mr Weatherall—There is a culture within the state where the director general had the right under the legislation basically to dispose of all assets and all estates of Aboriginal people. They never considered asking Aboriginal people whether the siblings should have the estates or the wages of the people. It was never considered. It has been passed at a number of meetings since the campaign began and the offer was made. Aboriginal people have made resolution after resolution saying that it should be going to their family members. That has been ignored.

Senator SIEWERT—One of the terms of reference for this inquiry is about the possibility of holding a national forum to talk about these issues. Would that be useful in helping to resolve some of the issues? How would you see it being useful?

Ms Butler—At the time I wrote my submission I felt it was right to have a national forum, but you become disheartened because there have been many inquiries over the years—it is just prolonging the cause for us to get justice with our stolen wages.

Mr Weatherall—I would like to see an independent tribunal, actually. There is an enormous amount of records that need to be acquired and that the government has to match up. That has not been available to Aboriginal people. There are clauses of 30 years and a large amount of documentation that still is not accessible to Aboriginal people. A lot of documentation is quite flimsy, but I think that we need some kind of a tribunal, who will basically ensure that the documents are acquired from the archives and wherever else they exist—whether they are hidden in community police stations or wherever else they have been over the many years. And the tribunal ought to ensure that the Queensland government makes those records available for the claimants to make adequate claims so that they can get what is rightfully theirs.

Senator BRANDIS—On this issue of the completeness of the records, it should not matter if the records are incomplete—presumably there was a standard—as long as the records are sufficiently complete to enable us to learn what was the rate at any given period of time for a full-time worker or a part-time worker. Presumably a skilful accountant would be able to reconstruct, up to a point at least, the missing records. So I would not have thought that the government—particularly since they are government records that are missing—should be able to hide behind the incompleteness of the records.

Mr Weatherall—You would think, if government was going to be just and fair and ensure that there was going to be equitability, they would actually do that.

Senator BRANDIS—To me it sounds like the Queensland government is behaving like the board of James Hardy.

Mr Weatherall—That is not the case at this particular stage. That is why I am saying that you need a tribunal to basically come in, have the investigations, get all the records, negotiate and consult with the Aboriginal people and then file those cases on behalf of Aboriginal people. We have had inquiry after inquiry and I think it deserves that type of authority to basically come in to get those records. We have to rely on the

public servants who will say what we can have and cannot have. They are the ones who are also assessing the claim. It is almost like putting Dracula in charge of the blood bank, basically. That is the main problem.

Senator BRANDIS—One last thing: you said before that when this offer was made there was no process of negotiation. It was a take it or leave it offer. I think you said it was thrown on the table. Were you speaking metaphorically or was there an actual meeting at which somebody, face to face, made this offer?

Mr Weatherall—In the early days when NAILS and QAILSS were involved, they were the people who were basically negotiating. There were a number of individuals who sat on that but who also walked away because of what was being conducted at that particular stage by those representatives. They rejected the offer at that stage as well.

Senator BRANDIS—Was any minister of the government personally involved in these discussions or was the offer made by a public servant or a lawyer?

Mr Weatherall—It was made by the Premier. There were meetings with the Premier.

Senator BRANDIS—Meetings between the Premier and whom?

Mr Weatherall—With the QAILSS and NAILS people.

Senator BRANDIS—I see. So when you say this offer was dropped on the table, you mean—

Mr Weatherall—You should ask the question of other people who were at that meeting and who will be here next, I think.

Senator BRANDIS—We will. But when you say this offer was tossed on the table, are you talking about the Premier?

Mr Weatherall—Basically—yes.

Ms Butler—Excuse me, can I just add something with regard to records?

Senator BRANDIS—Yes—sure.

Ms Butler—When that police officer was going through court, there were a lot of records destroyed and police stations were burnt.

CHAIR—Yes. I saw that in your submission and other submissions.

Ms Butler—I went to the state archives last year and tried to get them for Palm Island, Ingham and Charters Towers, and I was told by a worker there that a lot of those documents were destroyed.

Senator BRANDIS—If government documents were destroyed, then it is the government's responsibility, not yours. The thing that troubles me about the evidence you have both given is that there seems to be an attitude that you are seeking an indulgence. Subject to proving your claim, you are not seeking an indulgence; you are seeking to claim back property that is yours, at least by inheritance.

Ms Butler—Yes.

CHAIR—Ms Butler, thank you for your submission and for your attendance here today—for coming all the way here. We really appreciate that very much. Mr Weatherall, we also thank you very much for joining us today and for assisting the committee. We will, as I said, continue to carry out this inquiry as best as we are able. I hope that we can make a constructive contribution in this process. Thank you both very much.

[11.41 am]

HAEBICH, Professor Anna Elizabeth, Private capacity

CHAIR—Welcome, Professor. Thank you very much for attending today. You have lodged your submission with the committee, which we have numbered 19. Do you need to make any changes or alterations to that submission?

Prof. Haebich—I would like to add something in reference to whether there were any reports available on the Western Australian government's activities. I understand, because I was contacted by someone from the Department of Indigenous Affairs of Western Australia, that they were doing some research, but I have no idea what happened with that. Also, of course, there are royal commissions and so on that have some evidence in them.

CHAIR—Thank you very much. What I ask you to do is to make a brief opening statement. We have all had the opportunity to have a look at your submission, so if your opening statement is brief then we can ask you questions after that.

Prof. Haebich—Thank you. I would just like to stress that my research is directed at Western Australia. That reflects my research background and my family background. My husband is a Nyungar man and I have a lot of contact and involvement with the Nyungar community. I noticed that there are very few submissions from Western Australia—principally from the legal service, Maude Walsh, Don McLeod and myself. I think that this is a national issue. Queensland has led the way, but it is a national issue.

There is a very urgent need to build community awareness and understanding of this issue in Western Australia. I spoke to my husband before this meeting. There was a big meeting in Perth about the stolen generations last night. I asked whether the stolen wages issue was mentioned, and he said no. There is also an urgent need to impress on the Western Australian Labor government its responsibilities and obligations.

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

I would like to recommend, and here I follow and join in support of the Aboriginal Legal Service of Western Australia submission, that the Senate committee seriously consider holding hearings in Perth and selected regional centres if possible. This would really profile the issue in the state and would also kick-start the momentum for research over there. I also support their call for a national royal commission into the stolen wages issue.

I also support the proposal for a national forum for collecting stories. I would like to mention the issue of the privacy of people who present their stories and also the fact that it is a very emotional experience. Anyone who was present for the stolen generation inquiry hearings will know how very emotional it is to recall these past events and experiences. I would like to see from this that Indigenous people develop the package of ways to compensate the stolen wages people. Finally, I would suggest that the stories that are told at the national forum should be recorded and that they become part of our national heritage, held in the National Library of Australia and in state libraries, returned to the individuals and to their local organisations. Thank you.

CHAIR—Thank you very much, Professor, and thanks for appearing today. We are very grateful both for your submission and for the perspective you give us on Western Australia. The committee will consider future hearings after the conclusion of this week's program.

Senator BARTLETT—To kick off, I note that in your submission you mention, in the context of concerns today about welfare dependency—and I do not want to have that debate here, although I think there is a lot of substance to it—that the practices of the time actively encouraged reliance on welfare benefits because it was either money that was then able to be taken by the institutions or else money that could be used to replace other government expenditure. I am just wondering whether you could expand a bit further—because you

reference yourself in your submission about that issue—on both whether there was an active encouragement of claiming that welfare so that it could be used or taken by governments and also whether this was seen as a way of saying, ‘Well, we don’t need to bother about job creation, job generation or employment.’

Prof. Haebich—I guess there were a number of sides to the move to extending social security benefits to Aboriginal people. It was only during the mid-1960s that all Aboriginal people became eligible for all social security benefits. On one side, there was an interest—this is of course prior to 1967—in getting federal funding into the states. There was also, with the assimilation policy, the belief that it was the right of all people who were Australian citizens to have access to these benefits. It took a very long time, it was very frustrating and it was accompanied by levels of surveillance and intervention in families that were not experienced by any other group or category of people in the Australian community. That led some Aboriginal people to say, ‘Well, if that’s going to happen, we don’t want, for example, child endowment. We don’t want it. You can keep it.’ In Western Australia, in the south-west, Aboriginal families were threatened that, if they did not use the money properly, they would have their children taken from them, and that in fact happened in some instances.

It is not a matter that social security was introduced rather than job creation; I do not know that the government, the department concerned, could have done much more. First of all, to describe the situation: prior to the sixties, Aboriginal people in the south-west of WA were all in some sort of employment, generally speaking. They were doing seasonal contract work in the rural areas. When people were not in employment, when they could not get work, they had two choices: they were put on rations—not cash, just food and so on—or they could go to one of the government settlements, where they lived in appalling conditions for the rest of their lives. The idea of cash was not open to them.

During the 1950s there was quite a considerable change in the employment that was available to Aboriginal people in the south-west. In the rural areas the work for Aboriginal people deteriorated rapidly. Local welfare officers looking at their situation said: ‘We can’t find them work. We don’t have the skills for finding adult people work. So we don’t even know how to start doing that.’ So they encouraged people to go on to social security, presumably as a temporary measure. But it became the norm. People were encouraged to move into state housing, which meant that most people moved to Perth. When they arrived there was very little work, and I guess you could say that during the seventies the Aboriginal community in the south-west faced its first major youth unemployment problem. That has continued to this day, so now generations of Nyungar families have been surviving on unemployment benefits and pensions.

Senator TROOD—As I understand it, the Western Australian government has yet to confront this issue. Is that the story?

Prof. Haebich—Yes.

Senator TROOD—What has so far occurred in relation to the Western Australian government facing up to its responsibilities in relation to this matter?

Prof. Haebich—As I mentioned earlier, I had a call last year from someone in the Department of Indigenous Affairs, making inquiries about research and so on. I heard nothing more, and people say that nothing is happening over there.

Senator TROOD—Is that right? Have representations been made to the government? Has there been any kind of intimation that they are prepared to confront this issue or not?

Prof. Haebich—As I said, there is not a strong awareness of the issue over there as yet. The main body that is working on this is the Aboriginal Legal Service of Western Australia, with their submission. And really they are only sort of gearing up on the issue. So that is why I suggested it would be very significant if the hearings went to Western Australia. It would show that it is an important issue. It has not really emerged on the horizon there.

Senator TROOD—Your research has been confined largely to the south part of Western Australia, but presumably it applies to Indigenous communities throughout the state?

Prof. Haebich—The employment system, of course, applied throughout the state, but there were some important differences between the Kimberley, which the legal service deals with in some depth in their submission, and the south. There were different sorts of labour and so on. In the south Aboriginal people in the main received some sort of wage. In the north, in the pastoral industry prior to the granting of award wages in the sixties, the Aboriginal people were not paid wages. Maybe from the early fifties they were paid a minimal wage. Pastoralists consistently refused to pay wages to Aboriginal people. In fact, during the 1930s the chief protector, Mr Neville, who was chief protector from 1915 to 1940, pushed for the Western Australian

government to adopt a minimum wage for Aboriginal people but it was blocked each time by the pastoralists. They said they would not pay wages. He wanted the wages because he wanted to adopt the system that Queensland had, more extensively. You cannot take people's wages if they do not have any.

Senator TROOD—And behave in the same way in relation to it, perhaps?

Prof. Haebich—We do not know. But the system that was here did operate on a small scale in WA.

Senator TROOD—I see. Have you been into the archival records?

Prof. Haebich—Yes, I spent many hours there.

Senator TROOD—Can you briefly characterise their status for us? We have heard a lot this morning about the Queensland records and the parlous state they appear to be in, but are the Western Australian records any better, do you think?

Prof. Haebich—No. If anything they are more tattered and disconnected, I suppose you could say. As here, there are three main sets: staff records, which were disposed of after a couple of years and so there are not very many of them left; the administrative records; and also the personal records. The records are controlled by the Department of Indigenous Affairs. A lot are held at the State Records Office. The Department of Indigenous Affairs has a vetting process for administrative files, so, if you want to look at them, you apply and then maybe three weeks or even longer after that you get to see the file. The personal files of course are restricted to access by the family of the person the file addresses, and they have to have written permission from that person.

In those personal files, which of course I have not seen—although I have a lot of friends who have seen them, and my husband has his grandfather's file—people find a number of things. One family had a personal file that came back. It was very thick and, when they read through it, it was only about whether or not their old granny should be able to have a pair of glasses. It was extremely upsetting to the family to think that their grandma had gone through that. In the case of other people they find a lot of mistakes. The information on the files was often collected by local policemen, who, I think like here, were the local protectors of Aboriginal people and did not always get it right, and also by the head office in Perth.

There are other stories, for example about employment. In the case of my husband's grandfather, there was a comment from a local employer who, when told by the police that he should take out a special permit to employ the old boy—it was against the law not to; you could get fined and so on for not having a permit—said he would refuse to do it. The employer said it was an insult to Mr Kickett that he should have to have a special permit to employ someone who does work that is much better than the white labourer down the road.

We are hoping that those personal files will contain a lot of information that will enable us to see what was happening with the number of trust accounts that were set up mainly for children who were taken from their families, who were put in institutions, like Moore River or Carrolup settlement, or missions and who were then sent out as youngsters to work in domestic service or as farm labourers. They worked under departmental control until they could escape. Usually women did that by getting pregnant or getting married and then they could get away from Mr Neville. It is often difficult to know what is in the administrative files. A file might be called 'Gnowangerup 1930' but when you start reading through it—some of them are very thick—it might actually start in 1904 and go through to the 1960s. They often have a lot of material about personal aspects of lives and so on.

Senator TROOD—You are referring primarily to Indigenous people in the south of Western Australia—is that right?

Prof. Haebich—Yes.

Senator TROOD—Do you have a sense of how many people we might be talking about, at least in the south?

Prof. Haebich—It is hard. Theoretically everybody came under the controls over employment, but in actuality it was not the case. WA is huge, so it was very hard to enforce the permit and agreement system, so a lot of employers tried to get away with it. It was used most extensively in the pastoral industry in the north. In the south you had three categories of workers. You had workers who were working in family groups, taking out contracts, working with local farmers and getting wages, but often their wages were paid off in food and so on, so sometimes by the time they had finished they did not have any money coming to them. But they were there and they should have been covered by the permits system. In the 1930s it became law that all casual work also came under the legislation. Then there were workers working within the settlements, and they were

covered by government regulations that forced them to work. They generally received no remuneration for what they did. They really maintained the settlement and did all sorts of jobs. Then there were the young people who were sent out to employment.

If you are asking for numbers, it is very hard to estimate it, because we do not have the research. I would not like to hazard a guess. We have to have the research done in Western Australia. It is absolutely essential that we have a literature survey of what exists. The legal service is starting to do a survey of the archives and collecting stories from people—from the people and their families. I stress that often it will be families that will have to be interviewed because in WA this stopped in the fifties, and there is low life expectancy. It will often be about talking to families. They really have to get started on that process in Western Australia.

Senator TROOD—You referred to the first group that were, to paraphrase, almost paid in kind with food et cetera.

Prof. Haebich—They were paid a wage but often they would arrange a contract and they might get that in kind. In theory, they were being paid wages. But people also did receive wages; Aboriginal shearers received wages.

Senator TROOD—There were obviously a range of classes of people and so it is complex. Is the evidence that people were expected to be paid a wage and expected to be provided with sustenance, food and board as well?

Prof. Haebich—No. In fact, Aboriginal people were deliberately excluded from the Shearers' Accommodation Act 1912. They could go and do shearing but they were not to be guaranteed any of the conditions that other shearers were given. So they travelled in their family groups. They would go together and camp, often on the farmer's land, and support themselves while they were doing the work.

Senator SIEWERT—I want to follow up on the issue of international experience. You touched on it a bit in your submission. Could you go a bit further into what experience from overseas you think Australia could draw on as to how we could approach this issue? Is there anything that is useful to use as an example? Or it could be to things to avoid as well—what has been positive and what has been negative.

Prof. Haebich—There is a bit of a throwaway line in there. I am not as aware of all of those areas as, for example, Dr Ros Kidd is but I would certainly think that the example of Elouise Cobell and what is happening there is an example to follow. I could send you some information later.

Senator SIEWERT—That would be useful, thank you. One of the things, particularly relating to WA, which is where I am from, is what you think of the situation in terms of awareness and the way the issue has been picked up in Western Australia compared to Queensland. Is there a reason that can be identified for that?

Prof. Haebich—Perhaps it is because the system and the process went on in Queensland until the seventies and eighties, I understand. Things in WA seemed to grind to a halt about the mid-fifties. They got very worried over there that they were acting outside the law in a lot of the things that they were doing, for example in the way that they were removing children, and so they stopped a number of practices. It was more draconian and bigger in Queensland. In Western Australia there were a smaller number of people who were really in that trust account system. I see it as a bigger issue than the trust account system. It was a systemic thing. People over there might think: 'It's just about those trust accounts. We had some of them here and people have told me stories about what happened to them, but it's not like what happened in Queensland.' I think that is a bit of the thinking and that is why there is a need for more awareness building in Western Australia.

Senator CROSSIN—What sort of difficulties have arisen in Western Australia with people trying to access records, or is it the case that people have not actually attempted to do that yet?

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

One man was telling me that, when he was a young man sent out to work from Moore River settlement, he had been working on a station all year with all his money going in and getting a little bit of pocket money.

People got pocket money—about one-third of their wage went into the department and in the thirties about two-thirds of their wage. This man and his mate were out there working their butts off, and this guy goes into town to have some fun. He goes into Mr Neville's office and says, 'I need new clothes.' Mr Neville says: 'You need new clothes. Just wait there.' Mr Neville goes into the secretary, gets a token, goes with these two young men down to the second-hand shop and buys this guy what he said was a very ill-fitting suit. So this guy goes in to get some money to have some fun—fair enough—and have a bit of a holiday after working so hard all year, and all he ends up with is an ill-fitting suit. He does not even get to have money in his hands. He does not have the experience of using money from his account. Those sorts of stories need to be documented and they have not been yet.

Senator CROSSIN—In your research, have you been able to identify why Indigenous people in the north were treated differently to those in the south? Was it the impact of the pastoral industry versus other industries?

Prof. Haebich—The pastoral people were very powerful; they held lots of seats in parliament and protected their interests. It is a strange thing because Aboriginal people were the backbone of the pastoral industry. You would have thought that they could lobby to protect their interests and get a wage or negotiate in ways that people in the south did to make sure that they got nominal wages, but it did not happen that way. The big change in the pastoral industry—and this is from work by historian Dr Mary Anne Jebb—was that, even before award wages came in, when old people started to get pensions, they took that money and they moved into town. They finally had some financial independence so they could move off the stations and escape from that sort of system of slavery that existed.

Senator WEBBER—Following on from that, would it be fair to say that when they were allowed to move onto the pension it was more than they were being paid on the pastoral stations?

Prof. Haebich—Absolutely—they were hardly paid anything. Those older people would have been paid nothing because they would have just been sitting down. Pastoralists said they could not pay people because they had families of 'hangers-on', as they used to call them. They said they could not afford to support all those people and pay a few workers.

Senator WEBBER—Thank you for your submission. It is good to get some information about what has been going on in my home state of Western Australia on the record. We have had a bit of a chat about Mr Neville and his regime, and there is a lot more oral history to come out about what he did as the chief protector to people. In your submission you also talk about young women workers who became pregnant being sent back to Moore River. I am from WA, so I know what that means. Can you describe for us for the record the establishment of Moore River and what that meant?

Prof. Haebich—Moore River along with Carrolup settlement were two settlements set up just after the war. Moore River was set up in 1918. It was a block of marginal land near New Norcia, near Moora and miles from anywhere. It was set up as a place to send children who were taken from their families, to train them and to give them schooling so they could go out to work. It was a multipurpose institution, because it was also the place where they sent elderly people who needed care, people who were unemployed, women who were pregnant. It had a little hospital there that women who were pregnant could go to. They were at one stage having their babies next to a ward that was set up for venereal disease, so it was not very good.

Hundreds of children went through that system. They were living in dormitory conditions. At six o'clock the doors were shut and they were allowed out the next morning. I think people here will have probably seen *Rabbit Proof Fence*. That actually made Moore River look a bit better than it was. The photographs of the time show that it was filthy—children had no plates or cutlery, they ate their food with their hands. They were in a school with maybe over a hundred children and one teacher, who was usually the superintendent's daughter, trying to teach them.

The outcome from that was that a lot of people who came out of that system could not read or write. One elderly gent was a great mate of mine. When he was dying in hospital I went to see him and I gave him a card. He said, 'You should've bought me a beer and cigarettes.' Anyway, he put my card down. I said, 'Aren't you going to read it?' He said, 'Hey, sister, you know I can't read.' I said: 'No, I didn't. I've seen you at the TAB.' He said, 'I know the numbers.' I said, 'But you went to Moore River,' and he said, 'I never learnt to read.' This man went to war—he was in the Second World War; he was in Changi prison. He was a big, tall man, and when he came back he was under seven stone.

That is the sort of thing that happened at Moore River. The adults sat around doing nothing most of the time, except for the ones who were selected to do quite a lot of work. Kids were sent out to work. When they had their holidays they could come back to Moore River. My understanding is that they had to pay their own fares backwards and forwards. If they had to stop in Perth overnight they had to pay boarding fees, which were quite exorbitant. In 1936, when Royal Commissioner Mosely visited Moore River settlement, he described it as a woeful spectacle. The Commissioner of Native Affairs, who took over in the late 1940s, wrote of his absolute shock and disgust when he went there first. So it was a very unpleasant place to be going to.

Senator WEBBER—Thank you very much for that. It certainly was a very unpleasant place. I want to return to the issue of the WA state government records. You say you have done a bit of a search. Obviously, that would be your first port of call in terms of establishing the extent of the issue in the west. How long do you think that would take? If we got the state government to agree to do it, which is a hurdle in its own right, how long do you think that would take? It sounds like it will be like here, where all the significant records seem to have disappeared, so we are going to get a random sample of the problem rather than an overview of the problem.

Prof. Haebich—Yes. Of course, a lot of records were destroyed. Aboriginal historian Steve Kinnane and Lauren Marsh have written about the disposal schedule, I think they called it, that they had for the files. That was officially. There was informal destruction of files as well, that Aboriginal people have recorded evidence of. How long? It is a bit like one of those questions. But I would think it would be a very time-consuming process. First of all the government would have to negotiate with the people who are the holders of the personal files. Nyungar people are not so trustful of government. It would take quite a long time to negotiate, I would think. Then there is the burrowing down into all the administrative files. A long time ago I prepared an index to some of the administrative files relating to Nyungar people for IATSIS. Whether that survived the technological changes, computers and so on, I am not too sure. But that would be helpful. I do not know. Can I say six months? I really do not know.

Senator WEBBER—It gives me an idea of how extensive the records are. If you think it would take years, then there are lots.

Prof. Haebich—It is beholden on the Western Australian government to do that. That matter of who is responsible for doing that has been raised.

Senator WEBBER—One last question: when Dr Kidd appeared before us, she raised the issue that the Commonwealth raised with the Western Australian government about concerns about endowment being paid directly to pastoralists and missions and that, therefore, you could not guarantee that it was going to the children. To your mind, would that be one of the reasons that perhaps some of these bad practices stopped a lot earlier in the west than they did on this side of the country—the fact that the Commonwealth did raise issues like that with the state government?

Prof. Haebich—In the fifties WA had a big clean sweep in line with the assimilation policy. I am not saying that what they were doing was necessarily the best thing, but they certainly tried to reform and get rid of a lot of the practices by introducing drinking rights, getting rid of discriminatory legislation and so on. Working with the Commonwealth and remembering that the federal minister for Aboriginal affairs was Paul Hasluck, a Western Australian, I think there was a lot of discussion going on formally and informally. Yes, it could have been for those reasons. I do not know.

Certainly the public in Western Australia was very supportive of the fact that families should not get these child endowment benefits directly. There is a file note that Prime Minister Curtin had to take time out during 1943, in the middle of the war, to answer letters from the Western Australian Premier replying to citizens' objections to Aboriginal people getting these benefits directly. I would like to emphasise again—this point was made before—what a difference these endowment payments made to families. People had very large families at that stage and it was a huge investment for the families. It was most unfortunate that a lot of the money went to missions and settlements to support their structures. In fact, they seem to have increased in number with the introduction of child endowment in Western Australia.

CHAIR—Thank you very much, Professor. We are out of time. I would like to thank you for your submission and the information you have been able to provide us with today. The committee, as I said at the beginning, will consider further hearings at the conclusion of this week. We will take on board your advice in relation to Western Australia.

[12.19 pm]

JOHNSON, Mr Andrew Duncan, Social Responsibility Advocate, Queensland Synod, Uniting Church in Australia

PITMAN, Reverend Dr David Arthur Alfred, Moderator, Queensland Synod, Uniting Church in Australia

CHAIR—I welcome our next witnesses from the Queensland Synod of the Uniting Church. The Queensland Synod has launched a submission with the committee which we have numbered 15. Do you need to make any amendments or alterations to that?

Rev. Dr Pitman—No.

CHAIR—Reverend Pitman, I will ask you to make a short opening statement and, at the conclusion of that, we will go to questions from members of the committee.

Rev. Dr Pitman—I have asked my colleague, Andrew, if he could make that initial statement on our behalf.

Mr Johnson—The Uniting Church stands in a strong tradition of advocacy for the rights of those whose voices might otherwise not be heard in our public debates. We come here today to give expression to that tradition in speaking to this committee out of two strongly held values: first, the value we place on our relationship with the Indigenous people of Australia and our strong desire for and belief in reconciliation; and, secondly, our belief in the rights and dignity of those in employment. This issue, which has become known as ‘stolen wages’, sees the intersection of these two values to which the Uniting Church holds.

While in recent times in other places there have been significant debates in this country about contemporary policy on employment conditions, we come today to shine a light on the history of the employment conditions of Indigenous workers in this state. While in recent times in other places there have been significant debates in this country about the teaching of history, we come today to shine a light on this little known and often little recognised part of the history of this state. It is therefore out of these traditions, beliefs and values that we speak to this committee today.

You have our written submission and I do not propose to reiterate all of that, but I would like to draw your attention to the three recommendations we make, which we urge the committee to consider. In summary, we urge governments to provide a public forum in which Indigenous people can tell their story; secondly, to provide adequate resources to systematically and comprehensively investigate and report on the available records; and, based on those two recommendations, to provide just and fair compensation to those whose wages were controlled by a succession of governments in this state.

As I imagine you will no doubt have heard earlier today in some detail, the Queensland government through much of the 20th century was responsible for the control of Indigenous people’s wages. We believe that it is vital that this story be told through a public forum which is specifically charged with that responsibility. Through raising awareness of the issue throughout the Australian community, we believe Indigenous people can finally receive recognition for their contribution to the development of this state.

We also believe the government, and governments around Australia, need to take seriously the job of investigating their own records in order to provide a clearer picture of what happened to these wages—from how the wages were controlled to the nature and extent of any fraud or mismanagement, from what the welfare funds were used for to what money the government made from investment of those funds. While individuals and community groups have investigated, they have neither the funds nor the access of a government. Nor do they hold the same responsibility, we believe, as governments for righting the wrong. We believe that responsibility lies with governments.

Finally, we believe the offer by the Queensland government was grossly inadequate, both in its magnitude and its manner. Those who have investigated these records believe the \$2,000 or \$4,000 to be quite inadequate. The offer was quite generic and took no account of individual circumstances. We see it as a quick fix to what is really a very complex issue. Our recommendations try to recognise that complexity and also recognise the importance of both the symbolic gestures and the practical solutions.

Our submission is not an analysis of the detail—we leave that to others—but advocacy of a principle, a principle of justice for those who have suffered the effects of injustices in so many aspects of their lives for so many years. Others may use the language of ‘a fair day’s wage for a fair day’s work’. The Uniting Church believes the Indigenous people have a unique contribution to make to Australia as the first peoples of this land,

and therefore we believe that in order to create true and lasting reconciliation the truth about this issue must be told and, as far as we are able, redressed.

CHAIR—Thank you for your submission and your recommendations.

Senator CROSSIN—Thank you both for your submission today. What interaction has the Uniting Church had with individuals seeking some sort of compensation? Have they come to you for assistance, or is it just as part of your pastoral work that you have had contact with these people? Are you lobbying actively for individuals?

Rev. Dr Pitman—We are not lobbying for specific individuals but wanting to make a statement on behalf of all of those we believe have been unjustly treated. As an integral part of its life the Uniting Church has within it the United Aboriginal and Islander Christian Congress, which is a national network of Indigenous and Islander people. Within Queensland the congress is represented by the Presbytery of Calvary, which is a non-geographic presbytery but where most of the people are in the northern part of the state—in Townsville, Napranum, Mapoon, on Thursday Island, in Aurukun and on Mornington Island. We are in constant contact and conversation with Indigenous people in relation to a whole range of matters that bear upon their lives. This has been one of the pressing matters that has been the subject of our conversation and concern in recent months.

Senator CROSSIN—Is there any evidence over previous decades that the church withheld wages from Indigenous people or is it solely the government that is perhaps, so to speak, in the firing line here?

Rev. Dr Pitman—The evidence that we have available to us—and I would not want to claim publicly that the church has always been lilywhite in this regard—is that, within the communities where the church had responsibility, Indigenous people were treated fairly. The major concerns appear to be where there was government control of the wages that were supposed to be paid.

Senator CROSSIN—Have any Indigenous people come to you with a claim for wages that were not paid or of underpayment?

Rev. Dr Pitman—Not who have approached us individually in that regard, but we have had numerous personal stories shared with us about people who are in that predicament.

Senator CROSSIN—Have you made representation to the Queensland government about the current offer?

Rev. Dr Pitman—Yes, we have.

Senator CROSSIN—And their response has been?

CHAIR—What is the nature of your representations and what was the response?

Rev. Dr Pitman—I have had a personal conversation with the Premier and with members of his government with regard to this matter, as have other heads of churches within Queensland. I think it is not unfair to say that, with respect to the strategy that the Queensland government adopted, they were hoping that this matter would go away—that the offer that was being made would be an end to the matter. And that was reinforced by the fact that there was a clear closing date that was set for people making application. When we made representation for that date to be extended, it was extended but only for a couple of months. I am sure the intent was that this would be a once only offer. Either it would be taken up or it wouldn't and then a line would be drawn to say, 'This is over.'

The most recent conversation I have had with the Premier with regard to this matter enabled us to address the fact that there was a considerable sum of money—I think in excess of \$30 million—which was not disbursed because many Indigenous people had no knowledge of the offer or were not in a position to be able to make an application for payment or chose not to because to do so would have meant signing off on any future opportunity for this matter to be addressed again.

The Premier has agreed that that money will be kept aside. I asked him quite specifically whether he would be willing to implement the recommendations of this committee, and the Premier's response was, 'If they are responsible.' That was the response. I want to say publicly that I intend to, nonetheless, hold the Premier to what I feel was a commitment to look again at this matter in the light of the work that you are doing.

Senator CROSSIN—I want to ask you about a national forum. You are right: I had many phone calls from people who were not aware of this inquiry or what this inquiry was meant to achieve. The submission we had earlier from Dr Kidd is correct. I do not think a lot of people have thought about whether this affects them or not. But would a national forum bring out anything that we do not already know? Given that a lot of people are

still coming to terms with whether or not this is an issue that affects them, if we suddenly called a national forum my fear is that a lot of people would not go because they would not see the relationship between their past or their ancestor's past and the forum. I wonder if the forum will tell us any more. Do we need to know any more, other than that we need to try and sort this out now?

Rev. Dr Pitman—I have two responses. The first is that I do not understand the notion of a national forum as being a group meeting in one place at one time. I believe that the process that was adopted in regard to the inquiry into the stolen generations was exemplary because an enormous effort was made to go to where Indigenous people are and to sit with them. That is my understanding of a national forum.

Senator CROSSIN—You are talking about the HREOC commission, not the Senate inquiry into the stolen generation.

Rev. Dr Pitman—Yes. Do you understand what I mean?

Senator CROSSIN—Yes.

Rev. Dr Pitman—What that does is honour and respect Indigenous people in a way that central gatherings perhaps can never do. To sit and to listen to their story is in itself a great good. I do not think it is necessarily about gathering more and more knowledge and data, because we have now in our possession the essential information that we need. But an essential step on our path towards reconciliation is a willingness to sit with Indigenous people and to listen to their stories with respect. We do enormous good when we are willing to make that kind of effort.

Senator BRANDIS—I do not want to sound disrespectful to what you have just had to say, and I am sure that what you have recommended might have some utility, but what concerns me about that approach—and you said that there were two values that animate you: reconciliation and the dignity of those in employment—is that it wraps this issue in well-meaning but amorphous generalities. To me, and maybe I am a very narrow lawyer, it seems much more simple than that. Quite apart from the values of reconciliation and the dignity of working people, which mean different things to different people, there seems to me to be involved here a much simpler value that means the same thing to everyone: that people, including governments, ought to pay their debts. If it is as simple as that, and I suspect that it is, I rather fear that, with the best will in the world, by losing sight of that core principle in the service of rather more amorphous values we might miss the point here. What is at stake here is money. There might be other broader issues, but to me it is as simple as this: there was money owed, it sat in bank accounts, it has never been paid, somebody must have it, somebody has to be liable for it and those somebodies are the state governments. I have put a few propositions to you to indicate my much more pragmatic approach to this, but in fairness you should have the opportunity to respond. If we could get these people paid what they are entitled to, that would be a totally successful outcome to this, correct?

Rev. Dr Pitman—It is indeed, and we would absolutely applaud that, but it is not the only value that is at stake here. The experience of Indigenous people for 200 years has been that people in faraway places have made decisions about their lives and they have had no opportunity to participate. The going and sitting and talking with is about beginning to rebuild relationships and understanding in a way that will last into the future—which ultimately is a far more important value than even the money. Part of the response we have received from Indigenous people in relation to this matter is that it is not just about the money; it is about more than that, in their minds. It has to do with their identity, their autonomy, their self-respect and their place in our society.

Senator BRANDIS—I am sure that is true, but I must say that, if we got them the money they are owed, that would not be a bad start.

Rev. Dr Pitman—And I sincerely hope that what you are doing will do a great deal to help achieve that.

Senator BRANDIS—I have not—to my shame, perhaps—participated much in the Aboriginal affairs debate since I have been in the Senate, but it has troubled me that so much of the debate has been at the high-concept level—the currency has been words. But here it seems to me, in a more practical sense, that the currency is currency—something you can actually get your hands on, if the government does the right thing—and that to achieve that outcome might get you a lot further, in a practical sense, than all the high-minded words in the world.

Rev. Dr Pitman—I would say let us have both.

Senator BRANDIS—On page 10 of your submission, at paragraph 2, there is a reference to footnote 15. That seems to be an erroneous reference to an earlier reference. Was that intended to be a reference to footnote 14?

Mr Johnson—Yes, I am sorry about that.

Senator BRANDIS—That is all right. I just wanted to clarify that. Will we find in the document referred to in footnote 14 a methodologically well-developed model for reconstructing these records that would have some forensic utility in a court of law, for instance?

Mr Johnson—My recollection is that it made reference to a way of going about that, which could be found elsewhere—it was a reference to another reference. I think it specifically refers to the Palm Island cases, where a methodology was put in place for reconstructing oral records that could be used as evidence in a court of law. That is my understanding.

Senator BRANDIS—Perhaps we should track that down with Dr McGrath. Again, being very practical about this, it seems to me that one of the biggest challenges here is the forensic challenge—the challenge of actually identifying the proof of this—because we might be talking about people being held out on their rights unless there is something on which to act. You cannot reasonably expect a responsible government to give away money in the absence of any evidence on which to ground the claim.

Rev. Dr Pitman—Ultimately, I think that is also inadequate because it is clear that much of the documentary evidence is either misleading or missing altogether—gone.

Senator BRANDIS—Yes, but if it is missing it is missing. What do you do if it is missing?

Rev. Dr Pitman—However, I believe we have an obligation to take seriously the personal information that people provide about their circumstances or about the circumstances of their parents. That is a part of the story.

Senator BRANDIS—Certainly, secondary evidence might not be as good as a book entry in a ledger, but it is still evidence, and if that is the best evidence available then that is what governments ought to act on.

Rev. Dr Pitman—Yes, indeed. But, of course, we have to gather it.

Senator BRANDIS—Absolutely. To what extent—and I imagine you can only speak on behalf of the Uniting Church—are the churches which ran missions likely to have records which would assist this process?

Rev. Dr Pitman—I cannot answer on the full extent of that. There are very significant records in archives.

Senator BRANDIS—That is what I am thinking of.

Rev. Dr Pitman—I am sure that a proper search could be undertaken.

Senator BRANDIS—To your knowledge, were these payments ever administered on the mission stations by the churches?

Rev. Dr Pitman—Yes, they were—

Senator BRANDIS—Then you would expect that the churches' records would be illuminating.

Rev. Dr Pitman—Yes, indeed, but clearly always acting within the obligations of the law of the time.

Senator BRANDIS—Of course.

Rev. Dr Pitman—Yes.

Senator BRANDIS—I have one last point—and you have addressed this in part in your opening statement—about the maximum offer of \$4,000. We heard some evidence this morning from Ms Yvonne Butler, who told us and was able to demonstrate to us that her grandfather had standing to his account in 1947 £623 3s 4d which has never been received by the descendants. I asked the Parliamentary Library to do a calculation for me and they told me that the value in present currency of £623 3s 4d in 1947 is \$32,350.

Rev. Dr Pitman—Yes.

Senator BRANDIS—And that is without compound interest over 59 years.

Rev. Dr Pitman—Yes.

Senator BRANDIS—If you compounded that over 59 years, you would be talking about well over \$100,000 and probably much more. In light of that one case, what do you say about the justice of a maximum offer of \$4,000?

Rev. Dr Pitman—Our response to that was that it was a totally unjust and insulting offer.

Senator BRANDIS—You took the word out of my mouth, Dr Pitman. It is almost a nominal sum to get rid of a nuisance claim, isn't it?

Rev. Dr Pitman—That is, I guess, exactly what I said at the beginning. It was an attempt to make this go away and I think there was probably a hope that it would do that. It clearly has not achieved that goal.

Senator BRANDIS—Do you think a responsible government would take seriously the obligations to pay its debts?

Rev. Dr Pitman—Absolutely.

Senator BRANDIS—Let us hope that the state government treats this matter responsibly.

Rev. Dr Pitman—I hope so, and we are going to do our best to ensure that it does.

Senator SIEWERT—I would like to go back to the issue that you were just talking about: your recommendations about compensation on page 10 of your submission. You talk about the use of a formula where no evidence is available. It seems to me that there are going to need to be a number of ways of dealing with the issue of where there are records and where there are no records. We have heard evidence of people acting in a fraudulent manner as well. That seems to be another layer, and there will be evidence about that. I suspect very strongly that there will not be any evidence in many cases. Would you deal with that through a formulaic approach? Where there is direct evidence, you are suggesting that it be dealt with on a case by case basis. Where there is not, you are suggesting that it be dealt with through a formula. How would that formula be worked out?

Mr Johnson—I am not sure that Dr Pitman or I are in a position to recommend that to this committee. I think it takes a significant amount of work to try and come at a formula. That is why we make the second recommendation—that is, the very practical thing about getting a comprehensive survey of the evidence. I do not think that we are in a position to provide a detailed explanation of a formula that could be applied.

Senator SIEWERT—But you would say in general that the approach that should be taken where there is no evidence should be a formula based response so that you are providing fair compensation for people where there is no evidence of how much they are owed, for example, but where they clearly had wages stolen.

Mr Johnson—Yes.

Rev. Dr Pitman—Yes. I think a formula that is based upon a wide program of research is going to be a far more just outcome than the very arbitrary sort of decision that our state government made.

Senator SIEWERT—I notice that you are suggesting that there would be a tribunal, if I interpret what you have said correctly, that would be responsible for not only the case by case management but also the application of the formula, based on the lack of available evidence.

Mr Johnson—Our thoughts on that are that that it provides the ability to deal with it more quickly and not necessarily with the same standards of proof that may be required in a court of law. The Queensland government could, for instance, say that normally in a court of law you would need to go through this process and this would need to be the standard of proof but they could say, 'Well, we'll take this standard of proof.' They did have a lower standard of proof in the recent offer; it was just that the offer itself was inadequate.

Senator BRANDIS—Are you talking about the standard of proof or the rules of evidence?

Mr Johnson—I think the rules of evidence.

Senator BRANDIS—I think you are talking about the rules of evidence. You are saying that this tribunal should have one of those provisions that says that it can inform itself in any manner it sees fit and is not bound by the technical rules of evidence.

Mr Johnson—That is right. Sorry.

Senator SIEWERT—I probably should have asked Dr Kidd this but you may be able to answer it. When we are talking about where there is no evidence, do we have the records of the actual people? There may not be records of the wages that were stolen or the fraudulent activity, but is there at least that level of evidence, that people's name are somewhere on the various registers we have been talking about so that at least they have got that bit of evidence? Or are we even lacking that in some areas?

Mr Johnson—I think that question is probably better directed to Dr Kidd and others who have done more forensic analysis of this.

Rev. Dr Pitman—We live now with the sad reality that, clearly, a number of the people who might well have been eligible for payment have died, there are no records with regard to their employment and the only access we have now is information from their families. But I think that is just one of the really difficult things that we are going to have to live with.

Senator MOORE—Thank you, gentlemen, for coming. I have a couple of questions—and you may have to take these on notice—and it follows on from both Senator Crossin and Senator Brandis. Have you made public the records of the missions that your church was responsible for during the period we are discussing?

Rev. Dr Pitman—No.

Senator MOORE—I know that the Uniting Church has been active in the community campaign, but I was wondering whether, as part of that campaign, the next step forward is to review what has been going on in different parts of Queensland and to look at what records we have. I am interested in whether the church has any plans to do an audit of its own areas. I have not got a full list of all the missions—and perhaps you could give that to us on notice—for which the United Church, in whatever guise the Uniting Church existed at that time, was responsible and administered the funding.

Rev. Dr Pitman—Indeed. I am certainly happy to get that information for you and to send it on.

Senator MOORE—That would be good. I will just put on record that, because some of us were involved in the institutional care processes we did through the Senate, it becomes a really interesting process as we move forward—as we will with all these things—to see where church and government link in the processes towards the future. If we could start that work, that would be very useful—and not just in Queensland.

Rev. Dr Pitman—Yes. Quite clearly there are historical links, and quite clearly those links were not always friendly.

Senator BARTLETT—Following on from that I note one of your recommendations was providing adequate resources to comprehensively investigate and report on available records. I very much appreciate Senator Brandis's finely honed and targeted point about people just paying their debts and not getting too caught up in the flowery stuff, to paraphrase—

Senator BRANDIS—That will do, Senator Bartlett. It is good to hear the observation come from the Australian Democrat.

Senator BARTLETT—It seems to me, as is the case today in many situations, the churches probably did the government a favour in doing the same tasks for a lot less. There were a lot of continual requests from church bodies running missions for more funding and support from governments, which was not forthcoming. Whether it is your church, or ideally the churches working together through such bodies as that, have you given any thought to enabling a comprehensive history to be produced? You would probably find out about a lot of things, things broader than just the stolen wages issue, but, going to your point in response, these wider issues have the benefit and their merits. It is a long-winded way of saying: is your church or the churches more widely in Queensland looking at producing a more solid, comprehensive history? History is something we do still have a deficit in. I praise the Prime Minister here: his desire for us to all learn more about our history is one I support, but we need to have the documentation and the facts there.

Rev. Dr Pitman—There is a considerable body of historical material in existence. It has not been collated, I think, at any time in the way that you are now suggesting, but there is certainly substantial written material that traces the involvement of the Uniting Church and its predecessors in relation to Indigenous and Islander people in this nation and certainly reflections on the relationship between the churches and the government in that regard in recent decades, where the churches have more and more had to adopt a stance of standing with and being advocates for Indigenous and Islander people in Australia. That kind of collation of historical material with appropriate reflection and analysis upon it sounds like a really worthy PhD to me.

Senator BARTLETT—The follow-up to that—with all due respect and acknowledging the role the churches did play in standing beside Indigenous people in some circumstances in Queensland—is the opportunity for it to be opened up to somebody independent to assess it. Flowing from that, are there any current cases that you are aware of or approaches that have been made about similar concerns with misappropriation—whether it is wages or other entitlements—involving church bodies in Queensland or your own church?

Rev. Dr Pitman—I am only aware of one instance that was before the courts, which involved an action taken against the Queensland government, where the Uniting Church was named as a secondary body

involved. But there was a constant suggestion—and I am not sure that that has been finalised as yet—through that process that, because of the evidence that was available, the Uniting Church was to be released from its obligations in that case. But there is no other instance that I am aware of where the Uniting Church has been named.

Senator MOORE—Can you tell us which one that is?

Rev. Dr Pitman—Sorry, I cannot from memory, but I am willing to provide that information also.

Senator MOORE—That would be great.

Senator WEBBER—One final question. I share Senator Brandis's and, I am sure, other senators' concerns about the state government's approach to offering what they are calling compensation. The other side of that coin, which I was wondering whether the church had a view on, is what we do about the people who may already feel that they have been coerced into accepting that compensation, particularly if subsequent record searches prove that they were entitled to a lot more, only they did not realise that.

Rev. Dr Pitman—My understanding of the situation for those who have accepted payments and signed off on them is that at the moment, legally, they have no further recourse. However, I am not a lawyer. But I believe that that is probably something that could be questioned in the future.

Senator BRANDIS—Can I help. It would be a simple matter of the government, which presumably is the other party to the deed of settlement, releasing those people from that obligation of finality. If this were to happen, that would be the only just thing to do.

Senator WEBBER—That is all from me.

CHAIR—That concludes questions this afternoon, until after our lunch break. Reverend Pitman and Mr Johnson, thank you very much for attending today and for the submission that you provided to the committee. I think there is at least one if not two questions that you have taken on notice.

Rev. Dr Pitman—Yes.

CHAIR—The secretariat will follow up those with you, and we appreciate your assistance in terms of answers to those.

Rev. Dr Pitman—Yes, indeed.

CHAIR—Thank you very much.

Proceedings suspended from 12.56 pm to 1.34 pm

BONE, Mr Kenneth Kevin William, Mayor, Cherbourg Aboriginal Community

BROWN, Mrs Jeanette Elaine, Secretary, Cherbourg Historical Precinct Group

COLLINS, Pastor Henry, Member, Cherbourg Historical Precinct Group

GAMBRILL, Mrs Beryl, Chairperson, Barambah Local Justice Group, Cherbourg Historical Precinct Group

GATER, Mrs Alexandra Hazel, Cherbourg Historical Precinct Group

MOFFATT, Ms Annie, Cherbourg Historical Precinct Group

BIRD, Mr Peter Noel, Private capacity

CONLON, Ms Alzira Astrid, Private capacity

GLEESON, Mrs Ettie, Private capacity

MORGAN, Ms Sandra Ann, Private Capacity

CHAIR—I am very pleased to welcome representatives from the Cherbourg Historical Precinct Group. We have had a submission from the Cherbourg Historical Precinct Group, which the committee has given the number 53. This afternoon we intend to ask each of the people who are here today—and I think there are 10 or so—to make some brief remarks to the committee, perhaps of a few minutes each, just to tell us what you would like us to know and to hear.

Mrs Brown—As secretary of the Cherbourg Historical Precinct Group, I can say that we found out about this inquiry only a day or two before it closed. That is why a submission went in in the form of a petition, where we got over 100 signatures from Cherbourg supporting the submission. Do you want me to read what that said?

CHAIR—We all have a copy of that and we all have that with us, so we are okay.

Mrs Brown—You are aware that they agreed with what was written about the stolen wages and living and working under the act. We mentioned the other entitlements, such as pensions, child endowments, sickness benefits et cetera. I personally did not experience going out to work, like the other elders here did. I was more fortunate—I had an education—but there are older siblings who have been through that system. I am the youngest of a large family. Our mother was sent out to a sheep station, way out at Longreach, when she was a young girl, when she was only 12 years of age. Then she went to various other stations around south-east Queensland, around the Goomeri-Kilkivan-Nambour area.

I just wanted to speak about a bit of that time. I was born in 1956. During that time, my parents were also victims of sicknesses and illnesses that went around Cherbourg in the early days. So I was deprived in early childhood of a mother and father. Our father was sent far away, to an island up in Far North Queensland, Phantom Island. He caught sickness there—Hansen's disease, leprosy—and he was separated from us for over five years. I never saw him until I was about eight years old. At the same time, our mother became ill with tuberculosis. She was hospitalised for a long period. At that time our grandmother had to struggle to take care of all the grandchildren without any financial support, to my knowledge. I just wanted to mention that bit. I also have three statements from people who were not able to attend today. But I would rather let the others who have had experience in the stolen wages era speak.

CHAIR—Thank you. Would you like to table those three statements so that we can receive them?

Mrs Brown—I table three letters from three elders in Cherbourg.

CHAIR—Thank you, and thank you for your remarks.

Ms Morgan—I come from Cherbourg. Jeanette is a younger sister of mine. I was going to say what she just read about our mum and dad anyway. I did go out to work. During that time, in the sixties, I was asked by the department to help provide for the younger siblings. There were eight younger than me. So I gave permission for the department to take money from my allowance for the upkeep of our family. Our grandmother was looking after everyone at that time.

When I came home from work I expected to have some money left, but they said that our grandmother was paid most of my wages. So I had very little there. But I did not ever question that at the time. I never thought about it then, but I do think about it now. We were not allowed to ask questions back then about anything. It

was very hard being from a big family and not having your mum and dad around for a while. That is all I would like to say about the wages.

CHAIR—Thank you very much. We appreciate that.

Mr Bone—I am here to speak not only on my own behalf but also on behalf of others who have not come down but who were in the same predicament as I was. I am the Mayor of the Cherbourg Aboriginal Community council, and I have held that position for the last 13 years. But I have also come through a system that denigrated and degraded us as people. For the best part of 20 years, from my teenage years up until my early 30s, I was torn away from Cherbourg. I worked on a lot of different jobs in the community.

I also want to thank the senators for giving us this opportunity to speak and to have our stories heard. I always say this to whoever wants to listen, whether or not it is degrading to whoever I say it about—and that is that the treatment that I was given as a young man growing up in Cherbourg by the system, and the system I have lived with, is the government's. I always say that nearly all of our mob, especially when we became young adults, were dictated to.

I have lived in a lot of country. And I appreciate everybody who is involved in trying to get this reparation—or not reparation so much as payment; I am becoming like the government, because the term 'reparation' came from the government, who stole wages as well. That was money that was stolen from the people, from us.

I speak not only on my behalf but also on behalf of my people. I cannot really get any closure for my grandmother and my grandfather or my mother and father, who have gone on. But I definitely would like to see something come out of this because there was a lot of misdoing by the government.

Even for not turning up for work we got jailed. And there was no court system; there was just the system we had there, which sort of dictated to us. I have lived with dictators—the superintendent and the staff, who worked for the government. We could get, say, six weeks in jail, and without any defence or anything; you had nobody to defend you. I have just a short thing here that I wrote about my history and about my working history in Cherbourg.

It is not like what was said by one of the senators, I think Senator George Brandis—it is not about the money. A lot of the people who did wrong to us are not around anymore. They are dead. But the government is still here. No matter what government was in place at that time, it is the government, I believe, which is at fault. And it is the government, who were supposed to be protecting us, who were the very people who were stealing from us.

Last Friday night I came down with the ladies and another guy. We received awards from the museum for our ration shed. The ration shed was a shed where we got all our rations from. We had thought that the government, which was supplying us, was being very good to us in giving us tucker, food and whatever. We found out later that it was all bought with the money that was stolen from us—from our people—in the first place. Once every year in our Christmas celebrations there were toys given out to us as kids. We were told later, and I believe it, that the toys were bought with the money that was stolen from our people—from our parents and our grandparents.

Yes, money is an issue and then there is also closure and justification. Our people need to see that something has been done for them. It is for those who are still alive and well, to be able to get some closure out of it. The feeling of my people, especially those in Cherbourg, is that the government seems to be waiting until we all die out.

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

Am I after money? Of course I am after money. But I am after closure too and I am after justification with regard to what happened to us. That you could go to jail for turning up late for work is not an issue. Things were done just because they could do the things they did. They were able to do whatever they wanted. I heard one of the ladies speaking at one of the meetings about welfare payments and stolen wages. 'It's not about the money,' she said. 'But it's about what was done to us as young women when we were sent out by the government away from our own people at 13 or 14 years of age.' That is the kind of thing that everybody needs to hear about, especially people in government—including senators and everybody else—because there

was a big hush-hush about it, it was all closed down and nobody was allowed to talk about it. But now I appreciate that it is that we try as we can to get the message out. We would definitely appreciate any help that we could get from senators. Thank you.

CHAIR—Thank you very much, Mayor. I am sorry I did not introduce and acknowledge you appropriately before. Thank you very much for those remarks. Would you like to go next, Ms Moffatt?

Ms Moffatt—Yes. I am one of the elders of Cherbourg. I was sent out to work straight after I finished at state school. We were not allowed to go to high school. We had to go straight out to the farms that were around Murgon, Goomeri and Kingaroy. I could not understand why I was taken off my mother. My mother was rounded up from Quilpie and Charleville, Thargaminda—all that area—and was put in a truck and brought to Cherbourg. What I was upset about was this: I used to ask her, ‘Where do you come from, Mum? Could you tell us your story?’ and she used to say, ‘Go away! Go away!’ She could not read or write. She said, ‘Go away! The policemen will put me in jail if I tell you.’ So that was her answer. I used to ask the question all the time why my mother was like that.

She got a job; she worked in the hospital. I got sent away to Palm Island because I was upset about it all. Five of us girls got together in a dormitory and we wrote a note to the superintendent and told him that we wanted to know what was going on. The superintendent said to get out of our mission because we wanted to run the mission ourselves, although I was only 14 going on 15 then.

Before I knew it, we were put in jail the very next day. We were sent to Palm Island over that, and they said that because we wrote that note—we wrote a note, and Sandra has done a DVD about that—but, like I said, I cannot talk. People laugh at me for talking in broken English, but the story is there. I invited some of the women from up at Mount Tambourine on a weekend to come. They were asking me questions about our aboriginality, and I said, ‘Come to Cherbourg, because they renovated this ration shed into the museum now and if you want to know about our history you should come to Cherbourg and you’ll hear it all there.’ I told them, too, that I am not good at talking English, but I can recommend you go to Cherbourg, to see our black history there already in black and white. I could go on and on, but like I said I cannot talk very good.

CHAIR—I think you’re doing pretty well. Thanks very much, Ms Moffatt. Ms Morgan, if there is a DVD or something that you think would be useful for the committee to see then we would be very happy to receive that.

Ms Morgan—Okay.

Mrs Gater—I am also a priest in the Anglican Church here in Brisbane. I was born in Brisbane and grew up in Cherbourg. Sandra is my eldest sister and Jeanette is my youngest sister. Growing up in Cherbourg, our lives were controlled. Our freedom, rights and identity were taken from us. We grew up by the whistle. The whistle would blow and everybody went to work. The bell would ring and you all went to school. On Sundays the bell would ring and we would go up to church. So that is how we grew up: by the whistle and the bell. Our people worked. They were hard working. They were forcibly removed and taken to various parts of Queensland. Our families were taken to Queensland. I am proud of the valuable contribution that our family made to Cherbourg, to Queensland and to Australia. They worked in the big industry and they fought in the armed services. My oldest sisters went out to work, as was said here. Because both our parents were sick and had to be sent away from the family, we lived with our grandparents. I was the youngest and I helped my grandmother to look after the family. My other sister, Lesley, will be speaking later.

I worked in the hospital. The other two did not go out to work on the cattle and sheep property. They worked on the missions, as they were referred to: settlements, reserves or missions. We worked in the hospitals. The hours were long and our wages were £2 10s a fortnight. The staff who came there said, ‘We’re being paid big money, and youse are doing all the work.’ You name it, we did it. We looked after patients and we scrubbed the floor. We got on our hands and knees, we scrubbed, we cleaned and we polished—you name it. And one day I organised about six of us: we went on strike for more wages. So we were marched down to the superintendent’s office and he said to us in no uncertain terms, ‘I’ll give you 24 hours to go back to work or I’ll put you in jail.’ If you spoke up for your rights, you were sent to jail for three weeks. Your only diet was black sweetened tea and bread and jam. If you continued to speak out you were sent to Palm Island, which was referred to as a punishment island.

That is one of the things that we went through. What we want today is justice. We want our money returned. The \$4,000 that was given was an insult to our people, and we are fighting today for justice and truth. I would like to take this opportunity to thank the senators. Thank you all for taking the initiative. Back 15 years ago

when my sister Lesley Williams started this fight for stolen wages, we approached the Minister for Aboriginal Affairs to hold an inquiry. The response was: 'We've got to be careful what we do, otherwise we can cop flak from the opposition. The Queensland government haven't the money to fund it and to hold an inquiry.' And, in the next breath, that was when they held the Indy race at the Gold Coast. They had no money to hold an inquiry, but they had money to host an Indy race. So I want to thank you for taking the initiative and listening to our concerns here today.

CHAIR—Thanks very much, Mrs Gater. Now it is your turn, Mrs Gambrill.

Mrs Gambrill—The stolen wages and fraudulent things that were done in Cherbourg and throughout Queensland were terrible. I had information from a letter that was sent from the protector of Aboriginal affairs to the superintendent at the time, Archibald Meston, saying that if anyone wanted to withdraw money from their accounts, they were to be given £2 or cheques of £5—the £2 had to be given to the individual. That was one case.

The returned soldiers from the First World War were not paid the same as the European soldiers. They received a pittance in wages. It was not even half of what the white soldiers got. That money is still owing to them. Most of them have passed on now. My father was one of them. My father ran the vegetable garden in Cherbourg and he supplied the community with vegetables all year round. Even the people from the government office—Aboriginal affairs—here in Brisbane used to come up and collect their vegetables to bring back to Brisbane.

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

So the government really owes us a lot of money. They are still holding even the deceased estates. The families have not received anything from the deceased estates, because the government still holds it. They put that money into a trust account and from the trust account they turned it over to the welfare account. With that they received all the interest that was paid and they used that for their own benefit—like buying hospitals. The Commonwealth Bank across the road was purchased through Aboriginal money. The Treasury Building, which was a morgue to start with, was purchased with Aboriginal money. These are things that the government has to look at to return the money to the rightful people. Even the deceased estates can go to families that are still living in Cherbourg.

CHAIR—Thank you. I did not want to interrupt you. Have you finished?

Mrs Gambrill—Thank you. I have finished.

Mr Bone—Chair, before we go on, I just want to say one more thing.

CHAIR—Sure.

Mr Bone—It is about the day when what they call the reparation payment was offered by Peter Beattie. I was at a meeting at the same time. If you need verification or you want to talk about it then I am willing to say exactly what happened on that day.

CHAIR—We might listen to the rest of the stories, if that is okay—

Mr Bone—Yes.

CHAIR—and we can come back to that. Ms Conlon has been waiting very patiently.

Ms Conlon—My employment history started when I was about 16 years old, working on a dairy farm outside of Toowoomba, near a place called Pittsworth. I do not know exactly where it is. They were long hours. I got up early in the morning, stopped halfway through the day and then continued in the afternoon. I left that to come back home to Cherbourg and found employment there, doing part-time work stuffing bears and koalas for tourism with other young women who were looking for jobs at that time. Later on I worked for the hospital as a nurse's aid, doing nurse work and all the dirty work. That was in the early seventies. Those were the times when I worked. I had a father who worked on a cattle station and we all had to move outside to stay with him. Today we still do not know the wages that my father got. He worked in the cattle industry and probably worked for some big names who owned a lot of the cattle at that time and took the cattle through to

Western Australia from Queensland. That is part of the history of employment in my family. That is what I can tell you about me.

CHAIR—Thank you very much. Pastor Collins has joined us, along with Mr Bird.

Pastor Collins—I was born on 11 June 1936. I am a Gemini—I have a split personality! I left school when I was 13 or 14. I worked at manual training for one week and at the training farm the next week—and, guess what: I got 10 shillings for a fortnight's work. I thought I was rich. I did a lot of work at Cherbourg. I worked on hygiene, going around and picking up rubbish and cleaning the drains—I did all that. I kept the community clean. I also worked on making boomerangs and things like that—cutting boomerangs and all those sorts of things. Then I left Cherbourg. I came back an invalid. I have an artificial leg below the knee. I refused to go on the pension; I kept working. In those days you had to sign and you got either £5 or £10 and they said, 'That is your pension.' I did not know anything about how much an invalid pensioner should get, so I kept working. I worked at the reservoir, sometimes from six until two and from two until 11 o'clock at night, doing all that work.

One of my jobs was that I used to have to go around and spray still waters, homes and things like that with DDT and kerosene or linseed oil and DDT. One day my back was all blistered up and I could not wear a shirt or anything. I could not take time off because I had six children, a wife, a home to run and electricity bills to be paid of about £10 a week. That was hard work. It was very hard work. And then that was not enough. I went out to work on weekends peanut picking, peanut stooking, ringbarking, boomerang cutting and all of that. My week was full except for Sundays, because 40 years ago I became a Christian. There was an Anglican pastor here for a long time. His name was Bishop Greenway. When he left, I left because the other bishop who came brought two bells from England and he used Aboriginal money. I said to him, 'If you're going to put those bells before the lives of my family, my children and my people then I will not work for you.'

Aboriginal and Torres Strait Islander people make up about $1\frac{2}{3}$ of the whole population of Queensland. But we make up 85 to 90 per cent of those people incarcerated. How do I know that: because I have been a prison chaplain for the last 15 years. I started in Boggo Road. That keeps me going, but I do not get paid for it; I do it because I love it. They are my people. People say, 'What is wrong with this Western justice system that came off the boat at colonisation?' It has not changed, according to my estimation and my people who are incarcerated. I have also been a juvenile justice officer. I used to travel from Ballywillan down to Westbrook and all those other places to talk to people. I had three or four juvenile justice guys come to me. We were talking and I was counselling. I said, 'Look, you can do this or this and then you'll be out of here.' They said, 'Pop, if I go out of here now, I will be looking over my shoulder all the time to see where the bully man is.' That really hurt me. I am 70 now and I still do prison work.

I am glad that you people have taken the time to listen. I am hoping and praying that your listening will turn into action. Should you need help or encouragement, call on me. I will tell you; I will lead you. I have done all this. I have worked on the mill and everything for next to nothing, but I supported my family and I supported my community. I have come down here and I am the only Aboriginal pastor within the Anglican Church. I have been to Tasmania, Port Augusta and all around talking and listening. I have been to Nungala College. I have been endeavouring to get some kind of recognition that though the pigment of my skin may be different to yours I am still a human being.

The people that I represent and look after and help are human beings—do you understand? While I am down here and go to Musgrove Park, those people who may be classed as drunks and no-hopers, when I go there, put their bottles down and say: 'How are you going, Pastor? How are you going, Brother?' That is total respect and that is something I find is very scarce these days. We are Aboriginals and Torres Strait Island people, as I said, and we are struggling for recognition in our own country.

When I was 17 years of age we used to go to a roll call. They would call the name out and then when you were finished you had to turn and salute the flag. I did not do it. I said, 'That is not my flag.' Do you know what happened? I did six weeks in the jail on bread and water. I had one mattress and it was winter time. I went out and they said, 'Now are you going to salute?' I said no. So they took me back for another six weeks. I did 12 weeks on bread and water because I would not salute the flag. I said, 'It is not my flag.' That person did not come to talk to me or confide in me, did not know whether I was hurting or not. My first daughter, because of a lack of quality in the hospital at that time, died in my arms. I am a man who would never cry in public. I cried in public. Only twice in my life have I cried in public.

Mr Bird—I was born in Cherbourg 73 years ago. In fact my birthday was two days ago. Let me begin by maybe telling you a little joke, but there is a moral to it. There was a guy who went a psychiatrist and he said

to the psychiatrist, 'When I go to bed at night I get a feeling that somebody is under my bed every night.' The psychiatrist said to him: 'Look, if you come to me for two years I can fix you. Come to me three times a week at 200 bucks a visit and you will be right.' This guy said to him, 'I'll have to think about it.' Six months later the psych met him out on the street and he said, 'I thought you were coming back to me.' 'What,' he said, 'for 200 bucks a visit? Oh no, I went to my local pub and the publican fixed me for \$10.' 'What?' said the psych. 'Yes, \$10.' 'What did he tell you?' 'He told me to cut the legs off my bed.' A simple answer, isn't it? There is nothing simple about the Aborigines as far as the Queensland government were concerned. They stuffed up our lives. They made it more complicated than you can ever imagine it to be. There is nothing simple about our lives, nothing whatsoever.

I would like to read to you a poem that I wrote a few years ago. It is called 'SORRY'.

Isn't it strange that a man of so many words

Find it very difficult, yea, even absurd

To say 'Sorry,' to the Aborigines

For all the horrific atrocities brought about by his!

On board the Endeavour they came to our shores.

Heart hardened criminals, ruthless to the core.

To murder innocent people, over this they did not worry

Now just like his ancestors, he refuse to say 'SORRY.'

"SORRY," should not be just for the Stolen Generation alone,

But! for a country "Stolen," for which all governments must atone

More-so; for it's first inhabitants

Who for 200 years or more suffered a cruel embitterment.

Yes, "Sorry" must be, for the imposed estrangement

By ALL Colonial Governments, who imprisoned all Aborigines on Government Settlements.

And kept us out of their societies

And made us suffer very harsh penalties.

Right from the very out-set, when our country they had won,

The Blacks and the Whites were never ever one.

But! now they speak of Reconciliation

This is but, an, "ILLUSIVE DREAM"—

"SORRY!" I prefer "AMALGAMATION."

You see, when we amalgamate, we share everything. If reconciliation comes about, the white man will still be in charge and will own everything as he does now. Sorry—I do not agree with your reconciliation.

Pastor Collins—There can be no reconciliation without recompense.

Mr Bird—That's for sure. Like I said, I was brought up in Cherbourg, which my brother and I termed as being a place that had only two things missing at that particular time: the swastika and jackboots. Everything that related to a concentration camp was there in place. You could not move without getting a permit. Cherbourg is built right on Bramble Creek. About 100 metres or so away from the river was the farmer's house. We had to get a permit to go down and fish there. We had to get a permit to go to Murgon, which was four miles away—six kilometres—and it had a time set on it. If you came back five to ten minutes after that time expired, you would be put in jail for, maybe, a weekend. And they brought the curfew in. All lights had to be out at nine o'clock. If you were found out after dark or after the lights had gone out, you were put in jail. They even put searchlights on the vehicles—the police, the superintendent—and chased black fellas everywhere, hither and thither, throughout the night hours.

During the mid-forties, they took away our corroborees, they took away our culture. Our ancestors were not allowed to teach us our language; most of us know nothing of our language.

Pastor Collins—That's right. I know a few words—that's all. But they are swearing words; I don't want to say them!

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

Pastor Collins—It was nearly 12.

Mr Bird—Yes, 12. But during that time my brother and I wrote a letter to the *Truth*—the Brisbane paper at that time was the *Truth*. The caption of our letter was, ‘The iron curtains fall on Cherbourg’. The superintendent got word that we wrote the letter. He sent for us and he said, ‘Well, if you want to go out, you get out.’ He just kicked us out.

Our pay from the forestry was three weeks pay, which amounted to about £38. When they kicked us out of Cherbourg they gave me £10 of my wages. When I came out of Cherbourg, my wife and three children and I ended up in Gympie, sleeping on a white man’s veranda. He was away. We had three boys. The youngest boy had just come out of hospital. He was very sick—bronchial asthma he had, in fact. We had two or three blankets in midwinter, with no mattress. We could not get into the man’s house to cook. We had to buy two plates, knives and forks, and my wife had to cook in a billy can. We struggled.

Twelve months or so ago, down at Redcliffe, my grandson was picked up. He was charged with bashing a man. He said he was guilty of it and his legal team said to him, ‘Look, boy, if you plead “not guilty” to this, the prosecution is going to hit you with the charge of disproportionate response.’ We found out later that the prosecution did not have a case against him, but he pleaded guilty because his solicitor wanted him to. You know, the black man’s side of the story is never heard in a court of law. We have to go to a white man to be able to have our stories heard and told. I am so glad you people here today have given us the opportunity to tell a bit of our past and how we were treated.

My dad worked for Cherbourg for, I suppose, some 32 to 35 years. He was a policeman there for about 12 years, then he became the overseer of works for a few more years. I helped him put in the reservoir that Henry talked about and the water reticulation. We put in the reservoir at Murgon—at Barambah Creek below Murgon—and helped to build the reticulation to the town. All the money that we earned went into Cherbourg. It went into our account. When payday came around you would have to go in and, through a little window, sign a book. You could not get what you asked for; you would receive what they wanted you to get.

My dad died in 1979. I was in Sydney at that particular time; in fact, I was with the Anglican Church down in Sydney. I went to see a law firm about approaching the Queensland government and finalising my dad’s estate. Sixteen years later, when I came back home, they finally sent my mother the sum of \$2,500. It took me 16 years to get \$2,500 out of your lousy, stinking government. My dad is worth more money than that—more money than you can ever give to us. The reason I fought for it was because my mother was entitled to what was coming to my dad. We are now fighting to try to get what should have been coming to us.

We are not after compensation. Compensation is no good to us. We are after the money that was stolen from us, plus interest. I will tell you why we are not after compensation: the Commonwealth Racial Discrimination Act 1975 confers upon the Human Rights and Equal Opportunity Commission the power to award compensation for racial discrimination only to living persons. When this part of the legislation—it took them from 1975 to 1986; it was supposed to be in place that year—had to be ratified by the Queensland government, it took them until 1999 to ratify it, so all those who died between 1975 and 1999 were not entitled to the \$4,000. So they are still stealing money from us.

My wife’s mother worked for Cherbourg for some 30 or 40 years, looking after the dormitory cooks—our cook, in fact. Then she ended up being a cook at the Cherbourg Hospital. We could not get the money that should be hers either. She died in the early nineties. She was entitled to that \$4,000. We have tried and tried and we have pleaded with every known source of government. I would like to end with this, another poem that I wrote. It is called *Unheeded Pleas*:

Their cries go out across their land

Their cries go out across sea and sand
Their cries go out to every man
Their cries go out across the land.
Unheeded Pleas—Unheeded Pleas,
On deaf ears they call,
On deaf ears they fall,
Their cries return—Unheeded Pleas.
To the top they cry; to the top they call,
But never the word of ‘Sorry’ does fall
From the lips of the man—to the Aborigines,
Their cries return—Unheeded Pleas.
O’Who will listen with sympathetic ears
And let our cries become Heeded Pleas.
No longer on deaf ears to fall,
Who in the world will heed our call?
Thank you.

CHAIR—Thank you very much, Mr Bird.

Mrs Brown—We have a time limit with the bus. We booked a bus coming from Cherbourg for the ones who have travelled. The driver gave us until 2.30. We want to know if you want to ask us any questions.

CHAIR—We had not planned to ask a lot of questions. What we really wanted to do was to listen to what all of you wanted to tell us, your experiences and your families’ experiences. We are on a schedule as well. Senator Brandis says he has one question, but it never really works that way. That is not a specific reference to Senator Brandis, but it is for all of us; we are all guilty as charged.

Senator BRANDIS—I think there is something we need to know. Before I ask the question, Mr Mayor, please understand I was not meaning to suggest by any of the observations I made this morning that you are only looking for money. I know you are not; I know that is not principally what you are here for. My point was that you are certainly entitled to that, and you should not feel embarrassed about that; if it is yours it is yours. My question to each of you, but it can have a very quick answer I am sure, is: how many of you accepted the \$4,000 offer from the Queensland government?

Mr Bird—I did.

Pastor Collins—Yes.

Ms Moffatt—Yes.

Mr Bone—Yes.

Ms Morgan—Yes.

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

CHAIR—I understand that, just one at a time though.

Senator BRANDIS—Ms Conlon, you took it, and there were several other people in the audience who took it. We might restrict this to the people who have got microphones. Before you signed the document—it was the settlement; you would have signed a legal document—were you told by anybody from the Queensland government that you should seek independent legal advice before signing that document?

Mr Bird—No.

Mr Bone—As I stated earlier, I was one of the people who sat in on the day the offer was made. We were told that the people would not have the money to fight the government if they took the government on, that the government would win because the government had so much money. When they went around—there was a negotiating team set up to go around to the communities—they expressed the same idea—that is, if you do not take this offer, you are never going to get another chance.

Peter Beattie also said on the day, 'This is a one and only offer, it's for \$55 million.' Apparently, the offer was \$55,600,000. One of the guys from the party I was with said, 'Listen, we'll need money to go around to all the communities in Queensland.' And Mr Beattie said, 'We'll take \$200,000 off the current offer, because that's the only place we can get money from for you to go around.' I think that was stealing from people who had already been stolen from. From the money they were offering to us, they went and stole again. It might not seem like it is officially stealing, but the thing was that it was from the money that was offered to the people.

Senator BRANDIS—Were any of you who signed this settlement advised by the spokesman for the Queensland government before you signed it that you should get independent legal advice? Was anyone told that?

Witnesses—No.

Mrs Gater—No. Definitely not.

Senator BRANDIS—No?

Mr Bird—No, and I am going to tell you why—

Mrs Gleeson—I signed for it. I went to the city and I had a witness with me. I went in to see the bloke, the solicitor. He said: 'You sign it or you get nothing.'

Senator BRANDIS—The Queensland government solicitor said that to you?

Mrs Gleeson—I do not know. He was a solicitor, they reckoned.

Senator BRANDIS—But it was not your solicitor; it was somebody from the government?

Mrs Gleeson—No—'Or wait 20 years like Mabo.' So I signed it, because my cousin died of cancer. I signed it under pressure.

Senator BRANDIS—Did you want to say something?

Mrs Gambriell—It was a solicitor from QAILSS that came around with an ATSI rep. They said that if the sheet was not signed you would not get any money.

Senator BRANDIS—Mr Bone, when you were at this meeting with Mr Beattie—bearing in mind that Mr Beattie is a lawyer himself—did Mr Beattie say to you or to the people at the meeting that your people should make sure before they signed their rights away; that they should get independent legal advice?

Mr Bone—I do not recall them saying that.

Senator BRANDIS—Do you think he said that?

Mr Bone—I know that everybody there who signed those papers signed them with a legal person from the government. But they were also told by the negotiating team that went around, who were speaking on behalf, supposedly, of the people: 'Look, you guys are never going to get another chance if you don't sign these forms and take the \$4,000.' That was told to the people. All the documents were there. All the documents were in place. Because they made sure they covered themselves.

Senator BRANDIS—But the people who said that to you were the government's lawyers?

Mr Bone—The people who said that were our people, who were going around, as the government had given \$200,000 for the negotiating team that were negotiating. They explained to the people: 'You will not have money or you will not have lawyers to back you up'. They had a lawyer called Angelo Vasta. They had a lawyer with them and a barrister. I think people were conned into doing it, because they knew that there would be no other chance of getting any money. They were thinking, 'Anything is better than nothing,' at the time, not realising that—well, a few people may have realised, but when you are told that, if you are going to take the government on, it is going to cost you a lot of money and you have no money to fight the government, then what situation are you in then?

CHAIR—That is right, Mr Bone.

Mr Bone—You either say no or you just accept.

Paster Collins—My reason for taking that was that my late wife and my second daughter were rushed to Brisbane hospital, and I had no money. I took that.

CHAIR—I understand. We do understand.

Mr Bird—I think the reason why many of us—we took it under coercion. The whole point is: I was practically going on for 70 years of age. I was sick; my wife was sick and there were many around about my

age. We were so concerned about the future: we might not be alive by the time all of this great amount of money came in. So, in a sense, we were coerced into taking the \$4,000, with the promise that a certain union was looking into it and, should they get some more money, then we would be entitled to what was coming to us. That is the reason why we took it.

CHAIR—Thank you very much.

Ms Moffatt—Because we are going home, I would like to say that we have been through this battle for so long now. We might not get no money. We might not get no land. So I would like to end it with a song. It is called *Acres of Diamonds*.

Acres of diamonds
Mountains of gold
Rivers of silver
Jewels, I am told
All this together
Couldn't buy you or me
Peace when you're sleeping
And a conscience that's free
A heart that is contented
A satisfied mind
These are the treasures money can't buy
If you love Jesus
There is more wealth in your soul
Than acres of diamonds or mountains of gold
Acres of diamonds or mountains of gold

I cannot sing.

CHAIR—You certainly can. Thank you very much and, on behalf of all of us, we know you have come a very long way and have a long trip back. I want to thank you on behalf of the whole committee for coming today and telling us your stories. As I said to a previous witness, this is the committee's first hearing in this process. It most certainly is not the last.

Pastor Collins—I hope it will not be the last.

CHAIR—The committee takes this very seriously and thanks you very seriously for the time you have spent with us this afternoon.

Mr Bone—Thank you. I was going to ask you the same question: where to from here?

CHAIR—In terms of the committee, Mr Bone?

Mr Bone—What happens with the recorded stuff you have got?

CHAIR—We will send you copies of the transcript as it is written out of what has been said, which you can have a look at and make sure that that is accurately what you said. The committee will keep you in touch with how the inquiry process is progressing.

Mr Bone—Thank you. We would like to thank you once again but we have got to move.

CHAIR—Thank you very much.

[2.44 pm]

HART, Mr Victor Gregory, Member, Executive, Queensland Stolen Wages Working Group

HEGARTY, Mrs Ruth, Member, Executive, Queensland Stolen Wages Working Group

HILL, Mrs Vera, Member, Management Committee, Queensland Stolen Wages Working Group

CHAIR—Welcome. We have received a document from you today, which is to be your submission to the inquiry. I would like to note for the record that you have tabled that submission today and we will lodge that as a submission with the inquiry. Is that suitable for you?

Mr Hart—Thank you.

CHAIR—What I would like to do, as I have done with other witnesses today, is ask you whether you would like to make some opening remarks and then go to questions from members of the committee on your presentation.

Mrs Hegarty—I sent in a letter that I wrote, which the committee said they would include. I begin my letter by saying:

I would like to submit the following comments into the Senate Inquiry into Stolen Wages:

As a recipient of the policies of the day that related to Aboriginal people in Queensland and a member of the Stolen Wages Working Group, I provide this first-hand account.

“The offer that the Beattie Government tabled in Parliament is an insult to Indigenous people in Queensland”

With the \$4000 and \$2000 almost completely distributed and the Wages and Savings Branch—
in Beattie’s government—

closed down, we are concerned about the balance of funds that remain.

Although Mr Beattie recently made a statement to Parliament that in relation to the Stolen Wages and I quote “These funds are not mine they are taxpayers money” (Hansard 51). Supported by Minister Mickel.

I ask the inquiry to clarify what is happening to the funds—

if you know anything about them—

and if by some miracle these funds are released, that we the Indigenous people and recipients of the first payout be involved in the decision to determine what will happen with these unspent funds.

This matter like a thorn in the flesh has been allowed to fester causing considerable pain and frustration to us all!

After three (3) Ministers for Aboriginal Affairs we’ve taken as many steps back as to so few forward.

It was not three but four ministers. My letter continues:

Our stories are well and truly aired with little regard to rate of pay and conditions. Our campaign for justice has taken its toll in that many elders have died before the whole issue was resolved.

I ask the following questions—

We have not had anything to with what was going on with the money. I ask:

(1) What was the balance of the employment and savings Accounts when Beattie came to power?

That is one of the questions that we would like answered, and whether you could do that for us. The next question is:

(2) What was the balance when the Nationals were in power?

(3) Will there be an end to all monies held in trust for Indigenous people e.g. Welfare Fund, Deceased Estates etc ?

(4) Does the current government have a case to answer in relation to its Fiduciary duty to the Crime and Misconduct Commission?

CHAIR—Thank you, Mrs Hegarty. Mrs Hill or Mr Hart, do either of you wish to make some opening remarks?

Mrs Hill—I have been going to the meetings. I am just one of the dormitory girls from Cherbourg. I was taken away from my mother. The dormitory was the worst place you could be. It was really hard to live there because you had to do everything and have permission for everything. It had to be on paper what you did. It was very hard. We had police watching over us all the time. Our own people had to obey the white people. If we did anything wrong or we did not do right, we would always get punished by our own people, not the white

people. They made the law for our people to obey. We had to do as we were told. When we were sent out to work, we were only 15 and some of us were only 14.

We worked hard. We worked from early in the morning right until late at night. If we did not, we would get sent back home. We did not know how much money we were getting as wages. We used to only get \$2 if we went into the town or anything—that is all. We could not buy much with that. That is why I am here: to let you know that I never got paid well at all. That goes for all our dormitory girls. That is all I can say.

Mr Hart—There have been a number of discussions held here this morning about the fiduciary duty of the state, and that is central. I commend Senator Brandis for raising this issue over and over, because it is central to understanding just what responsibilities the Queensland government has to citizens—namely Indigenous citizens—here in Queensland. We need to move down that path first to understand the comprehensive nature of the claims of Aboriginal and Islander people here in Queensland. Their initial offer did not acknowledge the crucial role of Indigenous workers in the development of this state, particularly in the pastoral industry. Their initial offer also did not acknowledge that contemporary poverty is due in large part to this financial deprivation called the stolen wages. Their initial offer also did not include a process for negotiating a fairer compensation scheme for individual claimants. It was, as has already been said in this forum this morning, a take it or leave it offer.

Senator Bartlett also raised issues about what happened at the beginning when the offer was being put together, and that is also crucial to this hearing in terms of finding out what role QAILSS played in representing the legal interests of all Aboriginal people regarding this offer. It is fair to say that everyone in this room would agree that they had no right whatsoever to either accept the offer or to reject the offer on behalf of Aboriginal people. Over the last four years, I have raised concerns and there have been concerns raised to the working group about the process of consultation undertaken by QAILSS back in 2002 on behalf of the Beattie government. Over a three-day period, they visited something like 16 communities in Cape York and consulted with, apparently, 95 per cent of claimants. To fly around and meet at least 3,000 or 4,000 people in that time is a phenomenal piece of research.

Mrs Hegarty—In one month.

Mr Hart—In two days, Ruth.

Mrs Hegarty—In one month, they did the whole lot.

Mr Hart—Yes. And they came back and slammed that on the table and said, ‘We’ve consulted with 95 per cent of eligible people.’ The terms of eligibility are also interesting. The ABS statistics suggest that there are 16,000 people who fall inside the eligible age group of 45 to 65 years of age. How they came up with \$55.6 million is also interesting and is something that the inquiry should investigate. Those are my opening remarks.

CHAIR—Thank you all very much for those remarks.

Senator BARTLETT—We have had some comment about the fiduciary duty and the clear misappropriation of money that people were legally entitled to. That is obviously a very straightforward component of the issue here. In the process surrounding the offer being put together and all of the talk around it, one other thing that comes out to me which you cannot get to by a court action is what might be more loosely called unconscionable conduct—at least from our perspective in the current era.

I note in the submission from the next witness, Lesley Williams, that she describes the bit of the 1939 act where it says: ‘Every Aboriginal shall, when required, be required to work, provided that they do not do so for in excess of 32 hours without remuneration.’ So, basically, they could work up to 32 hours for nothing under the law. How do you address that in any legal sense when, however objectionable, it was actually legal at the time? If they did not work for nothing, as we have heard from the last witnesses, it was for very little; people were grossly underpaid but apparently legally so. Was that aspect of it acknowledged in the discussions by the state government or others?

Mrs Hegarty—There was never anything discussed in terms of legals. As 14-year-old girls going to work and having to sign a contract, no-one explained to us that the contract was legal and binding. The only thing that was ever said to us at the time was, ‘You sign this contract, and if you do not finish your 12 months work wherever we are sending you then you get sent from here to Palm Island.’ So if you are reading something from back in 1939, I think you see that this is a whole process of the government right throughout our whole lives: to stick something in front of an Aboriginal person and say, ‘This has to happen or punishment will follow.’

If we had known anything about the legalities of anything, we probably would have had a better understanding of what had happened and maybe could have put up an argument of sorts. But it was not like that at all. It was them saying to you, 'You sign this or else you will get punished.' So when it came down to the fact that we had to sign this piece of paper, this indemnity, which our brother Pastor Henry is really adamant about, most of the people did. I was with the government's advisory body at the time, so I was able to go to that meeting with the Premier.

What had happened was that when people were out there, they already had the money spent—the \$4,000 or the \$2,000. In your mind, you had that money spent. Most of it was spent for funerals. Mine was, for my 94-year-old mother. I thought: 'She is still alive. We have no money for her funeral, because it is not really relevant for us as younger people to talk to our parents about dying.' So we had it all spent: 'That will be for mum's funeral.' There was no way in the world that I could not have signed that piece of paper, indemnity or not. That indemnity, we were told by the young solicitor who was there, was a legal document.

What I am saying is that we had had that money spent, more or less. When you then get into a meeting and somebody says, 'If you do not sign this paper, you do not get the money,' what are you going to do? Are you going to go back and tell your mum: 'Look, I refused the money. I cannot bury you. We have got to hand the hat around again to communities'? So I think it was unfair of them to say to us, 'You sign it.' That indemnity did not come when the consultative committee were going around the negotiating team. When they went around to 95 per cent of our folk, they did not tell them then that there was an indemnity. They told us when we went in there, maybe one by one or two by two, and said, 'You sign this or you won't get anything.' You cannot do that to a kid: say, 'You will get this lolly only if you go outside and blow your nose,' or something.

To be fair, the government did not treat us that well in all of this from the very moment he threw that paper in front of us, and I was at the table the day he did that.

Senator BRANDIS—Who did that—Mr Beattie?

Mrs Hegarty—Mr Beattie did. He raced into the meeting. There were 15 of us sitting around the table. Minister Spence was there as well. I cannot think of who the others were. Mr Beattie just raced in from parliament and said: 'Well, this is it. I can demonstrate it.' He was around the table as fast as anything. He said, 'That is the offer I will make to you guys.' He said: 'This is it. You either take it or leave it.'

That sickened me. I am 77 now but, at the time, I was just into my 73rd year. I was so sickened, because we had had a process—I believed with QAILSS and the others—going whereby they had got \$1 million from ATSIC to do up a proposal to hand to the minister to say how everybody's payment was to be paid out to them. That proposal was given to me two days before we met with Mr Beattie, because QAILSS knew I would be at that meeting. We were to look at that proposal. I read it through, as most of us did, and went to the meeting two days later. QAILSS had asked for a considerable amount of money to be paid out—not at once, but with every year so much money was taken out of the budget—to pay Aboriginal people the money that he owes us all. What they said to us was: 'We will walk out of the meeting'—Mayor Bone was there as well—'if he does not listen to us; if we're not given that amount of money.'

When we got in, it was a done deal by the Premier and NAILS, the National Aboriginal and Islander Legal Service—because there was no surprise. Mayor Bone, another fellow from Palm Island and I were the surprised people. I am thinking, 'When are we going to get up and walk out?'

Senator BRANDIS—Did it appear to you that this was evident to Mr Beattie?

Mrs Hegarty—Of course it was. I know what I am saying is going to be confined to here but the thing is, the minute he said that to us all and we sat there like stunned mullets, Sugar Ray Robinson, across the other side, said, 'Okay, brother, we'll need \$200,000 out of this money'—it was \$55.6 million; it came down to \$55.4 million—'to do our consulting, and then we'll come back to you.' Mr Beattie leant across the table and said, 'Okay, brother, I'll leave that with you.' Can you understand the anger that there is in all of us because of this?

Interjector—The government gets more money than what we get.

CHAIR—Thanks, Mr Bird.

Mrs Hegarty—Mayor Bone went straight out and let everybody know what happened.

Senator BARTLETT—How much did all of the lead-up discussions and even the ATSIC document take into account the issue of deceased workers who have passed on? It clearly is a major source of ongoing anger

and distress that there is no recognition at all. Was the initial endeavour through the ATSC paper or discussions with government to try to find a way of recognising that?

Mrs Hegarty—I think there was for the deceased workers. The deceased people had had money there and had been deprived of their moneys. If the government had gone along with what had been proposed to them—that they give so much out of each budget so that it does not cripple the country in any way—then the deceased people would have been paid out of all of that. But it did not happen. He also said that he did not see the proposal that had been put up by QAILSS, although I believe he did get a copy of it.

Senator BARTLETT—That is the previous document you got a few days before.

Mrs Hegarty—Yes.

Senator BRANDIS—Do you remember whether there was somebody taking notes at this meeting?

Mrs Hegarty—I do not think so.

Senator BRANDIS—How many people were there?

Mrs Hegarty—Fifteen.

Senator BRANDIS—About 15 Aboriginal people?

Mrs Hegarty—Yes. I remember that Ray Robinson was representing NAILS, and Angelo Vasta was at that meeting.

Senator BRANDIS—In what capacity was Mr Vasta there?

Mrs Hegarty—He did not say. He was just there. I think he was doing some work for NAILS at the time.

Senator BRANDIS—Who was your lawyer present at the meeting—by ‘your’ I mean, in aggregate, for the Aboriginal people?

Mrs Hegarty—We had no-one, but maybe he was representing us. I do not know. No-one said anything.

Senator BRANDIS—But, as far as you are aware, there was no lawyer representing the Aboriginal people at that meeting?

Mrs Hegarty—As far as I am aware. I was there as a representative of the government at the time, because I was on their advisory board. That was my reason for being there.

Senator BRANDIS—One of the important issues in all of this is the \$4,000 settlement that a lot of people accepted. Probably the most important issue about that, quite apart from its insufficiency, is whether or not the people who agreed to it did so with a fully informed mind—in particular, whether they did so on the basis of having received proper legal advice. That is why I am interested in knowing whether there was a legal representative of the Aboriginal people at that meeting. Mr Hart, I think, said something about that.

Mrs Hegarty—The legal representative we worked with at that particular meeting was John Lesley. He was at that meeting.

Senator BRANDIS—Who did he work for?

Mr Hart—NAILS.

Senator BRANDIS—Was anyone else there?

Mrs Hegarty—Angelo Vasta was there as well.

Senator BRANDIS—You were there in a government capacity, Mrs Hegarty—so we will put you to one side—but did the other Aboriginal people at the meeting understand either or both of those gentlemen to be their spokesman, as far as you could tell?

Mrs Hegarty—No. There were those that would have and those that did. They were part of the meeting—they were either QAILSS or NAILS—but the rest of us, as Mayor Bone was saying, were members from DOGIT communities and the Torres Strait islands, so we sat and talked afterwards. No, they did not speak for us.

Senator BRANDIS—Am I right in thinking from what you have already told us that there was obviously a degree of confusion among the Aboriginal people there and, perhaps, a reluctance to sign this deal?

Mrs Hegarty—We did not have to sign a deal.

Senator BRANDIS—I know that.

Mrs Hegarty—We did not have to sign a deal. The deal was put before us: ‘That’s it. Take it or leave it.’

Senator BRANDIS—Mr Beattie said, ‘Take it or leave it’?

Mrs Hegarty—Yes. There was nothing signed.

Senator BRANDIS—I am not suggesting that it was signed then and there, but was it pretty clear at the meeting that this deal was not one the Aboriginal people were very happy about?

Mrs Hegarty—I do not think Aboriginal people were happy about it.

Mrs Hill—They were not happy.

Senator BRANDIS—But was that evident at the meeting? Would that have been evident to Mr Beattie?

Mrs Hill—I was not there.

Mr Hart—It raises the question of whether or not NAILS were representing Aboriginal people across Queensland in their capacity as a legal advocacy service or whether the Aboriginal people felt that they were there on their behalf as well. I think there was some confusion in that meeting about what that means.

Senator BRANDIS—Indeed. Would you like to elaborate on that point?

Mr Hart—This raises questions about whether or not Peter Beattie used their capacity as proxy to represent the interests of Aboriginal people without any mandate—without NAILS going back to the communities and saying: ‘We are in the process of bargaining with the state over a reparations process, over an offer. Do you think we are in a position to negotiate on your behalf and accept the offer?’ I think that did not happen. It was a foregone conclusion that NAILS should take up the capacity of representing Aboriginal people in this state without any consensus view from Aboriginal people themselves.

Senator BRANDIS—Mrs Hegarty, as somebody who was at the meeting, would what Mr Hart said have been apparent to Mr Beattie at the meeting, as far as you can tell?

Mrs Hegarty—I should think so. It was apparent to him because these people had already been nominated, as far as I could tell, to become the representatives for Aboriginal people, and they all went out to dinner after.

Senator BRANDIS—Who went out to dinner?

Mrs Hegarty—The whole of that group, I would say, bar three of us who did not go to the dinner. There was a big joke when we came out of the meeting: ‘Let’s go for dinner. QAILSS has got all the money; let’s go.’

Senator BRANDIS—So QAILSS took them out to dinner, effectively?

Mrs Hegarty—Yes. So they all went out to dinner. I said, no, I would not have any part in that.

Senator BRANDIS—Who was the leading person from QAILSS at the meeting?

Mrs Hegarty—Ray Robinson.

Senator BRANDIS—And who was the leading person from NAILS at the meeting?

Mrs Hegarty—Bertie Button was there.

Senator BRANDIS—Bertie Button.

Mrs Hegarty—He was part of that group.

Senator BRANDIS—Is he a lawyer?

Mrs Hegarty—No, he is not. No, there were no lawyers there. I think the only lawyer there was John.

Mr Hart—Was Russell Belare there?

Mrs Hegarty—Russell was not there.

CHAIR—It is probably not helpful to engage in conjecture about who those representatives were, but, if we can, we ask you to perhaps give advice to the committee on that.

Senator BRANDIS—I want to know. I am not inviting conjecture.

CHAIR—I understand that. I am not suggesting there be no answer to the question, but what we are engaging in is conjecture about who may or may not have been there and who may or may not be a lawyer—and we should not condemn people to being lawyers if they are not! So I am just suggesting that, for the sake of the accuracy of the record, we make sure of that.

Mr Hart—Yes, I think that is fair, Chair.

CHAIR—Senator Brandis?

Senator BRANDIS—You see what I am getting at: I want to know whether the people at that meeting were receiving proper independent legal advice. I also want to know whether, in your view they were not, that would have been evident to Mr Beattie.

Mrs Hegarty—It had to be evident to Mr Beattie because, as I said, it was a done deal. All of this other group knew what was going to happen. They knew exactly what was going to happen.

Senator BRANDIS—All right. Thank you.

CHAIR—Senator Crossin?

Senator CROSSIN—Thank you. Can any of you tell me if you have a copy of the proposal that you say QAILSS put together; you said it outlined what people were entitled to or whom it concerned. Did you ever see that? I thought you said earlier that QAILSS had got money from ATSIC to put together a proposal.

Mrs Hegarty—Yes.

Senator CROSSIN—Have you ever seen that?

Mrs Hegarty—Yes, I read it through. Quite a few people have. We were told it was confidential. When I got to the meeting and I asked Ray Robinson who else had brought their proposal and whether the minister had a copy, he said, ‘No, Auntie Ruth; that’s a confidential document.’

Senator CROSSIN—Even though it had been put together with money from ATSIC?

Mrs Hegarty—Yes. He said, ‘It’s a confidential document.’ I got a bit of a scare, because I had already taken it back to the office of the people that I worked with and we were running off copies to give to everybody!

Senator CROSSIN—So you are not aware that there is a copy on the public record anywhere?

Mrs Hegarty—I think there is. If we looked hard enough, we could find one!

Senator CROSSIN—I am not sure which public record, but if you—

Mr Hart—Chair, we could help. There are people in the audience who do have copies and we could certainly get one.

Mrs Hegarty—Yes, we could get that to you.

Senator CROSSIN—Because, if ATSIC was responsible for that, it would obviously now come to the AG’s Department. It might be worth us making inquiries of them. I wanted to ask you something, Ms Hill. In your working history, do you have any recollection of ever signing anything when you started working?

Mrs Hill—Only to go to work; that is all.

Senator CROSSIN—But the contract would not have had your wages in it or—

Mrs Hill—No, nothing. You do not see anything.

Senator CROSSIN—I am just trying to get you to tell us on the record what was or was not there. So, every time you wanted any money, what did you have to do?

Mrs Hill—We had to go to the bosses and ask them if we could have some money.

Senator CROSSIN—And what would they say?

Mrs Hill—Yes or no—you can have it or you cannot.

Senator CROSSIN—Even though you might have, let’s say, worked for six weeks, if you went and asked for money, you might not get money?

Mrs Hill—No. You would not.

Mrs Hegarty—No.

Senator CROSSIN—And you had no idea where your money might have been going?

Mrs Hill—They would give you a slip to go to the shop or something, or an order form, and then you would go into the shop and buy what you wanted, and you would not see the price or whatever that was on there.

Senator CROSSIN—I see. So would they have also said to you that they believed that your accommodation or your meals were payment in kind, as your wages?

Mrs Hill—Yes.

Mrs Hegarty—I did not get that. I went out when I was 14 and I think I spent about 10 years on and off going backwards and forwards to work. In all that time I did not see a bank book, not ever.

Mrs Hill—No, none of us did.

Mrs Hegarty—I signed a little pocket money book. I got two shillings and sixpence a week on the pocket money book. I think I wrote a protest letter when I was 15 to the government, which I included in the first book—I have written two books—asking for extra money because I could not even buy a dress with two shillings and sixpence. So we were completely under their control. Whatever you needed, you had to write to them and ask if you could have extra of anything. But no-one ever said to me or to any one of us, ‘Here’s your bank account and this is the amount of money you have in your bank.’ So it was that controlling thing all the way through. I might add that, even when I did ask Liddy Clark about the stolen wages when she was in office—we were negotiating with her, talking with her about that—she said to me, ‘Aunty Ruth, the reason why the government don’t give you people this money is that you’ll pilfer it away.’

Senator BRANDIS—Sorry, did she say that when she was the minister for Aboriginal affairs?

Mrs Hegarty—Yes, she did. What was the exact word?

Mr Hart—At Palm Island she said that.

Mrs Hegarty—Yes, she said that to me.

Senator BRANDIS—Was that said at a time when she was the minister?

Mrs Hegarty—She was the minister when she said that.

Mr Hart—I believe Judy Spence also used similar words.

Senator CROSSIN—Could I just clarify that before you add to that. Did she say, ‘The reason the government didn’t give you the money’, referring to the past—

Mrs Hegarty—Yes.

Senator CROSSIN—or referring to the present situation?

Mrs Hegarty—Well, referring to anything. We took it to mean that they were not going to give us anything more, even if we sat down and negotiated about it.

Senator BARTLETT—That is similar to what you have on page 9 of your submission here, really, where you are expressing what the public attitude is and the way people would feel if they saw large sums of money being given—

Mrs Hill—Just to the blackfellas to do their work.

Senator BRANDIS—It seems to me that a statement like that is important because it may amount to an admission by her when, as a minister, she would be in a position to make admissions on behalf of the government that in fact the money was owing to you.

Mrs Hegarty—It is. I told her that, and she said that we just waste money—that is the reason why. I said, ‘Well, governments waste money also.’

Senator BRANDIS—What an idiot.

Mrs Hill—It is ours to waste, anyway.

Mrs Hegarty—I said that to her: ‘If you give us the money and we go down to the pub and drink it all, that’s our business.’

Senator CROSSIN—Mr Hart, did you want to add something further to that?

Mr Hart—No, not really. I think it is pretty obvious that the general attitude behind the government’s offer of \$2,000 implies that they take for granted the legal and constitutional rights of Indigenous people. From this you can apparently make a clear assertion that they do not think we are as equal as other people.

Mrs Hegarty—Can I also mention, if you do not mind, that I heard the Speaker of the house on talkback radio last week—

CHAIR—Of the Queensland parliament?

Mrs Hegarty—Of the Queensland parliament—Mike Reynolds. He was being interviewed by Tiga Bayles on Murri radio, and Tiga is on the executive, so he said, ‘Is anything going to happen with the stolen wages?’ and the Speaker said, ‘What is going to happen is the governments will talk about it.’ He said it could be put

into a trust fund. We already wrote to the government about 12 months ago saying that none of our money should ever go into another trust fund, because they also control the trust funds.

Mr Hart—We also highlight that in our submission. We point that out too. We do not want the remaining money put into another trust fund.

Mrs Hegarty—That is right.

CHAIR—We cannot all read as quickly as Senator Bartlett! We have not all read the submission.

Senator CROSSIN—So at the moment your working group would be gathering evidence from Indigenous people throughout Queensland?

Mrs Hegarty—Yes. They come to our meetings.

Senator CROSSIN—Are you starting to get information or files on particular individuals or are you not resourced to do that?

Mrs Hegarty—Not really. We are not resourced; we have no money at all. The unions were putting in a little bit of money but that has stopped now, so we cannot do that. In fact, we have sent in a proposal to the government to grant us some money so that we can travel around and talk to our own people about this issue and how they feel about it. The government wrote a letter back—that would be on file—to say that they had no money.

Senator CROSSIN—So there has never been any suggestion that perhaps your group might actually hold the \$35 million and work with Indigenous people to get what they are actually compensated for?

Mrs Hegarty—We would love to be able to do it and we mentioned here that we thought that it was only a down payment. If there are only 4,700 people who have been paid and \$17 million has gone out of that \$55.5 million, then there is still about \$34 million left over.

Senator BRANDIS—Sorry, can I just interrupt to say that I think that this whole discussion is going off on the wrong tangent. It is not as if this trust fund represents the only money available to satisfy these claims. It might have been the only money put forward to satisfy the claims but, in fact, if there was money going way back to the 1930s and 1940s—

Mrs Hegarty—1900.

Senator BRANDIS—or whenever it was, that was held in trust and not paid to the beneficiaries of the trust, then, in whatever account it might sit within the Queensland government or to which it can be traced, that amount of money with accumulated interest is your money. It does not matter if it has been earmarked in a particular fund put forward as part of some political settlement.

Mrs Hegarty—We have told them that.

Mr Hart—That is true, Senator Brandis, but also there is a sense of urgency in the community. A lot of our people are getting old.

Senator BRANDIS—Of course, Mr Hart; I understand.

Mrs Hegarty—A lot of them do not own their own homes.

Senator BRANDIS—But do not get into this kind of thinking where you say, ‘The money has been paid away.’ It has not been paid away unless it has been paid to the beneficiaries.

Senator CROSSIN—I am not disputing what you say, Senator Brandis. I just thought that if \$35 million has been put on the table—even if it is a down payment or a start—to have it going to some group like yours that could actually make a start on investigating individual files or payments would be better than—

Interjector—We would have to form a special Aboriginal committee to handle that money.

CHAIR—Mr Bird, really we cannot take contributions from away from the table.

Mr Hart—It does talk about the complete vacuum that exists between the Beattie government and grassroots Aboriginal communities in Queensland. There is no connection; there is no communication happening between the Beattie government and communities right across the state. It is the lack of that interface that is proving to be very detrimental not for government but for us in providing that representation or capacity to say, ‘This is a reparations process that we might agree with.’ We do not have that position at the table.

Mrs Hegarty—We have none because Mr Beattie had been putting together before the last election a group of ‘eminent’ Aboriginal people. We have asked for the names of these ‘eminent’ Aboriginal people that would sit down and work out how that money can be spent. So far, nothing has been forthcoming. We do not know who the eminent people are.

Senator TROOD—Mrs Hegarty, if we can go back to this meeting for a moment. You say there were about 15 people in the room and that, when Mr Beattie flung down this piece of paper which represented the settlement which you were all expected to accept, everybody seemed to know the content but for two or three people, is that right?

Mrs Hegarty—But for about five people at that meeting.

Senator TROOD—So everyone seemed to be a party to the deal but for these four or five people?

Mrs Hegarty—Yes.

Senator TROOD—And they were people not connected with QAILSS or NAILS, is that right?

Mrs Hegarty—That is right.

Senator TROOD—But they were people who were known to you?

Mrs Hegarty—Yes.

Senator TROOD—And they were the people whom you expected or hoped would walk out of the meeting when this proposal was put on the table?

Mrs Hegarty—We were all going to walk out of the meeting. We had had a meeting two days before with QAILSS and that is exactly what QAILSS put up. That was my first meeting with QAILSS about the wages and savings. I said, ‘What’ll happen if we don’t get this?’ They said, ‘We’ll all walk out—the whole lot of us.’ That is what we were waiting for—for people to get up and walk out.

Senator TROOD—Can I just leave that there for the moment and ask you a question, Mr Hart. You have raised this question of the money or the settlement proposal—\$55.6 million, which is of course a trivial amount in the context of the entitlements that are there. But it is a kind of a curious figure.

Mr Hart—It is. I do not know what kind of quantum physics they used to come up with it.

Senator TROOD—When governments talk about funding a thing like this they usually talk in round figures, like \$50 million perhaps or \$100 million or \$150 million. But \$55.6 million is a very specific figure. Can you shed any light on how that figure was arrived at?

Mr Hart—I am not sure.

Senator TROOD—Could you share your—

Mr Hart—I have just been informed by a member of our community that that amount is what Anna Bligh said back then about what Treasury had informed her they could afford.

Senator BRANDIS—What they could afford!

Mr Hart—That is right.

Senator BRANDIS—But that is not the point. You do not pay what you can afford; you pay what you are liable to pay.

Senator TROOD—But, even given that, \$55.6 million is a very specific amount. So far as you know, that is—

Mr Hart—That is how it was deducted.

Senator TROOD—That was put to you as a proposition?

Mr Hart—And then from that figure they came up with a formula for actually coming up with payments of \$4,000 and \$2,000—

Senator TROOD—I want to ask you about that as well.

Mr Hart—against the ABS statistics of 16,000 possible claimants.

Senator TROOD—I wanted to ask you about these numbers and ask you, if you would not mind, to put on the record whatever understanding you may have about where the numbers came from in relation to this figure—that is, the number of people who might be entitled.

Mr Hart—The number of people was stated in parliament—I think that could be chased through *Hansard*—and was derived from ABS statistics about people who could be found within that age group between, I think, 40 and 55—

Mrs Hegarty—It is between 40 and 51 years old.

Mr Hart—It was Indigenous people from the last census.

Senator TROOD—So that was a calculation that the government did in the department—is that right, as you understand it?

Mr Hart—That is right. That is how I understand that it came about.

Senator TROOD—And you understand, further, that the figure was derived from the ABS statistics in relation to demography and age groups?

Mr Hart—Exactly.

Senator TROOD—I wonder if you could clarify this for me. When this agreement was flung down on the table, did anybody make it clear at that time that there would be an indemnity attached to the acceptance of this money?

Mrs Hegarty—Not at that time.

Senator TROOD—It was not said at the meeting?

Mrs Hegarty—No.

Senator TROOD—Did you have any reason to think that those people who were a party to the agreement understood that there would be an indemnity? In other words, you and your colleagues—the other three or four of you—did not know, but do you have any reason to believe that the other members had expectations that there would be an indemnity?

Mrs Hegarty—They may have known, because their program or itinerary to go out to Aboriginal people was already put in place. I rang QAILSS the next day. I spoke to Judy Spence first—she came to our meeting. I argued about the \$200,000 being taken off that \$5.4 million. She said that they had to have money to send these people out. What I did then was ring the QAILSS office and I spoke to their coordinator there. I said: ‘Look, I’m not very happy about all of this. I just want you people to know about it.’ He said: ‘You can’t do a thing about it. Their itinerary is made up and they are all leaving Monday.’ That is how quick it was.

Senator TROOD—This was the day after the meeting?

Mrs Hegarty—That is right.

Senator TROOD—Their itinerary had been made up and they were on their way.

Mrs Hegarty—He said that they already had it made up. They were ready to leave Monday. What could we do about it?

Senator TROOD—How long did they spend there?

Mrs Hegarty—A month.

Senator TROOD—They spent a month on consultations.

Mrs Hegarty—Yes, a month on consultations.

Senator TROOD—On the Cape or all over the state?

Mrs Hegarty—All over the state, I expect. They went out and they did this. And bear in mind that these people were paid—

Mr Hart—\$10,000 each.

Mrs Hegarty—Yes, more money than we would ever have in our hands—about \$10,000 each.

Senator BRANDIS—How many people can you speak to in a month when there are 16,000 claims?

Mrs Hegarty—I do not know how they did it, but they did it.

Senator TROOD—They are herculean, obviously.

Mrs Hegarty—They had four-wheel drives and aeroplanes. They had the lot. They travelled. They had TA and motels. They did the lot.

Senator BRANDIS—They spoke to 2,000 people a day, did they?

Mrs Hegarty—That is what they reckon.

Senator TROOD—They must have been very fulsome conversations.

Senator SIEWERT—Can I just clarify the consultation process. Was that about whether people wanted to accept the \$4,000 or about the overall concept of what was being offered?

Mrs Hegarty—The offer. It was not whether they wanted to or not; it was about the offer.

Senator SIEWERT—As I understood it, it was put on the table as a done deal anyway.

Mrs Hegarty—Yes.

Senator SIEWERT—So they were essentially going out and telling people what was going on. Is that a correct understanding of the process that was going on?

Mrs Hegarty—Yes.

Senator SIEWERT—Can I just quickly go back to the issue of the QAILSS document that you understood was being put on the table. Had that document been developed in consultation with community? When they presented it to you before the meeting, did you understand that that document had been developed in consultation with community members?

Mrs Hegarty—I knew nothing about it. I am not sure that anybody else knew anything. It was not in consultation with communities.

Senator SIEWERT—So the first time you knew anything about it was when they presented it to you two days before the meeting?

Mrs Hegarty—Yes.

Senator MOORE—I know that you are very active in maintaining the community action around this issue, and your report does that. I would ask that we get something as a supplement to say exactly who was at the meeting, because we keep talking about the meeting. It would be useful for our clarification if you could get together and tell us who was there and in what capacity.

Mrs Hegarty—We can do that.

Senator MOORE—That would be lovely. Because the community campaign has been going on since almost the time of this offer, I just want to know whether any policies were offered by the alternative government in Queensland about how they would handle this. This is so that we are working in a dialogue looking forward. I think all of us see that there are great faults. Have there been any alternative policies offered by the current opposition as to how they would handle this process?

Mr Hart—I am not aware of any but I think there is certainly sympathy on the opposition side.

Senator MOORE—Good. Have they been involved in the community campaigns to help draw attention to this issue?

Mr Hart—Not that I know of.

Mrs Hegarty—We were told that it was a bipartisan decision to pay out that money. They could not do anything. Labor would not do anything more about it. They said that both sides of the government agreed on it.

Mr Hart—We would love to find out about the negotiations between NAILS and government preceding the offer in 2002.

Senator BRANDIS—Have you FOied?

Mr Hart—That is possibly what we will do next to find out.

Senator BRANDIS—You have not yet?

Mr Hart—No. I would love to.

Mrs Hegarty—We know nothing.

CHAIR—Mrs Hegarty, Mrs Hill and Mr Hart, thank you very much for your assistance to the committee this afternoon.

[3.37 pm]

WILLIAMS, Mrs Lesley Dorothy, Private capacity

WILLIAMS, Ms Tammy Naomi, Private capacity

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Ms T Williams—I appear as an individual, but my submission has the endorsement and support of the NIC chairperson, Dr Sue Gordon.

CHAIR—We have received your submission, Mrs Williams, as No. 82 and your submission, Ms Williams, as No. 83. Do either of you need to make any amendments or alterations to those?

Ms T Williams—Some amendments were made last night and a new submission was submitted, changing merely a couple of numbers and updating.

CHAIR—We will amend the record accordingly. I invite both of you to make a brief opening statement of remarks that you would like to convey to the committee, then we will go to questions from members of the committee.

Ms T Williams—I understand that we have only five minutes jointly, so, in the interests of time, I am happy to take any questions but to allow my mother the full five minutes.

CHAIR—I do not wish to cut you short. That five minutes has been applied fairly loosely today to as many witnesses as possible for the benefit of the committee hearing, so if you also wanted to make a contribution we would be very happy to hear it. It would be unfair of me to penalise you after what has occurred today.

Mrs L Williams—First of all, I would like to acknowledge the traditional custodians of the land on which we are all gathered here today. It is a very important event. I also want to remember our elders who are no longer with us, but I know that they are here with us in spirit. I am here mainly because of the research that I have done, being one of the people who were affected by the protection acts when I was sent out to work.

It is interesting to know that governments put in place legislation for our protection, but the experience that I and thousands of other people in my situation had was that we were not protected when we were sent out to work as domestics or farm labourers. I believe that the government had a moral obligation for our protection when we were young girls sent out to work on these properties, but we were not only exploited for our labour but also sexually abused.

We were also forced to pay taxes. We did not know when we were sent out at the beginning that we were paying taxes. Growing up on these communities, we were led to believe that the government was looking after us by providing us with free food and shelter. But, when our money went back from our employers, we were taxed. It is also interesting to note that, apart from paying taxes, we were not even classed as citizens until 1967. This particular issue takes in a whole range of people right back to 1890, which includes three generations of people in my family alone as well as tens of thousands of other people.

Everyone, including me, seems to be talking about our wages—the money that was taken from us and that we had no access to. However, I would also like to mention the Aboriginal soldiers who fought in the First World War, the Second World War, the Korean War and the Vietnam War. They were paid less than the white soldiers and, when they returned from the war and the government was cutting up blocks of land for settlements—for the ballot—Aboriginal people did not have access to those blocks of land. Therefore, without having land to farm, there was nothing they could hand over to their descendants.

Ms T Williams—You have obviously heard a lot from people who have had first-hand experiences of going out and about the atrocities that they experienced. While I have assisted my mum with researching since 1991, I will not talk at all about the whole issue of the welfare fund or the saving accounts, because I think people who have had first-hand experiences can give a better description of those. Instead, the submission I would like to make this afternoon relates solely to the issue of reparation.

First, let us be really clear: when we talk about reparation there are two sub-issues. The first issue is that there needs to be an appropriate reparation package in relation to the Aboriginal Welfare Fund because, as you would have heard in this morning's evidence, the Aboriginal Welfare Fund was set up for the benefit of all Indigenous people, and therefore a reparation package must benefit the entire Indigenous community. The second issue is in relation to the savings bank accounts. As you also would have heard throughout the day, these were personal accounts which contained individual's wages and earnings. The Queensland government's

\$55 million reparation fund was set up for the purpose of providing compensation for the people who had their money in those savings accounts, so there is an issue in relation to the surplus of this money.

It is my submission, as you would have read, that that money should be used for the primary and direct benefit of those old people whose money was taken. It should also be used to have a long-term positive effect on those people. It has concerned me, as well as other members of the community, when we have heard people—whether they are government representatives or other people in the community—talking about how that money should be used for education kits or road signage to say, ‘You are entering into Gungeree country,’ or ‘You are entering into Wakka Wakka country.’

My submission is that first of all that money should not be spent on a job which should be the government’s job full stop. It is the government’s responsibility and it is its money, not the Aboriginal people’s reparations money, that should be going to educate the wider community. This is old people’s money and justice should be done for them. The only just approach is if there is a direct benefit. Let’s be smart about how we use the surplus of this money. There are a number of options. I am concerned that a number have not been explored. We have always just talked about giving people back the remaining surplus. I am not against that. All I am saying is let us look at other options.

Some of my business contacts from prominent institutions around the country and I worked on the proposal you have in front of you. We believe that it could be invested. You could get a good return and that money could also be used to establish a private premium health fund. Many of our old people do not have the money to have new glasses, or false teeth. A lot of our old people have diabetes and they require amputations. They have to rely on the public sector and they are on the waiting list. As you have probably heard through the media the Queensland public health system is in an atrocious state and many of our old people are dying while they are on the waiting list. I submit that if this money is invested we could easily afford premium health coverage, private coverage for our old people. That way our old people have a direct benefit.

I know in my own family’s case that \$4,000 did not last long. It did not have a lasting effect on us. There are many cases of our old people being stood over and suffering elder abuse from young drunk alcoholics because they want the money for their own grog. I understand that many of our old people have even donated some of their money, because of their generosity and their good nature, to other struggling families. Whatever policies or reparation packages are designed, I submit, should be for the direct long-term benefit of the old people.

If the Senate inquiry happens to travel around the state, I ask that you go and visit the cemeteries of at least some of our communities, because the one thing that concerns me as a young person is that the cemeteries all look the same. Our grandparents, great-grandparents and aunties and uncles have worked most of their lifetimes to build the infrastructure of the state and country and all they have left in memory of them is just a white cross, sometimes with not even their name painted on it. I ask that you have a look at that and look at how you can reach some reasonable recommendations and conclusions.

CHAIR—Thank you both very much.

Senator CROSSIN—I am reading your story here in detail and wondering whether at any stage you or your daughter have sought to get access to any of these records through the Queensland government?

Mrs L Williams—Yes. I started under FOI in 1992. That is when I wrote my first letter to the minister who was then Anne Warner. What shocked me was, while growing up on these communities, we were oblivious of what was going on in the outside world. We knew that every aspect of our lives was being controlled. I got access to these records about myself and my parents and grandparents and it was all documented. In my submission I talked about when I was out working. We were not told what the conditions of our work would be. We were only to work from nine to five. You will see that, in a lot of cases, it was from five o’clock in the morning sometimes until 10 o’clock at night, seven days a week.

Senator CROSSIN—So even though you might find records to say you were expected to work from nine to five, you may well have worked from six o’clock in the morning to 10 o’clock at night. Is that what you are saying?

Mrs L Williams—Yes. It was not set out; the records did not state that. My own personal experience, as I have said in my submission, was that when I and another girl had to cook for shearers we would start at four or 4.30 in the morning and work right through to 10 o’clock at night for two weeks.

Senator CROSSIN—Have you been able to get access to any records that verify this?

Mrs L Williams—I have all of my personal records saying that I was going out for employment to these people at Condamine and also at Taroom.

Senator CROSSIN—So part of the problem now is for you to be able to say, ‘Look, I’ve worked 40 hours a week for four years.’ Is there no written evidence of that?

Mrs L Williams—No. It will be our own verbal evidence.

Senator CROSSIN—The station owners at the time would have paid a percentage of your salary into this trust though. Is there any record of that?

Mrs L Williams—Yes. It was recorded in the letter what my weekly wage was, which was £3 10s at the time. This was in 1964.

Senator CROSSIN—So you have been able to find that out at least?

Mrs L Williams—Yes.

Senator CROSSIN—How much of that was paid into the Queensland government’s trust?

Mrs L Williams—Two pounds. I was supposed to be given the £1 10s as pocket money, which was to be entered into a pocket money book.

Senator CROSSIN—Did you get that?

Mrs L Williams—No. I will go back to the time when I was sent out. I was sent out from Cherbourg. There was an agreement set up that we had to sign and a letter to my employer in an envelope with a pocket money book in it. So you carried that when you departed to your place of employment. You lived in fear of the white man, so you did not dare open up the envelope. It was only 30 years later that I discovered how much my wages were. I still have not seen the pocket money book or my agreement. That is what started me asking questions about what happened to this money that was sent back to Cherbourg.

Senator CROSSIN—I suppose where I am heading is this: I was wondering if, in your mind, you have done some sort of rough calculation of what you might be owed?

Mrs L Williams—Personally, I did not do a rough calculation, but I would like to make something clear: I was not owed a lot of money, but I realised, once I started doing this research, that it was about the injustice of what was done. When you calculate the tens of thousands of people from 1897 through to 1972, you would be talking about hundreds of millions held in trust. Personally, I started researching my own situation because I was determined to find out. There was a money trail that I came across accidentally, and when I saw the big picture, which was Ros Kidd’s research, it led me to this campaign with Tammy and my sister to bring it right out into the open. It is important that we all get to tell our stories personally.

Senator CROSSIN—So you have been offered the \$4,000 from the Queensland government?

Mrs L Williams—That is another question. I am here as an independent. I have been offered it, but I also work for the Queensland government in the reparations area.

Senator CROSSIN—We will ask questions in a minute about how the \$4,000 has been arrived at, but the picture we are slowly building up today is that the \$4,000 is a very small amount compared to what people are actually owed. I am wondering if you have done your own personal calculations in respect of the \$4,000.

Mrs L Williams—With the compound in interest, it would probably amount to about \$8,000 to \$10,000. That is a rough estimate. I was in the employment area for about seven years.

Senator CROSSIN—So were you one of the very first people to realise that this was a very big issue?

Mrs L Williams—No, there were people before me who were starting to ask questions. I suppose I took it further by pushing for a public awareness campaign. I am talking not only about myself but about my parents and grandparents and a lot of my uncles and aunts here in this room. We wanted to have a campaign to bring it out. If you took the path of going through every single individual, it would take years.

Ms T Williams—Just to make it a bit clearer: Senior Counsel Jean Dalton, who appeared this morning, refers to mum. She was involved in a legal action involving my mother. To have a better picture, I would suggest you read the senior counsel’s submissions.

CHAIR—She could not attend this morning, but obviously we have her submission. Ms Williams, in your submission you have set out some case studies of how some of the claimants with whom you are obviously familiar have used the money that they have received from Queensland as part of this reparations offer.

Broadly speaking, how representative are they of the way in which the money has been used? I realise they are quite different. You have obviously selected a broad range.

Ms T Williams—It is relatively representative. Obviously a large percentage of people were able to use it for themselves, but, given the type of people we are—we are a sharing, caring community—often the elders take care of their family and they use what limited resources they have for their entire family. I am yet to meet a selfish elder who keeps resources for themselves.

CHAIR—Have you canvassed acceptance of or support for the proposals that you have put together and sent to us as part of this hearing amongst community members? What is the feedback that you are getting?

Ms T Williams—Yes, I have spoken to some community members. Some of them are here today. They have supported this, and I have their permission to use some of their case studies as well as some from a previous group. Some of the group from Cherbourg are represented here.

CHAIR—Yes, we heard this afternoon. One thing which has been in the front of my mind as I have read your submission and listened to some of the discussions today has been that a number of witnesses have said: ‘The reparations offer’s just an insult. We find it offensive.’ They find suggesting that you can, to turn a phrase, buy someone off with \$4,000 and not pay them money which is their own and instead refer to it as taxpayers’ money is offensive. In putting together your plan it seemed to me that there was a bit of acceptance of the fact that this was the way it was going to happen. Are you trying to make the best out of a difficult situation?

Ms T Williams—This is merely a concept paper. In January this year I attempted to contact Premier Beattie and Minister Bligh, at least to have a discussion with them and to look at doing a feasibility study. I have not even received a reply from the Premier’s office. It could possibly be, after a feasibility study and after we have access to actual numbers—and perhaps there would be someone seconded from the health department—that we find that this proposal is not appropriate. All I am saying is: let’s explore all options. It appears that we and perhaps other members of the community have not been given the opportunity to try and think of other proposals as well. At the moment the only thing we hear back from the government is, ‘There’s this money and we don’t know what to do with the surplus.’ And then we hear side discussions about education kits and road signage.

CHAIR—I must say I find the use of the word ‘surplus’ curious. I am not sure how this can be described as a surplus.

Ms T Williams—That is the terminology that was in some of the government literature that I have seen. I guess ‘leftover money’ is the other term.

Senator WEBBER—I would like to follow on from that. I share Senator Payne’s concerns about the term ‘surplus money’. What I have learnt this morning is that one of the reasons we have this supposed surplus money is that there is a group of people who will not accept the deal, because it is inappropriate. So what should the priority for this committee be? Should it be to try and redress that and actually seek to get proper reparation and compensation or should it be to accept that that surplus is there and look at what can be done with that money?

Ms T Williams—I think that they are two separate issues. I totally agree that the amount of money is not just. Just by giving birth to my son, I was eligible for \$4,000. To think that \$4,000 is to represent my grandmother’s entire work is an insult. So, absolutely, the numbers need to properly reflect that. The separate issue is that there is the extra money which was committed to the old people, so there needs to be a discussion about what happens to that. The third issue is the welfare fund money and what happens to that. There need to be three clear recommendations.

Senator WEBBER—Perhaps we should focus on the welfare fund money, then. It just seems to me that, if we are to accept that what is currently being done about the stolen wages money is inappropriate, to be polite, and we work to redress that, then you are not going to have the surplus, because the whole game is going to open up again and people are not going to get access to what to me sounds like is rightfully theirs or their descendants. So that surplus is perhaps not quite going to exist, which is why I was asking the question about the priorities. There may not be surpluses as such; in fact, it may end up being a lot more expensive.

Ms T Williams—Absolutely.

Senator WEBBER—In looking at your proposal for the so-called surplus money, you have come up with some innovative ideas. You quite rightly say that money should not be spent in areas where the government

should be spending money anyway. It seems to me that health is one of those areas too. The Commonwealth government has a very clearly defined responsibility to address the health needs of our Indigenous community.

Ms T Williams—Absolutely. That is why, in slide 12, I talk about the underspend in Medicare and the PBS. If, for instance, there were to be a health package for the Indigenous elders of Queensland, then I agree that the Commonwealth government underspend should also be included. On my figures, between 1998 and 1999 the underspend was around 38 per cent for Medicare and 31 per cent for the PBS. That is a significant amount of money.

Senator WEBBER—Would it be more appropriate, then, to look at perhaps doing something for the benefit of the entire Indigenous community, perhaps with the welfare fund aspect of it? I accept that that is probably a bit harder to trace. Perhaps we should separate it out in a way and look at the supposed surplus money, which is more the stolen wages money—actually revisit the way that has been constructed—put priority into getting proper compensation and redress, and then look at the global pool of what should have been welfare fund money, in terms of long-term advantage.

Ms T Williams—Yes, absolutely. I think that is really important. If you were to walk away from our submissions with anything, I would ask that you understand the difference with the welfare fund—that there needs to be appropriate reparation for that—and not confuse it with the individual savings accounts.

CHAIR—Thank you. I think that is an important clarification and line to draw. The committee has been talking around both aspects all day, so that is helpful.

Ms T Williams—Also, there should be adequate consultation with the people whom this actually involves. As you would have heard from the previous submissions, often decisions are made on behalf of our people, and I think that those old people are capable of making decisions for themselves. Having said that, there is often a ‘take me to your leader’ mentality and that mentality does not exist when we deal with, for instance, non-Indigenous people. We do not expect a consensus non-Indigenous view.

Senator BARTLETT—Mrs Williams, you mentioned at the end of your submission:

It would have eased the financial burden if I was able to access the balance of my savings account and the interest accumulated over the years.

I realise that this is an impossible question. We have had this notion come up in earlier submissions. The debate around the issue of consequential poverty is not just that you did not get the money, but it is the opportunity cost or lost. That may not have applied for every family but certainly those that could have put it to good use. We are dealing with the consequences now, of course, in a policy sense. Is there any way that you could give a flavour of the sorts of things that you did have to go without, that you would have been able to do or that you or your children would have had access to if you had access to your savings at the time? It is probably another PhD project, really.

Mrs L Williams—It was all starting to phase out then. Then I got married. My husband, Colin, had purchased a small truck to start our own business. We were so broke that, for us to eat, my mother-in-law would give us some money. What I did then was I went up bean picking so that what I had earned by bean picking was able then to buy food to put on the table, because it was such a struggle to drive a truck, find work and all the cost that goes with running a business. Also, back then, I think it was the Aboriginal Development Commission was handing out grants for Indigenous people that wanted to purchase a house. We kept moving from caravan to caravan park to farmhouses. I saw Aboriginal people getting access to grants of money but they had to have a small deposit. If I had known this money was there and I was able to access it, I would have been able to use that as a deposit to provide a house and have paid it off by now. Up until just very recently, we were still renting. That is the case with a lot of Indigenous people.

Senator BARTLETT—Thank you for that. Ms Williams, you are on the National Indigenous Council, as I understand it. I think you said at the start that, in general terms, the chair of that has broadly endorsed your proposal. One of the things that may come forth from this inquiry, depending on what is put before us, is that this is much more of a national issue and that it is not just a Queensland thing but also affects Western Australia and potentially the Northern Territory. Has this been raised with the National Indigenous Council or other members? Is this the sort of thing on which they could perhaps provide encouragement to the federal government to get more of a national approach? I am not thinking of a federal government pointing fingers at the states thing, but more saying: ‘Let’s try and take some of the partisanship out of it and look at a global approach.’ Is that something that the National Indigenous Council has looked at?

Ms T Williams—At our meeting in the middle of the year—June-July—I notified the NIC about the inquiry and also put on the record that, as an NIC member, I was interested in the outcome and also the proceedings of the inquiry. Other NIC members shared the same interest. We have a meeting due at the end of the year and I intend to submit to our NIC that when we next meet with federal cabinet we also request that this has a national focus, because I understand that this practice occurred in Western Australia and other states. That is the approach I am going to take at the NIC meeting. All I can say is that the chair has supported me to this extent. I do not want to pre-empt what the rest of the members would say, but that is my approach.

Senator SIEWERT—I have two questions. One, which I have been asking most witnesses, is to do with the forum. Part of the terms of reference is the issue of holding a forum for people to share their stories, amongst other things. What do you think of that idea? Do you think it is a good idea? Will it help to address the issues for people to share their stories? Is it an issue that we should be making a recommendation on?

Mrs L Williams—Most definitely. I think it will be a way for people to heal themselves. We have kept that bottled up inside because no-one would listen to us. For instance, I mentioned in my submission having to sleep outside. It would have happened in a lot of cases that you had someone coming into your room to sexually attack you. It is only now that I am talking about it. That happened over 40 years ago. It would be a wonderful thing for healing for people to be able to talk about their experiences without people condemning them, to have people listening compassionately to these stories. That is what we have been fighting for since I first started doing our campaign back in the early nineties.

We talk about the welfare fund and we talk about the wages. The wider community do not know to what extent we were exploited. In fact, it was the Indigenous workers who developed the pastoral industry. In the forties it was our gangs of men who went out when all the soldiers, including some of our Aboriginal soldiers, went to fight in the war. There were not many men left to go out and work on the farms. In 1942, 400 men were sent from Cherbourg, Woorabinda, Palm Island and Yarrabah. In that year alone they did cane cutting, peanut picking, peanut chipping, maize pulling, cotton chipping, cotton pulling and arrowroot picking, from up on the tablelands near Mareeba right down to Southport, on the Gold Coast. For that one year alone, they earned £60,000. That was in the cane cutters' account. Out of that money, the government gave a 'loan' to the war effort. Everyone needs to hear this story. The government needs to hear this story. Right across Australia, even the world, they need to know exactly to what extent Aboriginal people were exploited.

Ms T Williams—I totally agree. I think that feeling is shown by the number of submissions that you have received. I also understand that there were a number of lists going around the community so that people who were not able to write submissions could put their name down to make themselves available for oral submissions. Also, that there is such a large turnout here today is representative of the fact that this is an issue that affects people personally and that they want an opportunity to speak. I understand that because time is of the essence you cannot have everyone speaking today. I am grateful that you invited some of us to speak. This is an issue that affects people personally. This is their wages, their lives. It is an opportunity for them to be validated and to make decisions for themselves.

Senator SIEWERT—You may not be able to answer my next question, and just say so if you cannot. We have heard a lot about the various state governments. I am going to make sure that we explore some more how much the Commonwealth knew at the time about what was going on. Do you have any information on, or are you aware of, what the Commonwealth knew about what was going on in the states? I realise that the NT is a bit separate because the Commonwealth had responsibility for the NT at the time. Do you know where we could find out some more information about what the Commonwealth knew at the time and maybe in more recent history as well?

Mrs L Williams—I would have to go back to my papers. I think that at one stage there was a conference set up with all the protectors from each of the states. I cannot recollect what year it was. I think it was somewhere in the thirties, but do not quote me on that.

Dr Kidd—It was 1937.

Mrs L Williams—Thank you, Ros.

Senator SIEWERT—Has anybody done any work looking at it? There has been some evidence this morning where the Commonwealth obviously sound like they had some concerns when they were talking about child endowment and which accounts that could and could not go into. Has anybody that you are aware of done much work on whether the Commonwealth had other concerns with other states? I think the example we were talking about this morning related to Western Australia.

Mrs L Williams—It might have related to the Northern Territory.

Senator SIEWERT—Dr Kidd's submission talks about the NT and WA, and we were talking about WA. Is there any further work that you are aware of?

Mrs L Williams—No, but that means that further research needs to be undertaken.

Ms T Williams—Shares were also purchased and money deposited into large financial institutions and blue chip companies. So there is national reach.

Mrs L Williams—I just remembered something. The government should have some knowledge, because during the depression over £200,000 was loaned to the Commonwealth government out of the savings. So it would be somewhere there on record.

CHAIR—Senator Brandis did have some questions but he is not in the room, so we will conclude at this point. Thank you both very much. Mrs Williams, thank you for your submissions and your personal story. We appreciate it very much.

Mrs L Williams—Before I go I would like to personally acknowledge Senator Bartlett for really pushing this and making this happen. It was over 13 years ago when we were pushing for an inquiry. Thank you all for taking the time to listen.

Ms T Williams—If I could add, just to answer your question: back in the mid-nineties we wrote letters to various federal and state ministers, including the Prime Minister, and Her Majesty the Queen—a reply came via Government House—and High Court judges and the Equal Opportunity Commission.

Mrs L Williams—And churches.

Ms T Williams—Yes. So they were aware of this issue back in 1990.

CHAIR—Thank you very much. On behalf of the committee, thank you for attending today.

[4.20 pm]

HOGAN, Mr Michael William, Assistant Director-General, Queensland Department of Communities

CHAIR—Welcome. I believe the Queensland government has not lodged a submission with the committee formally.

Mr Hogan—A submission was faxed to the secretariat. I have a copy—

CHAIR—Today?

Mr Hogan—Yes, it was. I also have copies for senators, if I could table a copy of the submission.

CHAIR—If you table that, we will agree to receive it as a submission and publish it.

Senator BRANDIS—What was the closing date for submissions?

CHAIR—I do not recall, Senator Brandis. Mr Hogan, we do not have the benefit of an opportunity to have examined it but we will work around that difficulty. Before we begin, I remind senators that the Senate has resolved that an officer of a department of the Commonwealth, or of a state in this case, shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister as appropriate. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

The officer of the department is reminded that any claim that it would be contrary to the public interest to answer a question is one that must be made by a minister and should be accompanied by a statement setting out the basis for the claim. We normally invite you to make an opening statement and at the conclusion of that go to questions from members of the committee.

Mr Hogan—I will make an opening statement. At the outset, I acknowledge the traditional owners of the land and respectfully recognise elders past and present. I would also like to start by extending the apologies of my minister, who unfortunately was unable to make this hearing because of a prior commitment. I know that Minister Pitt sees this as an opportunity to heighten awareness among all Australians about past injustices of stolen wages. He also acknowledges the hearing as a forum whereby Aboriginal and Torres Strait Islander people can have their say about past injustices and what it means for them. Minister Pitt also sees the hearing as an opportunity to highlight the Queensland government's efforts in addressing these past injustices. This afternoon I wish to present a brief summary of the Queensland government's submission to the inquiry. A copy of the submission and eight attachments have been faxed and now provided to the committee secretariat.

Queensland was the first jurisdiction in Australia to make a without-prejudice offer of reparations and formally apologise to Aboriginal and Torres Strait Islander people in relation to previous government controls over wages and savings. A \$55.4 million offer was made in the spirit of reconciliation and was aimed at easing the lasting pain caused by the policies and controls of previous governments under a series of legislative provisions controlling the wages and savings of Aboriginal and Torres Strait Islander people. The offer was made by way of reparation and not as compensation for actual amounts stolen.

Senators may be aware that this historic offer in 2002 was made following a lengthy period of representations to government and a consulting process with Indigenous communities. Consultations in relation to the offer were undertaken by the Queensland Aboriginal and Islander Legal Services Secretariat, which reported an overwhelming acceptance rate of approximately 94 per cent of the offers amongst the 5,501 respondents in the consultation process.

The Queensland government was determined to make reparation payments as expeditiously as possible and to avoid protracted, complex legal processes. The government allocated over \$1.1 million on top of the \$55.4 million to provide independent legal advice for claimants. It also preserved the rights of individuals to choose between the offer and legal action, and no-one was forced to accept the offer.

The administration costs for the reparations process were also met by the government outside the \$55.4 million offer. The government had established in 1992 a community and personal histories savings branch and in 1999 a work and savings history branch had been established within the former Department of Aboriginal and Torres Strait Islander Policy to support both under-award wages and reparations processes. Since 1999 over \$15 million has been expended in those branches. In addition, the community and personal histories branch has undertaken extensive highly acclaimed and nationally recognised research and archivist work to

connect Indigenous people and communities to government records and to assist in the processing of claims. The good work of these branches has been instrumental in ensuring that a high number of claims have been processed relatively quickly and in as culturally competent and sensitive a manner as possible.

Because of the high volume of claims in Queensland, especially in comparison to those understood to exist in other jurisdictions, and because of the dispersal of claimants throughout Queensland, Australia and Papua New Guinea, the Queensland government chose an administrative process as opposed to a tribunal process. The government submission to the inquiry acknowledges and provides some historical background and reasoning behind details of the reparations process. These are set out on pages 3 and 4 of the submission. The submission also deals with the eligibility criteria for the Queensland scheme, and I will now touch briefly on these.

Eligible claimants under our process were those who were alive on 9 May 2002, which was the date of the offer, who were born on or before 31 December 1956 and had their wages or savings controlled under a protection act. The government was aware from experience in the compensation for non-payment of award wages scheme, for which over \$40 million has been paid out in a separate scheme, that the majority of Aboriginal and Torres Strait Islander people die intestate and that attempts to distribute estates in accordance with succession requirements are administratively complex and likely to result in outcomes that can be inequitable. These difficulties have been magnified where descendants of long-deceased persons have been entitled to claim on behalf of those persons. The scheme therefore focused on those alive at the time of the offer.

The cut-off date of 1956 was based on the fact that people born between 1957 and 1965 would have been nine years old or younger when the 1939 act was repealed in 1965 and 15 years old or younger in 1972, when the 1965 act was repealed. They were therefore unlikely to have had their wages and/or savings compulsorily controlled. Depending on their date of birth, eligible claimants were paid either \$4,000 or \$2,000. The differing amount reflects assumptions that people born before 31 December 1951 were subject to the 1897 and/or the 1939 acts and their wages and savings were subject to intensive controls. Those born between 1952 and 1956 were more likely to have worked and had their savings controlled under the 1965 act, which removed some of the earlier controls such as compulsory contributions to the Aborigines welfare fund.

Individual reparation payments were not intended to provide the replacement amounts for money which people may believe they were owed. Indeed, the Queensland government has explicitly acknowledged that the monetary offer may not meet the expectations of many claimants. The government has consistently emphasised that the monetary offer is only one component of a package offered in a spirit of reconciliation. Claimants were not required to provide evidence of wages or savings control in support of their claims. Indeed, they were also not required to provide evidence that their wages or savings were stolen. The department sought evidence only of control of a claimant's wages or savings in government records—and one relevant record only may be sufficient—rather than attempting to reconstruct work or savings histories to establish eligibility. Because the government was aware that relevant records may be incomplete for particular time periods and locations, provision was made for the use of affidavit evidence. An appeal process was also instituted for unsuccessful claims. As at 9 October 2006, 8,752 claims had been assessed, with 63 per cent assessed as eligible, and 5,413 claims were paid a total of \$19.11 million.

In relation to the next steps, in 2003 the government made a commitment at the end of the process that any unspent balance of the reparations amount would be placed into the Aborigines welfare fund with a proportion to be provided for the benefit of Torres Strait Islander people. The government decided that a foundation governed by a board of eminent persons would be established and would make decisions relating to the management of the assets of the foundation.

As the scheme is now coming to a close and because of the quantum of funds now involved, it has been determined that further consultation is necessary to seek the views of the Aboriginal and Torres Strait Islander peoples in relation to the application of the moneys remaining within the Aboriginal Welfare Fund and the unspent funds out of the Indigenous wages and savings reparations offer. These funds will be used for the benefit of the Indigenous peoples of Queensland.

In conclusion, the Queensland government acknowledges the pain and suffering experienced by Indigenous peoples, who were subject to controls exercised over their lives by previous administrations, and has, through the initiatives outlined in the submission, endeavoured to respond to the injustices of the past. I would like to conclude this statement by again acknowledging the elders and leaders present here today and by thanking the

committee for the opportunity to provide information on behalf of the Queensland government in support of the committee's deliberations.

CHAIR—Thank you very much, Mr Hogan. I am reasonably confident in predicting there will be a number of questions for you following today's proceedings. I have a question that I would like to begin with. As a senator representing New South Wales, not the state of Queensland, I do not have the benefit of the expert knowledge of some of my colleagues as I try to get my head around this. Can you explain to me, as comprehensively as possible, the consultation process that was put in place which allows you to claim, on page 5 of your submission, that there was support for the reparations offer from 94 per cent of respondents? How was the consultation carried out and by whom? How many people were consulted? Where were they? Who did the consultation and how long did it take?

Mr Hogan—I may not have all the details to hand.

CHAIR—You could take it on notice if you do not.

Mr Hogan—I will start by indicating that, as other submissions and witnesses have acknowledged, there is a long history of lobbying and representations to governments in relation to this issue. In 2000 the Department of Aboriginal and Torres Strait Islander Policy embarked on a two-year information program on the wages and savings of Indigenous Queenslanders from 1897 to the 1970s, delivering information to Aboriginal people throughout the state.

CHAIR—Delivering it how?

Mr Hogan—I am not familiar with the precise methods. I will have to take that on notice.

CHAIR—If you could find that for us, thank you.

Mr Hogan—Yes. In the same year the Queensland government commenced discussions with Indigenous representatives about the distribution of the Aboriginal Welfare Fund and a possible reparations package. In 2001 ongoing consultation was undertaken, including an elders forum on the distribution of the Aboriginal Welfare Fund.

CHAIR—Could you advise me on notice how many and which elders from which communities attended that forum, please?

Mr Hogan—Yes, I will have to take that on notice. In May 2002 the Queensland government made a without-prejudice offer of reparations. The offer acknowledged the history of poor treatment of Indigenous Queenslanders. Following the offer in May 2002, the Queensland Aboriginal and Islanders Legal Service Secretariat—QAILSS—was commissioned to conduct community consultations on the offer and to assess acceptance of the offer. QAILSS advised that over 90 per cent of the Indigenous people surveyed gave in-principle support to the offer. Following this consultation, applicants had up to 31 December 2006 to lodge a claim.

CHAIR—That obviously leads to the reference on page 5 of the submission. Can you indicate to us on notice a more precise explanation of the QAILSS led community consultation: how that was carried out, by whom, where, over what period of time and what the 94 per cent of respondents represents? If it represents 9.4 out of 10 people, then I would be interested to know, and if it represents 1,000 people I would be interested to know and so on. Did QAILSS tender for that consultation contract?

Mr Hogan—I will have to take those questions on notice. I can indicate though, as I mentioned in my opening remarks, that there were 5,501 respondents during the consultation process.

CHAIR—So that is the number from which the 94 per cent is derived?

Mr Hogan—That is correct.

CHAIR—So you have just taken on notice the answer to the question in relation to whether it was a tender which QAILSS was awarded in that process?

Mr Hogan—Yes.

CHAIR—Can you advise the value of the contract?

Mr Hogan—Two hundred thousand dollars was set aside for the consultation from the original amount of \$55.6 million, which left \$55.4 million available for the reparations offer.

CHAIR—Can you advise the committee how \$200,000 was arrived at? Was that a costed proposal from QAILSS, or was it a costed, precise document from government to QAILSS as to what they were required to do?

Mr Hogan—I will have to take that on notice.

Senator CROSSIN—There is a gap in time if we follow some of the questions Senator Payne asked. In 1996 ATSIIC gave QAILSS \$800,000 to carry out research into Indigenous wages and savings. Was the Queensland government involved in that at all?

Mr Hogan—I am not familiar with what level of involvement there was from the Queensland government in the ATSIIC funded process.

Senator CROSSIN—Could you take that on notice for us?

Mr Hogan—Indeed.

Senator CROSSIN—Do you have a copy of the outcomes of the research that QAILSS conducted?

Mr Hogan—It is not available to me right now. Again, I will need to take that on notice.

Senator CROSSIN—If it is available, can you make it available to the committee? I am wondering if your government used the QAILSS research to form the basis of your 2002 offer.

Mr Hogan—The sequence of events was that the government made an offer and there was consultation in relation to the offer. The offer in May 2002 was for a fund of up to \$55.6 million, and it was agreed that \$200,000 would be taken from that amount to commission QAILSS to undertake consultation in relation to that offer. Subsequently the offer was confirmed.

Senator CROSSIN—I want to get this clear. QAILSS got \$800,000 from ATSIIC to do some research in 1996 and then in 2002 the Queensland government gave QAILSS some money to conduct consultation in relation to the offer. Is there a link between the research they did and the offer you made in 2002?

Mr Hogan—I am not sure whether there is a direct link, other than this being a long-running issue and that the commissioning of QAILSS to undertake consultation, not general research, was in relation to the offer the government had tabled.

Senator CROSSIN—From my point of view there is a piece of the jigsaw puzzle missing. I want to know what was thrown up in the research QAILSS undertook in 1996. I will leave it with you to find that document for us.

CHAIR—Mr Hogan, the question that remains for me, relevant to the evidence we have received from other witnesses today, is whether QAILSS or the National Aboriginal and Islander Legal Service had any role in also providing legal advice to potential recipients of the reparations amounts. You may or may not be able to advise the committee on that, but if you can we would be grateful.

Mr Hogan—I understand that QAILSS was not one of the independent legal providers that were made available to provide advice.

CHAIR—Right. Senator Crossin?

Senator CROSSIN—In one of the submissions today it was highlighted to us that most of this money had probably been paid into a savings account held by the Queensland government in the Commonwealth Bank. Obtaining complete transaction histories from the Commonwealth Bank would enable a reconstruction to be made of the moneys. Is this money still currently held in a Commonwealth Bank account?

Mr Hogan—There is no money held in that account—that one that you referred to, which was lastly referred to as the Queensland Aborigines account. I understand that the Queensland bank does not hold historical records in relation to the account it held.

Senator CROSSIN—The Commonwealth Bank, you mean?

Mr Hogan—Yes, the Commonwealth Bank, sorry. It has a policy of destroying records after six years, I understand. The details of the individual accounts were actually held by the department. I understand that the Commonwealth Bank held the account with the total amount.

Senator CROSSIN—And you do not believe they exist any more?

Mr Hogan—I understand that they were asked if they had records and no records were forthcoming.

Senator CROSSIN—I might be pre-empting something that Senator Brandis is going to actually ask now, but I am curious to know how \$4,000 was arrived at.

Mr Hogan—The government determined originally that an amount of \$55.6 million would be available for the reparations scheme.

Senator CROSSIN—How was that figure arrived at?

Mr Hogan—I am not sure how it was arrived at. That is the figure that the government decided to make available for the offer. The Office of Economic and Statistical Research was commissioned to undertake some analysis of the population alive at the time that was likely to have been subject to the protection acts. The estimate was in the order of 16,400 people. Given the different level of intensity, as I referred to in my opening remarks, in relation to which acts people were controlled under, it was an estimate of something like 10,000 people were controlled in the category A group and 5,000 in relation to the second category. That gives you the figures of \$4,000 and \$2,000.

Senator CROSSIN—By dividing the 16,400 into that?

Mr Hogan—Yes.

Senator CROSSIN—So the original question stands then. How do we find out how the \$55.6 million was derived?

Mr Hogan—I will take that on notice, but my understanding is that was the figure that the government determined would be available.

Senator CROSSIN—Was there ever any intention to actually look at what people believed they may have duly deserved out of this trust fund?

Mr Hogan—You probably have also been informed about a report that was commissioned in 1990 by the consultancy bureau. That looked into the state of records available.

Senator CROSSIN—You have given us a copy in your submission.

Mr Hogan—The advice at that time, subsequently confirmed, was that there is a great deal of difficulty in reconstructing the records for an individual in a way that would allow for a determination of what they might have been owed.

Senator CROSSIN—On a case-by-case basis?

Mr Hogan—Yes.

Senator CROSSIN—What about those people who may well have been able to do that?

Mr Hogan—On the basis of the inadequacy of the records across the board and the knowledge that there were records for places and periods that were missing, the government took the course of a general scheme open to anyone who is alive and worked under that legislation. All that had to be found was that they were subject to the legislation.

Senator CROSSIN—So was there no view taken by the government perhaps that it was the government's responsibility to assist individuals to find those records if they so wanted?

Mr Hogan—As I understand, since 1992—and there had been a previous unit—a very considerable effort had been put into finding, collating, indexing and putting on microfiche any records that could be found that could be made available. I also understand that that still did not change the conclusion that was reached in 1990 about the extreme difficulty of putting back together the story on a case-by-case basis that would allow the determination on an equitable basis of what might be owed to individuals.

Senator CROSSIN—So the view is that it is all a bit too hard or it is all not there?

Mr Hogan—The records are not adequate to support that process.

Senator CROSSIN—This is my final question. What is your response to a submission we had today from someone—and I know your claims will not go to this, because this person is now deceased—who made a claim that there was actually around £623 in their grandfather's account in 1947? Let us set the fact that that person is deceased aside for a minute. You have now made an offer of \$4,000, I understand, to that family. It is actually \$32,350 in today's dollars. How do you recompense that in the offer you have made to this individual?

Mr Hogan—As I endeavoured to make clear, the reparations offer was not by way of compensation. It was a gesture of reparations in a spirit of reconciliation. It acknowledged the scale of the injustices done to people whose wages and savings were controlled under the legislation; it was not by way of compensation.

Senator CROSSIN—If that is the case, why were people then asked to sign a disclaimer that this would then prevent them from taking any further legal action? Surely, if it is a compensation matter, through reparations, that still leads the way for people like the Butler family to pursue legal action to recover this £623.

Mr Hogan—The government decision was to require an indemnity.

Senator CROSSIN—Why?

Mr Hogan—That has also been the approach taken in relation to the nonpayment of award wages scheme. That was the decision that was made.

Senator CROSSIN—But on one hand you say it is compensation; on the other hand, you say there cannot be any further indemnity. The two do not seem to correlate in my mind.

Mr Hogan—In addition, the offer was not compulsory. People have had a choice to either take the offer or retain their rights to pursue legal action.

Senator BRANDIS—On that very point, Mr Hogan, the problem with that, leaving aside the fact that these are vulnerable, generally poor people who are unlikely to be in a position to mount litigation against the state government—leaving aside all of those very obvious considerations—the difficulty they have in making up their claim is that the government was the record keeper and the government had lost the records. It does not seem very fair to make it their problem when the source of the problem, leaving aside the fact that they had not been paid what they were entitled to in the first place, was that the government itself had lost the records.

Mr Hogan—I am not in a position to comment about whether that was fair.

Senator BRANDIS—You might like to take that on notice and ask whoever is responsible on the political level, Mr Hogan. Again, following on Senator Crossin's example given to us by Ms Butler, the Parliamentary Library calculated for us that the value in today's dollars of the outstanding sums was \$32,350. If you add an interest factor, at the average real interest rate over the last 60 years, which I am told is 2.3 per cent—that is, 2.3 per cent above inflation—the value today of that £623 3s 4d would be \$126,593.76, and yet the maximum amount to which that family would have been entitled was \$4,000. That is about three-and-a-bit per cent of what they were entitled to. What do you say about that?

Mr Hogan—I am not in a position to query the figures you have provided. Just to reiterate: the scheme that was offered was not a compensation scheme; it was a reparations offer.

Senator BRANDIS—Indeed, and you have been candid about that. What you mean is that there was never any intention to compensate these people for what they were entitled to or to repay them what they were owed, was there?

Mr Hogan—The government's decision was to make available the reparations offer. There was a degree of urgency about it given the age and health of many of the people affected and the difficulty in relation to the records. The government took the decision to make a general reparations scheme available.

Senator BRANDIS—You have told us that this is a reparation scheme not a compensation scheme. To put the same proposition the other way round, what that means is that the Queensland government decided not to compensate these people, did it?

Mr Hogan—It decided to make a reparations offer available—

Senator BRANDIS—And decided not to make a compensation offer available—correct?

Mr Hogan—I am not privy to what the decision was at the time—

Senator BRANDIS—Yes, you are. You told us before that it was a reparations scheme not a compensation scheme. That can only mean that the government decided not to compensate these people but to do something else. That is right, isn't it?

Mr Hogan—At that point, Senator, the government made a reparation offer available.

Senator BRANDIS—And not a compensation offer?

Mr Hogan—It did not make a compensation offer available at that time.

Senator BRANDIS—And has not since.

Mr Hogan—And has not since.

Senator BRANDIS—All right. Mr Hogan, of course a compensation scheme would have been vastly more expensive, wouldn't it?

Mr Hogan—On the basis of the figures you—

Senator BRANDIS—That was just one isolated case, but it was the only witness we had today who actually brought a dollar value and was able to trace it back to a particular entry in a book of accounts.

Mr Hogan—That may well be the case.

Senator BRANDIS—You told us of the \$55.6 million, after \$200,000 had been given to this so-called information program, that was made available and that only \$19.11 million was expensed—is that right?

Mr Hogan—As at the 6 October.

Senator BRANDIS—So the average payment, on my arithmetic, is \$3,696 per claimant. Would that be about right?

Mr Hogan—I would need to confirm that.

Senator BRANDIS—You might take all of these on notice, please. Assuming that at the time this closes the amount expensed will not be significantly greater than the \$19.11 million so far expensed, that means that of the \$55.4 million appropriated for the scheme about \$36 million will not have been. Has that just gone back into the department's budget? You did talk about programs and reconciliation and stuff, but it has basically gone back into the department's budget, hasn't it?

Mr Hogan—That is not correct, Senator.

Senator BRANDIS—Where has its gone?

Mr Hogan—What I indicated is that the government has made \$55.4 million available as part of the scheme. It has decided—

Senator BRANDIS—That is subject to a deadline though.

Mr Hogan—Yes, with a three-year period for people to apply under the scheme. It has also decided that the residue would be put into the Aboriginal Welfare Fund and together with the residue in the welfare fund, which is now in the order of \$10.1 million, that a foundation would be established to distribute the residue for the benefit of Aboriginal and Torres Strait Islander people in Queensland. Given the scale of the residue, the minister has reiterated the commitment that the money will be expended for the benefit of Indigenous Queenslanders and has made a commitment that there will be a consultation with Indigenous Queenslanders about how that will be best distributed.

Senator BRANDIS—But that is what the department does anyway. That is what the department's job is—to expend the moneys appropriated to it for the benefit of Indigenous Queenslanders. This is just money that would have otherwise come out of the Aboriginal affairs budget anyhow.

Mr Hogan—I do not know that I am making myself clear. The residue of the \$55.4 million that has not been paid in claims will be kept as a separate allocation.

Senator BRANDIS—You have made it perfectly clear, Mr Hogan. My point to you is that that is all very well, but that is money that would have had to come from somewhere else in the department's budget anyhow.

Mr Hogan—The \$55.6 million was a special allocation from Treasury. It is separate from the department's allocations for its programs and services.

Senator BRANDIS—Let us say for argument's sake that when this progresses past the deadline there is \$30 million left—what you call the residue. Are you telling me that the Aboriginal affairs budget will not be \$30 million lower than it otherwise would have been because there is this \$30 million revenue left to chuck into it?

Mr Hogan—I think that does follow from what I have said. The government has decided that a foundation will be established. Given the amount of money remaining and, I guess, the views of Indigenous Queenslanders expressed in the process, the government has decided to consult again with Indigenous Queenslanders about the best use of that remaining fund.

Senator BRANDIS—Whatever you cannot answer about this, please take on notice. Are you aware that in the *Courier-Mail* newspaper on 24 August 2002 the journalist Wayne Sanderson reported, and quoted from,

legal advice received by the Queensland government in relation to stolen wages claims, in an article under the headline 'Leak aids claim for "lost" pay'? Do you remember that?

Mr Hogan—I am not familiar with that.

Senator BRANDIS—I want you to take all these questions on notice. It is reported that an opinion from Mr McGill, of counsel, now of the District Court, and Ms Mullins, of counsel, now of the Supreme Court, provided certain advice—and it is quoted in the article:

... indigenous workers have a reasonably arguable case that the State owed a fiduciary obligation to properly preserve and account for funds which it held on their behalf ...

That is in the article. It is said to be a direct quote from the legal advice. Would you produce the legal advice—that is, the McGill-Mullins opinion—to the committee, please, in camera.

Mr Hogan—I will need to take that on notice—

Senator BRANDIS—You will.

Mr Hogan—and seek advice, of course, in relation to whether that can be made available or not.

Senator BRANDIS—If need be, I will be asking the committee to resolve to require its production. Mr Hogan, are you also aware that the McGill-Mullins opinion was supported by the then leading Queen's Counsel, now the Solicitor-General, Mr Walter Sofronoff?

Mr Hogan—I am not familiar with the legal advice.

Senator BRANDIS—Did the department or the government take an opinion from Mr Sofronoff in relation to the McGill-Mullins opinion? If so, I am requiring it to be produced, please. You will obviously have to take that on notice.

Mr Hogan—I will take that on notice.

Senator BRANDIS—In the article, the then minister, Ms Spence, is quoted as saying, in relation to the McGill-Mullins opinion, that the government 'has received further legal advice that supports the government's position' and that 'the government's legal advice is that the Crown would have a very strong case if these matters ever went to court'. I am asking you also to produce the further legal advice that is beyond the McGill-Mullins advice, to which Ms Spence referred in the direct speech attributed to her in that newspaper article. And, while I am at it, I am asking you to produce any other legal advice taken by the government that is germane to these claims for stolen wages concerning which we are speaking today. There is one last topic, Mr Hogan. You mentioned the provision of independent legal advice to claimants. You are familiar with the way that all worked?

Mr Hogan—I have some familiarity. If we need further information then we can take that on notice.

Senator BRANDIS—Yes. There was a tender document, wasn't there, that was published to legal service providers who might be interested in tendering for this work?

Mr Hogan—I am not familiar with the detail of the process.

Senator BRANDIS—I am asking for that to be produced as well, please. Lest your political masters decide to claim privilege, I can independently source a copy, but I do not have the copy in the room today. However, I can tell you this: it was a term of the tender document—that is, the tender for legal services for the provision of independent legal advice to applicants for payments from the reparation fund—that the successful tenderer 'must have a demonstrated willingness to cooperate with the department'—that is, the Department of Aboriginal and Torres Strait Islander Policy. Are you aware of that?

Mr Hogan—I am not aware of the terms of the tender.

Senator BRANDIS—Given that the providers of independent legal advice were meant to be negotiating with the department—they were meant to be at arms-length from the department—does it not strike you as remarkable that one of the requirements for the successful tender was that they must have a demonstrated willingness to cooperate with the department? Have you ever seen that in a government tender document before?

Mr Hogan—I am not familiar with the tender document. As I have said—

Senator BRANDIS—Have you ever seen a provision like that in a Queensland government tender document before?

Mr Hogan—I am not in a position to answer that question.

Senator BRANDIS—Are you also aware that the interpretation given to that provision of the tender document, as was conveyed to a number of parties who inquired about it, was that what that meant was that the lawyers who were supposed to be providing the independent advice had to be lawyers who had worked for the department before?

Mr Hogan—I am not familiar with that.

Senator BRANDIS—Are you familiar with an article in the *National Indigenous Times* newspaper by Mr Terry O’Gorman, the well-known Brisbane solicitor, in which he made these observations and was extremely critical of the lack of arms-length nature and transparency of the so-called independent legal advice to be provided to the Indigenous claimants?

Mr Hogan—I am not familiar with that article.

Senator BRANDIS—Submissions to this inquiry were called in late June of this year and the original closing date was 28 July of this year. I am right in understanding, am I not, that by the closing date for submissions the Queensland government had not made a submission to the inquiry?

Mr Hogan—That is correct.

Senator BRANDIS—Was that as a result of a decision made by the government not to respond to the invitation to make a submission?

Mr Hogan—No. There was a decision to prepare a submission. That has taken some time to put together. As you are also aware, a general election was called—

Senator BRANDIS—But you are a public servant, Mr Hogan.

Mr Hogan—and the government was in a caretaker period. There have been machinery of government changes, post election. The submission has been dealt with expeditiously after those arrangements have been put in place.

Senator BRANDIS—When did the caretaker period start?

Mr Hogan—I do not have the date.

Senator BRANDIS—The election was on 9 September, and it was called about three weeks before that, so the caretaker period must have started about three weeks before 9 September—that is, not later than the third week of August. Would you agree?

Mr Hogan—I would have to confirm what the dates were.

Senator BRANDIS—Could you check that, please? The closing date for submissions to this inquiry was 28 July, and that was subsequently extended to 29 September, so the decision of which you speak, if it was taken by reference to the caretaker period—if it was taken after the election, I should say—had to have been made after 28 July.

Mr Hogan—A decision was made to prepare a submission. It has not been finalised and it has not been able to be approved.

Senator BRANDIS—I understand. But obviously a decision was made to prepare a submission, because here it is. You have given it to us—albeit, unlike every other witness we have heard from today, you have given it to us late. The Queensland government has more resources than anybody else who has appeared today, but you are the only ones who were late—

Senator MOORE—That is not true.

Senator BRANDIS—You are the only ones who did not have the submission before us today. Nevertheless, I am not interested in when the decision was made to prepare the submission that was ultimately prepared; what I am interested in is when the decision was originally made not to make a submission. You told me before that originally a decision was made not to make a submission—

Mr Hogan—That is not what I said.

Senator BRANDIS—and by the time of the closing date for submissions, 28 July, no submission had been received.

CHAIR—Senator Brandis, please let Mr Hogan respond.

Mr Hogan—To my knowledge, it is not correct that a decision was made not to make a submission. I did not say that.

Senator BRANDIS—Okay. So there was never a decision not to make a submission. Correct?

Mr Hogan—That is correct.

Senator BRANDIS—But there was a decision to make a submission subsequent to 28 July. Is that correct?

Mr Hogan—A decision was made to make a submission. Given the time available to prepare a submission and the fact that the government was in a caretaker period and the fact that there were machinery-of-government changes affecting the portfolio, the submission has only just been approved for—

Senator BRANDIS—I am interested—and you can take this on notice if you do not know it—in knowing the date on which the decision was made to make this submission. I am interested in knowing whether or not it is the case that the only reason ultimately a decision was made to make a submission is because the Queensland government had been adversely commented on in other submissions that had been received prior to 28 July. I want to know if it was for that reason, not to put information before the committee in an open way but to defend the government's position, that in the end the government decided to cooperate with this inquiry.

Mr Hogan—That is not my understanding.

Senator BRANDIS—Thank you.

CHAIR—Senator Bartlett.

Senator BARTLETT—I do not think it would have been a massive surprise to the state government to discover a few submissions were not totally complimentary. I thank you for the submission nonetheless. It probably should be said in this context that the inquiry is looking into whether this type of practice happened nationally and how best to deal with it. For all the pros and cons regarding how Queensland has dealt with it, hopefully there are things that other states that have not even gone this far can learn from that. I know New South Wales has taken some action around similar matters. Have there been government-to-government discussions about these issues, or even discussions with states further afield, or has it been very much each state doing its own thing?

Mr Hogan—I am not familiar with discussions at an interstate or national level in relation to this matter. Queensland was the first state to endeavour to take some initiative to repair the injustice of stolen wages. New South Wales is, I understand, the only jurisdiction to subsequently introduce a scheme, although it is quite a different scheme. We would certainly be interested to share anything we have learnt in terms of processes and information with other jurisdictions.

Senator BARTLETT—One aspect that has been raised a little bit, although not in today's verbal evidence but more widely, are the steps you might have taken to reach people who no longer live in Queensland but who may have been affected. Was that part of the task that QAILSS were given—to try and make sure that those people were informed?

Mr Hogan—I understand that the information program that was undertaken between 2000 and 2002 was undertaken on an Australia-wide basis and indeed went into Papua New Guinea. There were residents in Papua New Guinea who had worked in Queensland. Indeed, that process was made available beyond Queensland. In relation to the particular consultations by QAILSS, I would have to seek further information about whether that went beyond Queensland.

Senator BARTLETT—This question will probably go on notice; it is regarding the things you learnt. Would you be able to ascertain and provide to us any of the questions that have been asked at state parliamentary level, particularly through estimates committees? Given the contentiousness of this issue, I assume some MPs would have been raising this issue at various times. If you were able to collate those so that we could see all of that, that would be useful. There might also have been questions in the parliament, but I suspect that estimates or questions on notice might have been the avenues used. Thank you.

I notice that in the documentation you gave us at attachment 2 there is a brief time line. It mentions that in 1998 the predecessor department established a research project to attempt to reconstruct the Aboriginal Welfare Fund and associated accounts, then this was discontinued after four years. More detailed research was not considered necessary as the government developed its reparations policy.

The question that arises from that is that I take it that over four years there would have been a fair bit of research done. It says 'associated accounts'. I am assuming that is the stolen wages accounts, for want of a better term, rather than just the welfare fund issue. Given that the reparations policy, as we have already discussed, is not compensation, why was a decision made—and I appreciate that this is going back a bit—to

not research that further? Was it basically at that time that it was decided that the point had been reached where it was just better to go down this blanket reparations path?

Mr Hogan—I am not familiar with the particular circumstances of the decision, but my understanding is that the research had confirmed the difficulty of reconstructing the records. A view was taken that it would take a lengthy period to try to continue with that endeavour. In the meantime, there was consideration given to the need to give some level of reparation to Indigenous Queenslanders affected by the legislation. Further investment in that effort to reconstruct records would just delay provision of a scheme to provide some measure of reparation.

Senator BARTLETT—It says here that in the year 2000 there was a negotiation framework approved relating to the welfare fund. That is as well as the reparations package; the welfare fund was separate to that. That consultation process, I guess, in effect is still going. It is a fairly long time to be consulting about the welfare fund per se. Is it because these other things have gotten in the way of that?

Mr Hogan—The focus has been on administering the reparations offer. A decision was subsequently made that, if there was a residue, that would be added to the welfare fund. A foundation, as I have described it, would be established and a board of prominent people would be appointed to administer the foundation. As indicated, given further experience and the amount that will be remaining, the minister has made a commitment that he will consult again with Indigenous Queenslanders about the best way to go forward in relation to that fund.

Senator BARTLETT—As to this difference between what is compensation and what is reparation, I am interested as well because I know that what I think of as the Palm Island case—the payments made with regard to Racial Discrimination Act breaches, which are called the non-payment of award wages process, to give it its clear title—was, according to attachment 6 that you have given us, a decision to pay compensation for non-payment of award wages. So that actually was not reparation; it was, I suppose, in a sense compensation for recognising a breach of racial discrimination law. Is that correct?

Mr Hogan—That is my understanding of the basis on which it was undertaken.

Senator BARTLETT—Part of my questions go to my understanding of one of the issues with why people who are deceased are no longer eligible. I had a letter given to me before, saying that compensation for racial discrimination is a right to a person, not a right in rem that passes on. Is that different if it is actual reparation—where someone was legally entitled to be paid \$6,423.45 and they were not? Does that lawful entitlement continue whether or not they are still alive?

Mr Hogan—I cannot provide a view on that question other than to confirm that a similar approach was taken in relation to the under-award-wages scheme and the wages and savings reparations offer—that they would apply to persons living at the time of the offer.

Senator BRANDIS—It is a chose in action, Senator Bartlett, that devolves to their estate by the principle of survivorship but subject to limitation.

Senator BARTLETT—But in a legal sense this reparations or stolen wages package or whatever you want to call it is not compensation?

Mr Hogan—That is correct.

Senator BARTLETT—Because compensation is a legal—

Mr Hogan—The genesis, as you have referred to, of the non-award wages scheme came out of the Human Rights and Equal Opportunities Commission in relation to Palm Island matters, where a determination of a payment of \$7,000 was made by HREOC. The scheme that flowed from that was applied to others who had been government workers and that amount was then used as the basis for that scheme.

Senator BARTLETT—The issue of the non-eligibility of people who have passed on is one that is continually raised as one of ongoing anger or hurt or both. What was the rationale for that not being part of the package?

Mr Hogan—I would acknowledge the concern that has been expressed about that issue. The advice at the time was that there were real practical difficulties in relation to including descendants of people who had deceased prior to the scheme, including the issues associated with the advice of the public trustee. The difficulties, given the large proportion of Aboriginal and Torres Strait Islander people that die intestate, the amount available, and the costs of identifying, verifying and distributing amounts remaining to descendants, meant that that was not included in the scheme.

Senator MOORE—Mr Hogan, how long have you been involved in this particular process? I know the machinery of government changes. I always ask public servants when they come before us how long they have been involved in the area.

Mr Hogan—I have only just recently taken over the role.

Senator MOORE—That is what I kind of thought. You were not involved in the same unit beforehand—this is entirely new for you?

Mr Hogan—That is correct.

Senator MOORE—I take it that people in your agency have had a chance to look at the submissions?

Mr Hogan—The submission has been prepared by departmental staff.

Senator MOORE—No, the other Queensland submissions that have come to us. It is also a question I ask public servants every time they come before the committee.

Mr Hogan—Indeed, we have been looking at them.

Senator MOORE—Whilst I acknowledge there are other late submissions, as a Queensland senator I want to express my disappointment that the Queensland government submission came now. So, instead of being able to ask questions based on what we had, we are trying to read the submission at the same time, which is just unhelpful. I want to put that on record.

I also want to follow up on the point that Senator Bartlett raised about the internal Queensland estimates processes. I am aware that there is a community campaign that has been in place since the time the first offer was made expressing concern about the whole process. I am genuinely interested to know whether the kinds of questions you have received from us today have been taken up within Queensland's internal processes. This is to ascertain whether people's awareness and knowledge is brand new or whether it has been going on for a while. That would be useful.

You might have to put this on notice. There are ongoing concerns about this offer, yet that is not alluded to in the submission we have received today; there is nothing in the minister's statement that indicates that he is aware of what I consider to be quite wide-ranging issues of concern in our state by Indigenous people and non-Indigenous people. His foreword to the submission does not seem to indicate that. What I want to find out is: what communication is there between the people who are upset and aggrieved and the department and the minister to exchange these views? Given that we have a situation imposed—and I was pleased to reread the Premier's and the minister's statement in bringing it down, because it was clear what the intention was—almost from day one, issues about how, why, when and who were being raised. I am trying to get a sense, from the department's point of view, about how that information is shared.

Mr Hogan—In regard to recent times, since the current minister has taken responsibility, he has embarked on an extensive process of—

Senator MOORE—It has actually gone back to the Department of Communities, hasn't it?

Mr Hogan—Aboriginal and Torres Strait Island policy is now part of the Department of Communities.

Senator MOORE—So, when it all started, it was in what was the then ministry of that kind. When Minister Spence was the minister, it was an amalgamated ministry which included Indigenous affairs.

Mr Hogan—That is correct.

Senator MOORE—Now we have gone full circle and it is back into that department, so the current minister is Minister Pitt.

Mr Hogan—He is undertaking extensive consultations. This issue has been raised with him. He is very alive to the concerns that have been expressed directly to him. He has indicated that, in considering how to move forward in relation to the remaining funds, he will take into account the issues raised with him—and, indeed, I expect the issues raised in this process—in providing advice to government about the best way to move forward.

Senator MOORE—Does the parliamentary secretary have a role? You may want to take that on notice as well in terms of the megadepartment. I am not sure how it is carved up but, when you have a parliamentary secretary, I am not sure whether the parliamentary secretary will take Indigenous issues or whatever. There are another couple of questions on notice. I know you have a lot of homework, but that is what happens. One is

whether you keep any record about whether the issues about the program have been raised at community cabinets and how it balances out with the numbers.

The other is in terms of a statement that we have here from one of our witnesses—and I am sure that people who read the submission could have picked it. We have correspondence from Ms Williams wanting to discuss the future of which possible way it could go. In the submission we have, it has been particularly stated that Ms Williams contacted the Premier to raise these issues with him and to try and seek some discussion in January 2006. As of today, when she gave evidence, she had still not received a response or even an acknowledgement of her request, let alone any move forward. In terms of process it is always disappointing, when you come here as a Queenslander, to have something like that on record.

Mr Hogan—I am not familiar with the particular correspondence, but I understand that there was a meeting with the Premier's department earlier this year with some representatives from the Queensland Stolen Wages Working Group.

Senator MOORE—Ms Williams is not a member of that group. This was in another capacity in this area. She has provided us with a submission because of her interest. It raises some interesting things in terms of possible future direction. A particular point that was raised was that not only has she not had the opportunity to discuss these issues about the future but her correspondence was not even acknowledged. I consider that poor.

Mr Hogan—I will take it on notice to follow that issue up.

Senator MOORE—So we have those community cabinet internal estimates processes and what happened and also consultation processes that occur. I know that we have heard about the proposal for the formal consultation with the group of eminent persons, whom we are waiting to be identified, but I am more interested in how people get access to consultation.

Mr Hogan—I can indicate that the minister is very committed to there being a full and effective consultation process in relation to the future of the funds.

CHAIR—Mr Hogan, have any of my colleagues asked you who comprises the proposed board of eminent persons?

Mr Hogan—That has not been determined yet. That will be part of the process that the minister consults Indigenous Queenslanders about.

CHAIR—How will that consultation take place?

Mr Hogan—The minister has indicated that, as this scheme comes to a close, the next step will be engaging with Indigenous Queenslanders. At this stage, the method for that has not been finalised.

CHAIR—You could understand if there were some scepticism in the Indigenous community about entrusting millions of dollars of Indigenous funds to another foundation, board or similar organisation?

Mr Hogan—I am sure the government is interested in making sure that proper administration of this fund will be realised.

Senator MOORE—Did this minister have an Indigenous advisory group in the model that was used previously?

Mr Hogan—That is an issue that the minister is currently giving some consideration to.

Senator MOORE—I am just looking at past history.

Senator SIEWERT—You may need to take some of these questions on notice. Regarding the \$1.1 million legal fund, how were people told that they could access independent advice? I would also like to know how many people actually sought access to that independent advice.

Mr Hogan—I will need to take the second question on notice. I draw your attention to one of the information sheets, which is part of attachment 7 and gives a step-by-step indication of how the scheme would operate. Step 6 refers to legal advice and deed and indicates that DATSIP will pay for a lawyer to give eligible claimants independent legal advice. In addition, after a claim has been made and assessed the department has provided a letter to those assessed as eligible, indicating that, if they want to receive a payment, it is a requirement of the offer that they sign a deed of agreement after receiving independent legal advice about what acceptance of the offer means. Originally what was put in place was that two consultations with a lawyer were made available. So there was a visit or contact with a lawyer, time to think about it and then the possibility of consulting the lawyer again after having given it some consideration. I understand that 5,555 people were provided with independent legal advice.

Senator SIEWERT—That is out of the 8,672 who applied—is that right?

Mr Hogan—No, out of those who were—

Senator SIEWERT—Those who were deemed eligible?

Mr Hogan—deemed eligible.

Senator SIEWERT—So out of that 63 per cent who were deemed eligible, 5,555 people took that up?

Mr Hogan—It was a requirement that they had independent legal advice.

CHAIR—So it was mandatory?

Mr Hogan—It was a requirement that they seek independent legal advice.

Senator SIEWERT—You are aware that when we asked people earlier today whether they had had access to independent legal advice we were told by many that they had not, and they were not aware that they could.

Mr Hogan—All I can refer to is the information in the sheet, and I can provide a copy of the letter—

CHAIR—I am not sure that is all you can refer to. This is a very serious question. This is a question about whether individuals who took up the government's offer of reparation, which would cut off any future legal claims, were adequately aware that they were able to—and, in fact, according to you it was mandatory that they did—receive independent legal advice. So I would hope that not all that you can do is quote off the sheet of paper and that you can in fact take the question on notice and give the committee some more information about the adequacy of the legal advice that was made available and whether people did receive independent legal advice. If the impressions of the individuals who have come before the committee today are anything by which to be guided, they do not think they did.

Mr Hogan—I was not diminishing the seriousness of the issue and I will take it on notice. I was just alluding to the information that I had available.

CHAIR—Thank you. Sorry, Rachel.

Senator SIEWERT—That is okay; that is getting to the heart of the issue. Mr Hogan, you also said earlier that the reparation program was part of a package. I have not had time to read your submission, so I am wondering what the rest of that package is.

Mr Hogan—I refer you to attachment 1, which is the ministerial statement made by the Premier on 16 May 2002. From the bottom of page 1 through, there is a description of the components of the package: firstly, the monetary amount and the offer of \$55.4 million; secondly, a written apology from the government to all living persons who had their wages and savings controlled and are eligible to make a claim; thirdly, a parliamentary acknowledgement—a statement in the house in relation to public recognition of past injustices on the basis of race; fourthly, a government protocol that was adopted acknowledging traditional owners in relation to all official government business; and, fifthly, a commitment to address the issue of the distribution of the Aborigines Welfare Fund.

Senator SIEWERT—When the consultation process was carried out after this announcement was made, was that whole package presented to people in terms of whether they accepted that package or was it just the financial side of the package that was presented to people?

Mr Hogan—I would like to take that on notice.

Senator SIEWERT—That would be appreciated. Thank you. I have one last question. You made reference earlier to the savings accounts and the Commonwealth Bank not having records of them any longer. Do I take from that the implication that the Queensland government does not have any records of those savings accounts and how much was drawn down on those either?

Mr Hogan—The situation is that the government has some records, but not full records. There were records lost; there were records destroyed. There is not a full record of those accounts.

Senator SIEWERT—I understand that the Treasury records are the records in particular that researchers have not had access to. Even in the Treasury records are those details of bank accounts that the state government operated not available?

Mr Hogan—I will have to check that.

Senator SIEWERT—If you could, that would be appreciated. Thank you.

CHAIR—Mr Hogan, I thank you on behalf of the committee. It was inevitable after the number of submissions we have received and the evidence provided to the committee today that we would have a number of issues we needed to raise with you as a representative of the Queensland government. However, I should at this stage acknowledge that at least you have turned up. The New South Wales government is no longer going to appear before us on Friday, so we are grateful for your attendance here this afternoon.

You have been required to take a very large number of matters on notice, which I think is a function both of the lateness of the government's submission and the committee not having had a chance to look at that before the discussion began and of the amount of evidence that we have taken today. We would appreciate your assistance with returning those answers to questions on notice as soon as possible. The committee is intending to report on time in early December at this stage, so we do have a relatively quick process to deal with ourselves.

Mr Hogan—I will take that on notice too.

CHAIR—Thank you very much, Mr Hogan. To the rest of the witnesses who have appeared today, I want to thank each and every one of those witnesses for the evidence that has been provided to the committee. The personal nature of the stories that some witnesses have had to tell makes the work that we are doing in this inquiry much more compelling than simply written submissions that we receive so regularly. We are very grateful for that. I also acknowledge and recognise that it is not easy to provide that evidence in what is often a formidable and intimidating environment of a Senate inquiry, so I do want to acknowledge those individuals and thank them very much.

The committee will meet again in Sydney on this subject on Friday and then will give consideration to where it takes the inquiry process. We will make sure through the secretariat and the committee's website that individuals who are interested in the process of the inquiry can be kept informed. I thank my colleagues very much for their assistance and attention today, and declare the hearing adjourned.

Committee adjourned at 5.34 pm