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SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Indigenous workers whose paid labour was controlled by government

FRIDAY, 27 OCTOBER 2006

SYDNEY

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SENATE STANDING COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

Friday, 27 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, Crossin, Moore, Payne and Trood

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.

WITNESSES

Committee met at 8.31 am

DICK, Mr Darren, Director, Aboriginal and Torres Strait Islander Social Justice Unit, Human Rights and Equal Opportunity Commission

HUNYOR, Mr Jonathon, Acting Director of Legal Services, Human Rights and Equal Opportunity Commission

CHAIR (Senator Payne)—This is the second 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 is considering, 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 115 submissions for this inquiry. All of these 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 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 a committee. The committee prefers all evidence to be given in public but, under the Senate's resolutions, 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 having regard to the ground which is claimed. If the committee determines to insist on answer, a witness may request that the answer be given in camera. Such a request may, of course, be made at any other time.

I welcome our witnesses from the Human Rights and Equal Opportunity Commission. HREOC has lodged a submission with the committee, which we have numbered 41. Do you need to make any amendments or alterations to that submission?

Mr Dick—We have one additional point that Jonathon will make.

CHAIR—I invite you to make an opening statement.

Mr Dick—We would like to begin by acknowledging the Cadigal peoples, the traditional owners of the land where we are meeting, and we also send apologies from our president, Justice John von Doussa, and the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, who cannot be here today. We note the substantial range of submissions received by the committee, which provide a wealth of information detailing the history and personal testimonies about the impact of these past practices by governments and their agents, such as the churches.

The commission sees the practices that are broadly described as stolen wages as falling into three broad categories: the management and control of wages; related issues concerning the quantum of payments, in particular underaward payments; and the arrangements such as the welfare fund in Queensland where part of people's wages were placed in a fund for the benefit of all Indigenous peoples. Our submission focuses primarily on the second of those issues, the underaward payments issues and the difficulties that have occurred in addressing that issue under the Racial Discrimination Act.

In brief, we want to add to the commentary in our submission by outlining the main human rights issues that we see applying to all the stolen wages issues. We think there are six main issues that are of importance in addressing this issue. The first is: what are the human rights we are talking about? We consider that it is our obligation under a least three international treaties—namely, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights—and, in particular, obligations relating to nondiscrimination and equality, terms and conditions of employment, including equal pay for equal work and just and favourable remuneration, property rights and the right to inherit.

The second issue is: to whom do these obligations apply? We believe that they apply to all branches of government, be it the executive, legislature or judiciary, other public or governmental authorities and to all levels—national, state and local. CERD, for example, makes it clear in article 2 that the government must not

engage in discriminate practices but also must address and prevent discrimination by others, and that would include their agents in some of these practices, such as the churches.

The third issue is: do these obligations apply to the stolen wages issues, given the general principles that these treaties are not of retroactive effect? There are two considerations here. First is whether the obligations occurred at a time when Australia had entered into these obligations. We know, for example, that in Queensland the welfare fund continued to operate until 1993 and the funds are still held in that account while the government determines what course of action it is going to take. To the extent that the welfare fund involves breaches of rights, they are current and they are within the human rights obligations that Australia has undertaken. The payment of underaward wages also continued beyond 1975, which is when Australia entered into CERD and ICESCR.

The second consideration is whether violations such as management and nonreturn of wages occurred prior to Australia entering into these obligations. The state can still be in breach of its obligations if the act or the practice has a continuing effect or if the state party affirms the earlier violation. It would seem to us relatively uncontroversial that the denial of processes for and the actual return of money owed have a continuing effect. This also extends to the families of those who were underpaid or whose monies were withheld or managed and, in particular, their right to inherit. Accordingly, we would argue that the human rights obligations are relevant and they are enlivened by this issue.

The fourth issue is: what should be done about these breaches? Australia has undertaken through these treaties to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, and this includes the right to have their claim determined by competent judicial, administrative or legislative authorities and with the possibility of review. Article 6 of CERD describes this requirement as the provision of effective protection and remedies as well as the right to seek just and adequate reparation or satisfaction for any damage suffered.

The fifth issue is one of process. It is an essential human rights requirement that Indigenous peoples are able to effectively participate in the design, delivery, implementation and monitoring of any process that is designed to provide a remedy. This can be summarised as the requirement of free prior informed consent, but it requires an ongoing role in the process. We think this is quite a critical issue when evaluating the adequacy of the existing processes in New South Wales and Queensland, and in designing the broader response to the issue.

Finally, the sixth issue we see is the adequacy of the existing remedies for these violations. Our submission has highlighted the problems of relying upon the RDA to provide an effective remedy. We also note our concerns regarding the Queensland schemes, which we think are deeply unsatisfactory. To date, the commission does not believe that there has been an appropriate response to the issues relating to stolen wages, and we do not believe that existing domestic remedies are capable of providing an effective remedy to Indigenous peoples. So we welcome this inquiry and hope that we can provide assistance to the committee as it explores options for how a just settlement might be realised.

Mr Hunyor—The addition to our submission that I want to make is that paragraph 40 refers to an application by the state of Queensland in a set of proceedings for a permanent stay. A decision has now been handed down. It was the decision of Justice Collier of 28 September 2006 in Douglas v State of Queensland (No 2). The reference for that is 2006 FCA 1288. Her honour has granted a permanent stay over the bulk of those proceedings.

There are some residual issues that continue on foot, but the bulk of those proceedings have been stayed in as far as they related to the employment of the applicants by the Christian Brethren, who were the church organisation running the mission. So those aspects of the claim, which are the bulk of the claim, have been permanently stayed on the basis that, because of the passage of time, records are not available, witnesses have passed away and some are old and have inaccurate memories. The remaining parts of those claims that are on foot are those that relate to any direct employment by the state of the applicants. There may be a period between 1984 and 1986 where there was some sort of direct employment, but that is not the bulk of the claim. So they have been stayed. It highlights the point that we seek to make in our submission when we look at the series of litigation under the RDA—namely, that it has been very difficult for people to get an effective remedy through the RDA because of the difficulties associated with litigation.

CHAIR—Thank you both very much. I am just trying to get my head around more precisely the level of HREOC's engagement in the broad issue of stolen wages, whether it extends outside these cases in Queensland and what other work you may have done.

Mr Dick—We had a reasonable amount of involvement back around 2002 and 2003, at the time when the Queensland government was finalising its offer. Commissioner Jonas had a number of community meetings with what I think is still known as the Stolen Wages Working Group—

CHAIR—We met with them in Brisbane.

Mr Dick—and, for example, he also launched Ros Kidd's previous book on this issue, *Black Lives, Government Lies*. There were a number of statements and so forth that he put out at the time which we could provide copies of—I think the web references are included in the submission. We also wrote at the time to the Queensland government and had a meeting with the minister at the time—

CHAIR—Who was the minister then?

Mr Dick—Judy Spence. He had made an offer at that point to facilitate negotiations between Indigenous communities and the government—

CHAIR—Bill Jonas had?

Mr Dick—Yes—to improve the offer, given some of the worrying aspect of it. His offer was promptly declined. Since then it has been an issue that, in its regular consultations, the commission has kept up with developments on. The president in particular has taken a keen interest in whether the issue is one of national significance, with the view that ultimately it might have been something that would be appropriate for a national inquiry. Whether this committee replaces the need for that is, I suppose, a question for you to think about in your findings. We have not had the research ability or the time to be able to establish whether it was a national issue or one confined to New South Wales and Queensland. We have been in touch with a number of organisations such as ANTaR who we knew were preparing information that would have assisted us to decide whether we ought to investigate that further.

CHAIR—I think it is probably for others to decide whether this committee inquiry deals with the matters in a way which is regarded as adequate. In paragraph 24 of your submission there is a reference to Dr Jonas's engagement at the time of the announcement in Queensland. I would be interested in your having a look at the *Hansard* of Wednesday's hearings in Brisbane on the question of consultation. I must say that after considering the material which has been given to the committee and evidence which was provided to the committee on Wednesday and then the affirmation which was put on the *Hansard* record of Wednesday by the representative of the Queensland government, the Assistant Director-General of the Department of Communities, Mr Hogan, I am slightly bemused by the claims and counterclaims on the level of consultation, its adequacy or otherwise, on how the Queensland government claims that 94 per cent of those consulted thought that the package was a good plan.

In that quote from Dr Jonas's media release there is also a reference to the question of independent legal advice. Any information that you could provide the committee with in relation to Dr Jonas's experience in that regard would also be of interest. We were trying to get to the bottom of that question as well and the role played by both QAILSS and NAILS in particular in that process, so that would be helpful. Outside of Queensland—say, for example, in the development of the processes now in place in New South Wales—what engagement has HREOC had?

Mr Dick—It has been much more limited. We have had informal discussions with panel members in particular and with organisations that have been pushing for that offer, but the process in New South Wales was obviously vastly different. The first stage of it was consultations with people who were affected and so forth. We have taken a more 'wait and see what happens with that' approach.

CHAIR—Do you have a view about the New South Wales approach in contrast to the Queensland approach, and do you have any comments to make on Western Australia at this stage?

Mr Dick—There are a number of benefits in New South Wales that do not exist in Queensland. They are not requiring the release of any liability, for example. Descendants can apply for funds that were not returned to their parents and the simple evidentiary burden make it a much more acceptable scheme.

CHAIR—It is not capped, is it?

Mr Dick—No, it is not capped. The difference between the two is that the New South Wales scheme is for the return of wages that were taken. It is not a compensation or a reparation mechanism.

CHAIR—Be very careful to call it reparation, Mr Dick; we went through that on Wednesday with the Queensland government. It is not compensation.

Mr Dick—Yes, that is right. But the New South Wales one is very strictly, 'You are owed this amount of money with compounding interest over time.' It has some limits in that way which may or may not be acceptable to the people affected. It is not for us really to say if that is the case. We have not yet looked into the Western Australian issue.

CHAIR—Okay.

Mr Dick—I can make a few comments about your previous question if you want me to, as I have been involved.

CHAIR—Which one was that?

Mr Dick—The one about consultation on the Queensland offer and independent legal advice. We can provide further information. The point on the consultation, I think, is a subtle one. QAILSS had been provided funding to go out and conduct consultation on behalf of the Queensland government and they turned up to communities with—I do not know if you have seen it—a one-page flyer. It was not what you would call particularly independent legal advice: telling people that if they say no to this offer then they could get stuck in the courts like Mabo for the next 10 years and they may not end up with anything. It was all sorts of things like this which were not particularly objective in nature. They then held community meetings in which they would ask people to sign on to an offer—'Do you want this money?'—and you would have to tick 'yes' or 'no'.

CHAIR—It was not binding though, was it?

Mr Dick—No, it was not binding. A lot of the feedback that we got from people was, 'They think we are going to say no so then it is on record somewhere that we do not want the compensation.' I think at the end of the day, the money has been dangled in front of people and they may well ultimately choose to take it. I think that accounts for the very high rate that the Queensland government pays because those people who want to accept the offer were willing to tick the form. Those who were not willing to sign it just did not show up. The records that QAILSS had in their report would show that, for example, there might be a community with 1,000 people in it and there would be 50 who would turn up to the meeting.

CHAIR—And 48 of the 50 said yes, therefore—

Mr Dick—Yes, that is right. So when you get these figures of 10 per cent, you are saying, 'For the possible people who could have turned up and who could have said yes or no, only one-tenth turned up in the first place, but then 98 per cent of them said yes.' Whether you would call it coercion or not—

CHAIR—It is interesting that you call it 'subtle'. I would call it a blunt weapon myself, but that is another issue.

Mr Dick—Well, statistical arguments are always—

Senator TROOD—This is the consultation that took place after the proposal was made by the Queensland government?

Mr Dick—Yes, that is right.

Senator TROOD—The post-proposal consultations?

Mr Dick—Yes, and I am sure you were told in great depth that the initial costing that QAILSS had done was closer to $150 million.

Senator TROOD—I must say, Mr Dick, that there was a certain amount of confusion around this.

Mr Dick—Right.

CHAIR—Nobody could tell us how $55.6 million was arrived at and how easily $200,000 was skimmed off the top to make it $55.4 million so that QAILSS could be paid to do the consultation.

Senator CROSSIN—Nobody mentioned $155 million, did they? I do not remember that figure being mentioned on Wednesday.

Mr Dick—There had been an initial report submitted by QAILSS to the government which said that the appropriate level of compensation was that total. I know the details are covered in the latest book by Ros Kidd, *Trustees on Trial*, if you want a source for that.

Senator CROSSIN—We have that book, so we will look at it.

Mr Dick—We asked Minister Spence how the offer had been arrived at at the time, and her answer was: 'We'd put it to Treasury and they said that's what we can afford in one year.' Then we calculated back, on the basis of the estimate of the number of people, to see how we could make a figure that would add up to that.

Senator TROOD—'This is how much we can afford,' not 'How much are they due'?

Mr Dick—Yes, that is right—in one year.

CHAIR—Based on the assertion that it is taxpayers' money, not money that rightly belongs to another person that is being returned.

Mr Dick—Yes. Curiously, at the time there was a statement by Dr Jonas that said: 'Available estimates indicate that, if each person is paid the proposed $2,000 or $4,000, there will be approximately $20 million left out of the $55 million,' and that is what has happened. These issues were put at the time.

CHAIR—Yes. It suffers from a crisis of identity as well. It is variously called a 'surplus', a 'residue' and a 'remaining balance', I think.

Senator CROSSIN—Thank you both for appearing before us. HREOC are always so reliable in providing us with a view about a range of matters and I certainly appreciate it. To be honest with you, when we first got the suggestion of this reference from Senator Bartlett, in my mind I was not particularly sure how widespread this was, but I am coming closer to the view that I believe HREOC should look at it. Until I read some of the work of Ros Kidd and Dr Anthony, and she is a witness today—regarding, for example, the Northern Territory and the Vestey situation at Wave Hill—I was not aware that there was legislation at the time that required that some of that money was paid into a trust account or a fund held by the Commonwealth government. Regarding some of the old men at Kalkarinji—and I would be interested to go back and talk to them—I do not think that they knew that that was happening either. Mr Dick, we were both at Kalkarinji just recently. It is worth further investigation because, if people were somehow able to provide an oral history of what happened at that time, more people might start to think, 'Perhaps this is a much wider issue.' I do not know whether any of your work has led you to come to some of the conclusions that I am coming to.

Mr Dick—I have one very brief point and then I will make some other comments. In the last day or two I looked at the text in the *Bringing them home* report to see how this issue was dealt with. There is a range of references to this practice in the report, particularly with regard to young girls who were sent out as servants and so forth. It is an issue that has some links to the removal of children as well. I think it sits parallel to that. We thought very much about the HREOC inquiry proposal. One of the recommendations in the ANTaR submission is that there should be an inquiry by HREOC. I have a few points to make about that. First of all, I think it would have to be a very extensive inquiry and it would be time-consuming. It would require quite a lot of historical research and, as you said, a lot of consultation. The oral evidence would be very important, which is something that we, of course, cannot achieve unless it were a funded inquiry. That is an important point. It is more fundamental to ask: what would a national inquiry do? At the end of the day, it could further identify the situation and the need for something to be done and recommend a way of doing that, but it will not actually result in a settlement. That is the other point. It will result in a report which might recommend a way forward. We would think that there are probably a few ways forward from this committee.

You may well be satisfied that there is enough evidence to suggest that it is a issue of national seriousness and that, given the age of the people affected and the circumstances that they live in generally, it is something that ought to be swiftly dealt with rather than having to wait for another inquiry to progress. Then it would be an issue of looking at some sort of national mechanism that can provide that redress. The New South Wales scheme, for example, is very good in that way, being able to offer people the opportunity to tell their story and to assist in researching their claims and so forth. Some sort of independent mechanism that at the end of the day can then award the compensation or the repayments might be a swifter mechanism or an alternative to a national inquiry. That is just one note of caution we would exercise with that.

Senator CROSSIN—There seems to be such a vast difference between the Queensland offer and the New South Wales offer. I think it would be interesting for you to look at the transcript of the Brisbane hearing. This is an issue that I raised and I feel quite perplexed about this. Quite clearly, the Queensland government are telling us that this is a reparations payment—it is not compensation—but people have to sign it and waive any indemnity. If you are actually paying people because it is a payment in good faith and an acknowledgement, I wonder why this is. Perhaps you would like to look at the *Hansard* of that hearing and provide some comments about that. But I would assume that that breaches article 6 of CERD, as you mentioned in your opening comments, would it not?

Mr Dick—Yes, it may well. We were very concerned at the time about the indemnity that they sought, particularly on the basis that a number of the people were not going to have access to the records that would enable them to make an informed decision prior to having to sign on with 'yes' or 'no' to the offer. We also

know, and this may have come up in evidence, that there have been a number of other confidential settlements with the Queensland government. We only know there are settlements, though we do not know the nature of them, where people who have been owed substantially more—

Senator CROSSIN—I think we had evidence that there probably was only one.

Mr Dick—I have spoken to several lawyers who have merely said that they have settled several claims, but they will not go into details, obviously.

Senator CROSSIN—One would assume they are for more than $4,000.

Mr Dick—Yes, that is right. That would be where their records are sufficiently clear to show that they are owed amounts.

Senator CROSSIN—The Queensland government put it to us that the decision of $4,000 is $55.5 million divided by the 16½ thousand people they thought were eligible—that is how the magic figures of $4,000 and $2,000 came out. But they put it to us that they were quite clearly convinced that records were not available. It was all a bit too hard. They certainly did not give me the view that they would let everybody have a go and, if it was too difficult for some people, they would get a fixed amount, and well and good for the others who could find the records. There certainly was not that impression. I think they clearly wanted us to have the view that, by and large, they had made a decision that the records did not exist.

Mr Hunyor—I think it varies depending on the situation. If you look at what happened with, for example, the Baird litigation that is detailed in our submission, the court was satisfied that at least some of the applicants had shown that they were underpaid wages of between $8,000 and $37,000. The court was satisfied in an ordinary piece of civil litigation of that amount, so there was certainly enough evidence there. I think it will differ. Some communities and schemes had great bookkeepers and there are records and people remaining who can give evidence; for certain statutory schemes there may well not be adequate records—but I think it very much differs.

Senator CROSSIN—I think you are right. That is why I am a bit surprised that the Queensland government has erred on the side of assuming that the records are not there rather than giving everyone a fair go. What I want to alert you to is that Yvonne Butler in fact spent quite a period of time going through some records because in the family there was a letter that identified that her grandfather, on his death in 1947, had in his account—whatever that means—around £623. The letter clearly specified that on his death it was to be dispersed among the family. There is absolutely no evidence that the family ever got any of that money. In today's terms, without compound interest, that is around $32,000—without interest. So of course she has not accepted the $4,000 payment. The first issue is about the scheme applying to deceased people, which Queensland does not allow but New South Wales does. The second issue is that we had a big discussion on Wednesday about the requirement to demonstrate that that money is there and is an entitlement in the trust. I wonder if you have some comments to make about the Queensland scheme not applying to people who are deceased. It also does not apply to people who can prove that they are entitled to more than $4,000.

Mr Dick—This is where the distinction as to whether it is reparation or compensation is important. A number of the Indigenous peoples who have been opposing this offer in Queensland have made very clear that it should be seen as an industrial relations issue at the end of the day. At the end of the day, this is people's money that they have not received back. If you look at it in that light, which is clearly true, the fact that this man had this amount of money—it is his money—means that there should be no question that it should be returned to him and to his descendants. There can be no basis for not doing that. When they call it a reparation offer, they are saying that it is something that they are doing now and that they cannot address everything from the past and only those people who are alive now qualify. In a sense, it is not matching up very well to what actually happened and what they are actually trying to address. It is not a very appropriate way of dealing with it.

Mr Hunyor—That example that you gave—and I want to pick up the earlier discussion about the potential for a HREOC inquiry—raises a couple of issues that I guess would be relevant. Firstly, any inquiry by HREOC could not really dig into the details of all the individual cases. Secondly, in relation to the records of state governments, our ability to require the production of documents—if that were necessary to flesh out an inquiry—is really limited to the Commonwealth and does not apply to the state governments. Our inquiry powers relate to acts and practices of the Commonwealth. With our national inquiry into children in immigration detention, we were able to get to the detail of some of the practices in detention centres because they were done by or on behalf of the Commonwealth. In the event that states were prepared to cooperate with

any inquiry and provide all sorts of documentation, then an inquiry would be possible. But if they were not then we would have very limited ability to get into the detail of general schemes, let alone individual cases like that.

Senator CROSSIN—I understand what you are saying there, but in some cases the Commonwealth's welfare payments were managed by the states. People did not get their child endowment or their welfare payments as part of this. I think that there would be a role for HREOC in New South Wales and Queensland anyway, because payments generated by the Commonwealth were withheld. To my way of thinking, the *Bringing them home* report did not delve into individual cases, either, but at the end of the day it recommended things, and the Commonwealth government responded initially by giving $63 million to enable Link Up services to be set up and funded and to enable access to archives. It opened up and funded a door by which affected Indigenous people could start to access this information. The view I got in Brisbane was that clearly people were having trouble just getting resources or time to find this information. Even that, in a sense, would be a very useful conclusion. I do not think that you should delve into individual cases. That did not happen with the *Bringing them home* report. What sort of avenue do people have here in New South Wales to access resources?

Mr Hunyor—I do not know.

Mr Dick—My understanding is that they have waivers of fees for accessing the records and there is support in terms of how they are accessed. I do not know any detail.

Senator CROSSIN—But there is a mechanism at least here?

Mr Dick—Yes, there are benefits over the Queensland process.

Senator TROOD—I wonder whether you could help us as to how you think we should look at this issue of entitlement. Your submission, of course, alludes to entitlements under various human rights covenants and treaties, but there is also the question of the industrial relations entitlements. In Brisbane we spent quite a lot of time talking about perhaps a narrow but important legal principle about the relationship of trust that might exist between the government and the Indigenous people or perhaps a fiduciary relationship. So there is at least three ways of looking at possible entitlements in relation to this matter. How do you think we should be approaching it? Is it a matter of industrial entitlements, a matter of human rights or is it all three and take whatever best serves the interests of the affected people?

Mr Dick—We notice you have PIAC, the Public Interest Advocacy Centre later on today. You may want to explore this with them as well. We did some work with PIAC and also ATSIC in response to *Bringing them home*. It was looking at a model for a national tribunal that would be able to address the issues relating to forcible removal policies. They released a report called *Restoring identity*. It followed a national conference that HREOC and ATSIC co-convened with PIAC called Moving Forward. That was an interesting model that might provide a useful way forward as well. You would have a basic tribunal—or you could call it something else—which would have the ability to undertake that broad research and history in each state and territory and identify all the relevant acts and relevant regulations and so forth. It could then also provide the assistance in investigating the claims of individuals, provide those sorts of opportunities for people to give their oral testimonies and so forth, and it would then come up with a sort of tailored package that would address that, which may well include a compensation aspect—some sort of commemoration and some sort of reparation or some compensation payment on top. So you could end up with a package of measures. Then presumably you could also look to a broader package of measures that would be for the benefit of the whole community in terms of oral histories, making this known and national commemoration—whatever it would happen to be.

That model is a very good model that would enable a way for that to come together. One point with a model like that is that, if it were a national model, I do not think that necessarily means that it would be a federal paid model; it would be something that could be negotiated with the states, be it through MCATSIA or COAG or whatever, so there are co-contributions to the costs. So where there is a finding that it is the liability of the New South Wales government, they will pay that proportion or whatever. That may well be one way of doing that.

Senator TROOD—It sounds, Mr Dick, like a very comprehensive model but also a very lengthy model to put in place and a very expensive model. Part of the concern that I would have about that is that a lot of these people, certainly in Queensland, are becoming elderly—those who were around the early part of the 20th century, for example, who have entitlements—and records in Queensland are so poor. As time goes on, we are losing further contact with people who have recollections of these things. If the Queensland position were be

to maintained—that is to say, the descendants are not entitled—then many of these people would miss out if we were to spend too much time investigating the matter.

Mr Dick—Yes, I think that is right. That is where I think you can look at the New South Wales model as an example. They went through a stage of consultation as to how they would set the panel up and the panel is doing a smaller version of what it is suggested there. It does not have those additional aspects of coming up with a package of measures; it is simply identifying the liability owed and then addressing it. I guess there would be a question as to whether that process is operating in a timely manner. This may well be something that could operate in a similar time frame—you just broaden the scope of what it can do.

Senator TROOD—In relation to the New South Wales example, what are the archival records like in New South Wales? Are they reasonably comprehensive and detailed or are they in the same kind of parlous state that they seem to be in Queensland?

Mr Dick—We do not have enough information about that. We know that the Indigenous Law Centre of New South Wales have done a very thorough history of this, and they are appearing before you a bit later. My recollection was that there were not requirements, either legislative or by regulation, that money that was spent on behalf of people was recorded up until about 1940 or so. So you probably have an absence of records prior to that on what people are owed and what they were paid and so forth.

Senator TROOD—So how is that problem being dealt with in this process in New South Wales?

Mr Dick—I am not really sure. We have not had a sufficient connection to know.

Senator TROOD—That is the difficulty in Queensland.

Mr Dick—Yes, it is.

Senator TROOD—We have no evidence, therefore you cannot prosecute a case in civil litigation, or at least it becomes difficult.

Mr Dick—I think if you are limited to saying, 'It's a strictly legal issue; you have to go and prove it through a strictly legal process,' there is simply not going to be a remedy. The gaps are so harsh and so difficult to overcome that it is probably going to require some other sort of response that says, 'We're going to have to take this as a given, and this is what's there.' Again, I think the distinction between New South Wales and Queensland in that regard is that sort of consultation process and the involvement of Indigenous peoples in deciding a way to address that issue, which has been done. In New South Wales you have people who have received settlements that are less than the resulting settlements in Queensland, less than $2,000 or $4,000, and there does not appear to be dissatisfaction with that. Part of that is a process issue, I think—if people feel empowered through the process rather than disempowered.

Senator TROOD—Yes. It is about feeling as though you can put your case and have it justly dealt with.

Mr Dick—Yes.

Senator TROOD—Do you know how many people in New South Wales have had their claims disposed of?

Mr Dick—We do not know. We just do not know at the moment.

Senator TROOD—Does someone have that information?

Mr Dick—Yes, I am sure the panel does.

Senator TROOD—Well, apparently the New South Wales government is not interested in coming to talk to us.

Mr Dick—I spoke to one of the panel members yesterday who was disappointed that he was not appearing.

CHAIR—We did issue an invitation.

Mr Dick—Yes.

Senator BARTLETT—I know the Palm Island wages case is resolved in a sense, but you address it a bit in your submission—and there is the relatively recent scenario where there are some records, enough to force the government into some sort of action. But it is not just governments that are bound by the Racial Discrimination Act, is it? Nobody can pay someone less on the basis of their race, can they?

Mr Hunyor—That is right.

Senator BARTLETT—I know you have some details about a court case that is afoot. I will not ask specifically about that. We heard some evidence from the Uniting Church in Brisbane on Wednesday that there are potential issues for church run missions and perhaps other private employers—the pastoral industry, for example. Why have they been outside the focus of most of the attention to date? Is it just because church run missions are essentially government funded? And that is one of the disputes.

Mr Hunyor—There are a number of issues that come up in relation to church run missions. One of them is that some of the organisations do not exist anymore. For example, in relation to the Douglas litigation that I referred to earlier, the Christian Brethren as an organisation does not appear to exist any longer. So, to the extent that they were one of the organisations managing and paying under award wages—that was the allegation, and I think that aspect of it is reasonably uncontroversial.

Senator BARTLETT—Do they have a link to the Exclusive Brethren?

Mr Hunyor—No, not that I know of. That is one of the issues. The other is that the churches are in the position where they are saying, in simple terms: 'Look, we didn't pocket the difference. It is not a case of us having received a large grant, paid under-award wages and creamed off the difference. We simply don't have that money and we never did.' So in that regard they are seen as less of a target than the government, which funded on the basis that under-award payments would be made. So that is another of the issues.

The Lutheran Church was one of the original respondents in the Baird litigation that we detailed in the submission. The litigation was discontinued against them for reasons that I am not aware of, although members of the Lutheran Church did continue to give evidence in that matter. But that meant that they were not in a position where they could be held responsible for the underpayments. So there are a number of issues that have made it difficult for church groups to be held responsible or, I guess, to take responsibility in that way, in that it was not money that they really received in the first place.

Senator BARTLETT—As you point out in your submission, there are some shortcomings with the process of repayment of award wages on Palm Island. One of the points was about it not being available to people who died prior to the offer being made, in May 1999. I understand that compensation payments for being racially discriminated against go to the individual; they are not something that can translate to an estate. Is that correct?

Mr Hunyor—I am sorry. I was looking through our submission and I missed the end of your question.

Senator BARTLETT—If you are paid compensation for being racially discriminated against, that is compensation that is paid to a person; it is not translatable through an estate.

Mr Hunyor—That is right. The compensation needs to be paid to the person who has been discriminated against. I guess if an award were made to them and then they passed away, the estate could claim that, but only once that liability had first been established, so it would be a pretty rare situation.

Senator BARTLETT—So why was it that, with Palm Island, where there would have been records and where people had that employment entitlement of more than $7,000—you were probably able to determine quite a precise payment—people were not able to pursue that direct entitlement? They had to go through the process of proving that it was racially discriminatory first and then as an individual action. I would have thought that if there were sufficient records for somebody to say, 'I've been underpaid $10,123.05,' they would be able to get that. Why is that so hard?

Mr Hunyor—I think it comes down to the point that Senator Trood raised earlier, and that is that there are a number of ways you can conceive of this issue: as a breach of trust or as an industrial issue. This was simply the way that those applicants in the Palm Island wages cases chose to pursue it—as a matter of racial discrimination. I am not sure why they chose that as opposed to other avenues that were available. It is simply one of the ways in which this could be argued. They were successful in a way that people who were employed by church missions were not, because Palm Island was a reserve rather than a mission.

Senator BARTLETT—My final question goes to where we go from here. You touched on a few suggestions. The Bringing Them Home process, which a few people have drawn parallels to, can be a good way of getting information out. After the fact, it became a bit politically contentious. If we were to start a process which ended up becoming similarly politically contentious—and these things are difficult to avoid—it could mean a lot of money being spent on generating more angst for a lot of people. Are there other ways around, rather than trying to knit together some broad based, non-partisan building of political will to find redress?

Mr Dick—Some sort of national model might be the way, such as a tribunal or some sort of body that was auspiced with investigating the claims and coming up with some solutions. You would need the political will to do that, particularly to get that cooperation between the state and federal governments.

CHAIR—Thank you very much. There are no further questions. I would like to thank Mr Dick and Mr Hunyor for joining the committee this morning and for HREOC's submission. It may be that in the course of the inquiry there are matters that we need to follow up with HREOC or take up with you, so we may do that on notice. Thanks very much for your attendance this morning.

[9.20 am]

ANTHONY, Dr Thalia, Private capacity

CHAIR—Welcome. Is there anything you wish to add to the capacity in which you appear before the committee today?

Dr Anthony—I am a lecturer at the University of Sydney.

CHAIR—Dr Anthony, you have lodged a submission with the committee, which we have numbered 17. Do you have any amendments or alterations you need to make to that?

Dr Anthony—No, thank you.

CHAIR—I invite you to make an opening statement, and we will go to questions after that.

Dr Anthony—I would like to thank the committee for inviting me here today to give evidence in the stolen wages inquiry. As detailed in my written submission, my concerns relate to the stolen wages in the Northern Territory and, in particular, the wages for workers on cattle stations. This is a highly relevant issue for a federal inquiry given that the federal government was responsible for the Northern Territory between 1911 and 1978. During this period wages were withheld from tens of thousands of Indigenous cattle station workers throughout the Northern Territory. Indeed, until the 1968 pastoral award, when equal wages were granted—and an arguable consequence of that was that cattle stations workers were laid off these stations—the wages of cattle station workers went virtually unpaid across the Northern Territory.

The federal government was responsible for these workers by virtue of the protective measures stipulated in both ordinances and regulations. Until the late 1950s, the regulations gave the chief protector the power to exempt cattle station managers from the payment of wages where they maintained the workers and their families and dependants. As a result the vast majority of cattle station workers went unpaid and, unlike in Queensland, New South Wales and other states, the issue for the Northern Territory is that these workers did not have their wages put into trust accounts but, simply, their wages were not paid. The issue for the federal government is that the protectors failed to fulfil their statutory duty and duty of care by not ensuring that the workers were properly maintained and, where they were not maintained, ensuring that licences were cancelled and that the Commonwealth took over the responsibility for these Indigenous workers.

Specifically, they failed to meet their duty of care because many of these workers on cattle stations were classified as dependants and, therefore, not worthy of payment—but, in fact, they were workers. This includes many women, children and elderly on cattle stations who were responsible for the upkeep of the station property and the homestead. They were classified as the dependants of stock workers when, in fact, they were workers themselves. The other issue goes to the maintenance of these so-called dependants as well as the workers. Under regulations, they were required to be given certain health provisions; they were required to be given nutrition and accommodation of a certain standard. These were almost invariably violated. This is clear in both Aboriginal people's testimonies and the official reports of governments.

I want to outline some of the wages issues before I move on to the issue of reparations. After World War II, the situation did change somewhat and there were requirements for wages to be paid and money to be put into trust funds. However, the reality was these wages were not paid into trust funds. Rather, they were given to the managers, who tended to put them down as credits in station stores. The Indigenous people claimed their wages through these credits, and the prices at the station stores tended to be inflated—sometimes as high as 300 per cent. There are also a number of other issues that I have outlined on pages 6 and 7 of my submission: child endowments were not paid; workers compensation under the Workmen's Compensation Ordinance 1949 was also not adhered to.

These breaches, I argue, can be traced to the federal government. I think that for a number of reasons the time is ripe now for the Commonwealth to address this. We saw in recent months the 40th anniversary of the 1966 equal pay decision for cattle station workers. As a result of that, momentum was built in remote areas of the Northern Territory for wage justice. Also, I think, in light of the New South Wales and Queensland reparations schemes, it is pertinent now for the Commonwealth to be addressing this issue.

Ideally a commission should be set up to investigate wages and to make findings and recommendations based on the various periods in which Indigenous workers in the Territory were denied wages. There was no one standard regulation throughout the period. There needs to be quite an intricate analysis of this. I think ultimately this type of investigation needs to be done hand in hand with Indigenous communities. While there

are patterns across communities and stations, there are also differences that need to be explored and I think the only way in which wage justice can be achieved is through a cooperative approach between the Commonwealth and Indigenous communities.

Senator BARTLETT—You refer in your submission to the Aboriginal trust account investigation in 1940 which said that 'very few accounts operate'. What was that investigation about?

Dr Anthony—It covered mainly the trust accounts in the towns, in particular, in Alice Springs. It was fairly broad reaching but did not investigate pastoral stations to a great extent simply because they were nonexistent there. It sought to identify how much wages were being paid into trust accounts and calculated accordingly what was found in the towns but did not make calculations with regard to pastoral districts.

Senator BARTLETT—And that was done by the government?

Dr Anthony—That is right, yes. If the committee would like, I can send a copy of the report.

Senator BARTLETT—It sounds like, in a quantum sense, it is a small component of the broader problem you are painting. The trust account, using the Queensland comparison, is also only part of the issue there. Did it come down with findings of concern about the management of these or the lack of use of them?

Dr Anthony—It did point to the lack of use and that moneys were not being paid out but, at that stage, it was more a matter of just calculating how much was kept in the trust accounts.

Senator BARTLETT—Do you know if action was taken to follow through on it?

Dr Anthony—No.

Senator BARTLETT—You have obviously done a fair bit of research into this yourself. How recent was the research?

Dr Anthony—The archival research?

Senator BARTLETT—Your doctoral research.

Dr Anthony—That was completed in 2004.

Senator BARTLETT—I guess, having done that, you have an idea of how time consuming digging into these things can be. In terms of where we go from here, I know you have some suggestions. If we were to go down those paths, how big an endeavour would it be to properly investigate? I am partly thinking of cost but I am also thinking about how viable it is. I do have a concern—one I did have relation to this inquiry as well, I might say—that people will get their hopes up that this is going to produce a definitive answer in a short space of time and all will become clear. I assume that is not the case. How hard and how big would it be?

Dr Anthony—In the Northern Territory there is, I would suggest, a dearth of documentary records relating to cattle station wages. I think a lot of the evidence would have to come from oral testimony. There would be more evidence in the towns but, again, it is patchy. The main endeavour would have to be to work out what the regulations stipulated and then receive oral evidence—including evidence from employers—as to what was actually paid out, because of the lack of documentary evidence.

Senator BARTLETT—With the scenario from the Territory you have painted here, you have talked about a duty of care from the government's point of view. With regard to the actual payment or non-payment, was that itself unlawful at the time?

Dr Anthony—I think the issue is twofold: firstly, that they were not being paid because the managers were required to maintain dependants. So the issue firstly is that these people were not paid because they were dependants, when in fact they were workers. I think that misconception or misconstruction of the dependants means that it was unlawful, because the dependants were themselves worthy of wages.

Senator BARTLETT—So it was a fraudulent categorisation, for want of a better term.

Dr Anthony—That is right. And the other issue is that they were exempt from paying wages because they were required to maintain the workers and dependants and, because the maintenance was of such low levels and low standards, it was not really a trade-off. Because the government and its protectors failed to monitor the standards, it meant that the trade-off that was supposed to take place always fell short, because it was not enforced.

Senator BARTLETT—Finally, in your research did you form much of an idea of how much this situation would have been brought to the attention of people—new ministers or whatever—at federal level, or how much they were aware of it and how much was down at the local level? I have read a little about various

people in the Territory and had the impression of people—I am paraphrasing here—with a very fixed mindset at local level going down a path and that it was a bit hard for people, particularly in those days when it was much more removed, to rein them in.

Dr Anthony—I do point to evidence where, when reports were made by protectors who were concerned that managers were not meeting their duty of care, the government would take the advice of the station managers over the local protectors. There seemed to be, I would suggest, collusion between these managers, especially with the larger companies like Vesteys, and the federal government. When complaints were made by protectors, the federal government would intervene to protect the company rather than pursue the concerns of the protectors. I think there were, at times, complaints made to the federal government, so there would have been awareness at a higher level and it was not adequately pursued.

Senator TROOD—To start with, you said the records were largely local records. Are they station records rather than central records kept in Darwin, Canberra or somewhere else?

Dr Anthony—Yes. Station ledgers largely.

Senator TROOD—Station ledgers? Are they largely the only kind of written record we have here?

Dr Anthony—Yes.

Senator TROOD—So there was not a comprehensive Commonwealth record of individuals' names, with ledgers and entitlements, under the protector or anything like that?

Dr Anthony—No. The system was to provide a licence for an infinite number of Indigenous people, so the government was not concerned to pursue the individuals. As long as it was deemed that the manager was fit to maintain the workers, there was no concern to investigate the status of individual Indigenous people.

Senator TROOD—You talk about compensation in your written submission, and that seems to me to be saying something like, 'We have to provide some sort of payment for those who have been systematically deprived of entitlement,' but you do not seem to be saying that we ought to try to systematically identify specific entitlements and pay wages that are due. Is that because it is too hard, or is it because you do not think you can make a legal case for entitlement, for example, for moneys due?

Dr Anthony—I think that would be ideal, but it would be very time consuming and would rely on accepting oral evidence where largely no documentary evidence exists. Therefore I think a system where you had a base payment of reparations and, in addition to that, allowed for evidence to be provided to supplement, would be a more viable alternative for the short term. I do think, as I outlined in my paper—and I can provide additional evidence—that there are a number of legal claims that individual people can pursue; I just think at this stage it is more efficient to start with the reparations route. The reality is that the dialogue in the Northern Territory had not been initiated until this point. I welcome this inquiry because it has started the dialogue. In the last few months people have come to terms with this. We are at a very preliminary stage. The first thing would be to identify that there is a need for reparations and maybe pursue individual claims thereafter.

Senator TROOD—If you put your black-letter lawyer's hat on rather than your social justice hat, if indeed they are separate, how strong do you think the case is in law for the breach of duty of care claim and in relation to the fiduciary claim? If these people were as removed as you say they were from the Commonwealth and the responsibility was at a local station level, then doesn't that raise questions about the extent to which you could successfully prosecute a case, depending on duties of care or fiduciary relationships?

Dr Anthony—There are a number of legal avenues. Firstly, there is a breach of statutory duty by the Commonwealth not monitoring and enforcing its regulations. That is the first issue. Secondly, there is a fiduciary duty to care for and protect Indigenous workers that it violated by allowing the cattle stations to take on that duty. So, effectively, through allaying its responsibility to the cattle station managers, it pursued a conflict of interest. The Commonwealth, by allaying that responsibility, did not then have to take on the responsibility itself. So there was a clear breach of fiduciary duty on that level. So, despite the fact that there may not be proof of individual claims, there is a connection between the Commonwealth and the Indigenous worker through those various remedies.

Senator TROOD—What about a claim in relation to breaches of trust—a strict liability in relation to a legal relationship of trust of a kind that you could prosecute in the courts?

Dr Anthony—Do you mean specifically with trust accounts?

Senator TROOD—Yes. Was there a trust account of a kind where you could say that there has been a defrauding of a trust account that might lay the foundations of a claim?

Dr Anthony—There was certainly provision under the ordinances to place money in trust accounts after 1953. The evidence—

Senator TROOD—Where were those trust accounts kept?

Dr Anthony—What actually happened to those moneys is unclear. The evidence suggests that the moneys stayed with the manager and went into store credits, so it never actually—

Senator TROOD—So they never went into a specifically designated trust account.

Dr Anthony—Yes, that is right. To that extent, a trust relationship should have been established. By giving the responsibility to the managers, it seems that the government did not pursue that trust relationship and seemingly did it so that it would not have to pay the designated amount to the Indigenous person.

Senator TROOD—I see. Regarding the relationship between the Commonwealth and the Northern Territory government, is it your proposition that this is a continuing Commonwealth responsibility, or is there something about the relationship between the Commonwealth and the Northern Territory government now whereby the consequence is that the Northern Territory government must assume some of the responsibility for this? Is it your belief that it continues to be a Commonwealth liability?

Dr Anthony—My belief is that it is a Commonwealth liability. I think there are certainly practical measures that the Northern Territory government could pursue that are quite separate, like helping these people reclaim their identities on cattle stations, for example, in offering them employment. But I think that is a side issue. In terms of joint liability, I would suggest that a more concrete avenue to pursue would be through the companies. I point in my submission to the fact that the Vesteys company is still existing today and that that company continues to profit from the unpaid Indigenous labour. They have had in addition, for example, claims in South America that are similar. I think the Indigenous people should be pursuing any compensation remedies with both the federal government and these companies. I think that is where the joint liability stands, rather than with the Northern Territory government.

Senator TROOD—But you are not advocating or encouraging, are you, that Indigenous people should take litigation? Your evidence at the beginning was to set up a broad scheme of investigation which would provide a mechanism for compensation.

Dr Anthony—Yes, that is entirely right. However, failing that, I think there are legal avenues that Indigenous workers could pursue. I would just hope that it did not come to that.

Senator TROOD—Has anybody, to your knowledge, done that?

Dr Anthony—Not at this stage. I think Senator Crossin pointed out earlier that there was simply a lack of awareness until now that they actually had a right to wages or that their money should have been paid into trusts. Now that this information is being aired I think there may be claims in the future if the Commonwealth does not try to take the initiative.

Senator TROOD—I think I heard you say there are tens of thousands of people, potentially.

Dr Anthony—Over the period, yes.

Senator TROOD—When you talk about dependants and the categorisation of them, you are speaking about dependants of Indigenous workers—is that right? They were people for whom the Indigenous worker had a responsibility, but they were miscategorised, which allowed the liability to be avoided by the cattle station owner.

Dr Anthony—Yes. That is a very good question, Senator Trood, because the worker tended to be a male stockworker, and everyone else was a dependant. I think it is important to make that clear. Only a very small portion of all the workers on cattle stations were actually deemed to be workers, and everyone else, dependants. So if you calculate most of them as workers, as they actually were, then you are looking at tens of thousands.

Senator TROOD—So there should be some kind of filial relationship with these so-called dependants, in your view, rather than just being—

Dr Anthony—Communal.

Senator TROOD—Yes. So, an Aboriginally communal relationship, are you saying?

Dr Anthony—Yes, kin relationships.

Senator CROSSIN—Dr Anthony, I found your submission extremely relevant and enlightening, coming from and representing the Northern Territory, as I do, and having just celebrated the 40th anniversary of the Wave Hill walk-off. To reiterate what I said this morning, I would have to say, having spent that anniversary every year for the last five years at Wattie Creek with the old men involved, that they would have absolutely no idea of some of the ramifications of this. You know the history of the walkout—they just walked off because they were sick and tired of getting the leftover meat to eat and the shocking conditions that they lived in. It struck me when I read Ros Kidd's book that there was legislation at the time that might well prove that the Commonwealth at some stage was liable in this. So I want to ask you: how do we actually start a dialogue in the Northern Territory? We are not even at that stage yet. In fact, I can talk about Vesteys but there would be a whole range of other cattle stations there that we probably are not aware of yet. So we are not even in the starting blocks in the Northern Territory, I do not believe.

Dr Anthony—The land councils have some knowledge of the extent of the ongoing losses for cattle station workers and their descendants, but nowhere near enough for a reparation scheme. There needs to be some type of Northern Territory specific inquiry or tribunal to look into this and take claims. But I think in the first instance it would be about trying to support some type of council on the ground that can communicate with a cross-section of communities, because these Indigenous people have no sense that they have entitlements at this stage because they almost took it for granted that their wages should be kept from them. I think that is a very sad case, and part of the healing process should be talking to them about the fact that the process was unjust.

Senator CROSSIN—You talk about the book-down process. We actually call it book-up, I think, in the Northern Territory. I think what you alluded to was the start of the practice that we now live with day after day, which is a terrible indictment of some places in the Northern Territory. But have you actually been able to look at some of the records held by the cattle stations? Have you seen some of them?

Dr Anthony—Yes, I have seen some of the books. It is very difficult to say how accurate they are, but they certainly indicate that the prices were inflated compared to prices outside the station. So it suggests that they were recording money but more or less just paying it out through the station stores at the rationing level that the Indigenous people had been used to prior to the introduction of wages.

Senator CROSSIN—So where are the records? Have you actually been to the stations, or are the records held in the Northern Territory archives?

Dr Anthony—A lot of them are held at the National Archives in Canberra, and some in the Northern Territory. Because it was a federal jurisdiction, a lot of them are in the Commonwealth archives. But, having said that, there are not that many of them.

Senator CROSSIN—Okay. I now want to ask you a question about reality. Given that we currently have a federal government that will not say sorry to the stolen generation and acknowledge the ongoing situation for that group of people in our history, how successful do you think we can be in trying to suggest that the current Commonwealth government might even start the process of this dialogue in the Northern Territory? As I said to HREOC before, there is not even any thought of a fund being established to commence a dialogue with these people. There is no willingness at this stage even to try to make people aware, let alone talk about reparations; to me that just seems years away. And these people are getting very old, let me tell you. Look at Vincent Lingiari; he is not around anymore, for example.

Dr Anthony—I think that is why I did suggest a number of legal channels. The federal government has to be made aware that this was a violation of the law, both domestic and international, and that these channels will be pursued if the government does not see that it is a matter of justice. It is a clear matter of responsibility under the law. So I think the government has to be made aware that there are legal channels but that a much more efficient and reconciliatory step is to go down the path of compensation or reparations rather than revert to the courts, which is much more divisive.

The other issue is that compensation is not like affirmative action, where the government is concerned with symbolic reconciliation. It has nothing to do with that. These are wages that are owed to these workers. It is a legal responsibility. It is not about the symbolism. I would also suggest that, if we are going to use the terminology of the government, it is very practical to pay back wages as a way of empowering Indigenous people in terms of giving them a sense of what their contribution was on cattle stations, and hopefully using it as a channel to then appreciate their contribution nationally and move forward. The cattle industry was so vital to the economy of the Northern Territory that it is not just about symbolism; it is really about recognising what their contribution was.

Senator CROSSIN—Was there also a situation whereby child endowment or other welfare payments were paid into a trust? As I said previously, they are Commonwealth moneys that were withheld from these people.

Dr Anthony—Yes.

Senator CROSSIN—Have you been able to trace any of those?

Dr Anthony—From 1947, there was an obligation to pay the child endowment. I have only been able to find oral evidence that suggests that it was never paid out. I have not been able to find records at this stage.

Senator CROSSIN—If we are going to run the line that the Queensland compensation scheme is very inadequate, given that there are Indigenous moneys sitting there which are owed to Indigenous people under Queensland government jurisdiction, then the same argument should apply to the Commonwealth's responsibility in respect of Indigenous people in the Northern Territory.

Dr Anthony—Yes.

Senator CROSSIN—Thank you for that. Regarding the Vestey Group, now trading as Angliss International, have you had any discussion or communication with them?

Dr Anthony—No. But they are clearly still a functioning corporate body. Because they have been broken up into so many different subsidiaries and their corporate structure is quite complex, it is hard to know what their presence is in Australia. But they certainly continue to operate overseas.

Senator CROSSIN—What are the claims that they are experiencing in South America?

Dr Anthony—It is largely to do with how the Vestey company used the land there. It is about reclaiming the land that the Vestey company took illegally from the indigenous people there.

Senator CROSSIN—How long ago was that? Do you know that from memory?

Dr Anthony—I believe that it was in the early 1900s, but I can pursue that if you would like.

Senator CROSSIN—If it is not too much trouble. If you have some information about it, that would be quite useful.

CHAIR—Thank you very much, Dr Anthony, for attending the hearing this morning.

[9.53 am]

MORAN, Mr Simon, Principal Solicitor, Public Interest Advocacy Centre

SMITH, Ms Charmaine, Solicitor, Indigenous Justice Project, Public Interest Advocacy Centre

LINOW, Ms Valerie, Private capacity

CHAIR—I welcome witnesses from the Public Interest Advocacy Centre. PIAC has lodged a submission with the committee, which we have given the number 76. Do you need to make any alterations, changes or amendments to that submission?

Mr Moran—No, we do not.

CHAIR—Thank you. Mr Moran, I invite you to make an opening statement.

Mr Moran—Thank you for the opportunity of appearing today and giving evidence to the committee. PIAC were leading advocates for the establishment of the New South Wales Aboriginal Trust Fund Repayment Scheme and now play a major role in its ongoing operations by providing assistance to claimants to the scheme. We believe that we are the only organisation providing large-scale legal support to claimants. We currently have around 50 direct claimants and we have been providing information to a further 200 descendant claimants. PIAC's submission has been informed by our work in establishing the scheme and also by the experience of dealing with the scheme and the experience of our clients.

The majority of our clients were indentured as apprentices while they were wards, and their wages, amongst other payments, were paid to the state and retained in trust on their behalf by the state. One of our clients, Valerie Linow, is with us today, and her situation is typical of our client group. I thought I might explain to the committee her situation and her experience of the scheme as a way of demonstrating the processes that are in place in New South Wales.

Valerie was indentured to employers from age 16 to age 18 in the late 1950s. She worked for 10 employers in total. The level of her wages was prescribed by legislation. The employers were required to pay her an amount of pocket money and also to pay the residue of her wages to the Aborigines Welfare Board. When Valerie turned 18 her wardship ceased. Over the next three years she had two children and was in fear that the authorities might take the children from her. Indeed, one child was taken from her and she has only recently reconnected with her son, Steven.

Throughout that time, from 18 to 21, Valerie was constantly changing homes. She made a claim to the scheme, as she believed that she was owed outstanding wages. The scheme investigated her claim, it collected documents that were relevant to her and made an interim determination about the amount owed to her. It decided that, while there had been at one time a significant sum in her account, this amount had been paid to her through a series of cheques and personal payments during the period from 18 years of age to 21 years of age. The documentary evidence for this conclusion, we submitted, was minimal, particularly for the personal payments, where reliance for six months of payments was placed on a single file note.

Valerie sought review of the interim determination by the scheme from the panel. The panel is a second tier of decision making within the scheme. The panel's process is evidentiary based, thorough and rigorous. The panel makes its determinations on the basis of two main issues: whether there was certainty, strong evidence or strong circumstantial evidence that money was paid into the trust fund and whether there was no evidence, or no reliable evidence, that money was paid out. Those requirements are set out in the guidelines of the scheme.

PIAC and Valerie appeared before the panel and challenged the documentary evidence and the assumptions derived from it. Valerie gave oral evidence, and PIAC provided calculations of the amounts that Valerie had earned during the period of employment. The hearing before the panel also gave the panel an opportunity to test Valerie's recollection of events and her credibility. We believe that she was a convincing witness.

PIAC believe that the scheme is, within its jurisdiction, an uncontroversial and rigorous process for determining whether claims can be substantiated. Our main concern is perhaps that claimants are not resourced to obtain independent advice about their claims. As I said earlier, PIAC are the only large-scale providers of legal assistance to claimants. The jurisdiction of the scheme is, however, conservative, and that is really by virtue of the requirement that there must be a demonstration that money was paid into the trust fund. This creates a number of injustices.

We can give two examples of those injustices in the context of wards. The first is something that arose in Valerie's case which relates to pocket money. Legislation required that the wages of wards would be paid in two parts: partly as pocket money and the residual was to be paid into the trust fund held and maintained by the board. Regulation also prescribed the amount of pocket money to be paid. This system was open to abuse because state supervision of the repayment of pocket money was minimal, and there is no doubt, in our opinion, that most wards were not paid their pocket money. However, the scheme must consider whether or not money was actually paid into the trust fund. At this stage it appears that pocket money—a substantial amount—falls outside of the jurisdiction of the scheme.

The second example is where there are no records of payment into a trust for an individual claimant. That places the scheme and particularly the panel in a situation of having to determine whether the oral evidence of the individual defeats the implication arising from the lack of documentation. The claimant will be able to give evidence about their employment history. The legislation sets out the level of wages. However, the claimant cannot provide clear evidence of whether those moneys were actually paid into a trust. At this stage it is perhaps too early to tell how the panel will determine those sorts of matters. However, in our submission, the jurisdiction of the repayment scheme should not be drawn so narrowly as to allow a delinquent authority to escape its liabilities as a consequence of its own faulty record keeping or its failure to ensure that indentured individuals were paid.

CHAIR—Thank you very much. Ms Linow, would you like to say anything to the people here or to the committee? Would you perhaps just like to answer some questions later if people have them for you?

Ms Linow—I just want to say something about the panel. Going to the panel takes a load off you. If you went to court, it would be more traumatic. I thought the panel were out to knife me, but they were understanding and compassionate people. I did not realise that. I was brought up in an environment where non-Indigenous people turn against Aboriginal people. I did not realise that there are people in this world who have an understanding towards Aboriginal people. I found that the panel was very good. It was very easy for me—because, at my age, I am too old for this. That is all.

CHAIR—Do you have friends or family who have also approached the panel and tried to have their issues heard?

Ms Linow—Yes, I have friends who have.

CHAIR—Thank you very much. I am sure that other people will have questions for you as well, if that is okay.

Senator TROOD—Mr Moran, could you tell us how many cases have been resolved? Do we have any statistics about the number of claims, cases resolved and things like that under this process at the moment?

Mr Moran—We do not have clear numbers at this time. We have asked the scheme for statistics, and they are in the process of providing them to us.

Ms Smith—We understood that we were the second ones who appeared in person before the panel about Valerie Linow's matter.

CHAIR—When they provide the statistics—if they do that—

Mr Moran—We can provide that to the committee.

CHAIR—That would assist the committee.

Senator TROOD—I should have said—and as happy as you may be with aspects of this panel—that it is a darn sight better arrangement than exists in Queensland for resolving these issues.

Mr Moran—That is right. The state has made a strong commitment and it has followed through. While we have had some complaints about the jurisdiction of the panel, we think that the processes, although they have taken time to settle, are relatively good.

Senator TROOD—Clearly, in relation to all of these jurisdictions—Queensland, the Northern Territory, as you have heard, and New South Wales as well—there are problems with records. This is the problem here in New South Wales as much as anywhere else. Is that right?

Mr Moran—That is right.

Senator TROOD—Can you tell us how poor the records actually are? Are they strong in relation to individuals over a certain period of time or are they just incomplete and inadequate for most of the people who might be entitled to some sort of recompense?

Ms Smith—We have noticed that there have been considerable inconsistencies in the documents that are available. We have a number of clients for whom we have received an interim assessment of nil simply because there are no documents that exist in relation to those people. With the Cootamundra girls training home, I think there are better maintained records that have survived in that institution, but even then Valerie Linow, for example, has a number of sisters who also went through Cootamundra and there are still quite significant differences in the number of documents that we have received in relation to each sister when you would think that they might have been similarly maintained. I have noticed that the documents that have survived from Kinchela boys training home are considerably fewer than we have for Cootamundra. I have clients who have had employment arranged for them through the board and worked on stations and missions who do not have documents at all.

Senator TROOD—So there are documents in the care of institutions, some of which are church institutions, perhaps?

Mr Moran—We have not yet investigated the church institutions; we have been mainly focused on the state trusts. Most of those records are coming from state records, so they have been collected in one place. That is how the scheme and how PIAC are accessing documents.

Senator TROOD—Is that one place Sydney or the institutions themselves?

Mr Moran—In Sydney at New South Wales State Records.

Senator TROOD—So the practice was that the records in relation to individuals were kept in local areas and subsequently forwarded to Sydney.

Mr Moran—I think that is right.

Senator TROOD—One of the things we are struggling with here is the evidentiary record, which is clearly inadequate, so I am trying to get a sense of how records exist in New South Wales as distinct from how they might exist in other parts of the Commonwealth. But it is clearly a challenge. How many clients have approached you thus far?

Ms Smith—As Simon mentioned, we are really one of the very few community legal centres that provide advice and representation into stolen wages claims, so we get referrals from other community legal centres and Aboriginal and community organisations. We have had over 50 direct claimants who are still alive today to make the claim and give evidence on their own behalf.

CHAIR—Like Mrs Leno?

Ms Smith—Yes. And we have had approximately 200 descendent claimants who we have included on a database and keep up to date with a mailing list, newsletters and materials like that. We have very limited capacity ourselves and we have recently commenced a referral scheme with some private law firms in Sydney to ensure that all claimants, particularly direct living claimants, get some legal assistance through the process.

CHAIR—Are those private firms doing that work pro bono?

Ms Smith—Yes.

Senator TROOD—I was going to ask you about that. Are there many clients in the hands of legal firms?

Ms Smith—We have probably referred 20 direct claimant clients to four different firms, and those firms have participated in cultural awareness training with Tranby Aboriginal College and information evenings that PIAC runs.

Senator TROOD—So these are all claimants who are seeking compensation under the scheme. Are you aware of any civil litigation in New South Wales on the matter?

Mr Moran—Not that we are aware of. I think the majority of claimants are seeing how this process works out before they consider whether or not to enter protracted and complex legal proceedings.

Senator TROOD—Indeed, I understand.

Senator MOORE—I am particularly interesting in the contrast between the situation here and that in my own state of Queensland. It is not looking good, from what I can see. Getting back to the evidentiary base—and we are all doing that—my reading of the information we have about New South Wales is that the onus of proof is on the claimant. It is up to them to prove their claim. Is that right from a legal point of view?

Mr Moran—I think the initial phase within the scheme is a matter of document collection. The scheme then makes a determination on the basis of the documents that it finds and collects. From that perspective, the

onus might be considered to be disproving the documentary basis. However, I think our appearance before the panel heartened us to believe that the panel is not really taking an onus one way or the other but considering all the information before it—the documents, the oral evidence and also the calculations of wages.

I would not go so far as to say there is an onus one way or the other. Perhaps we would argue that, once we have established that there was employment during a certain period and that the wage levels are prescribed for that, the onus should be on the state to prove that that amount actually went to the individual claimant. So the scheme is not focused in that direction; at the moment it has perhaps an imbalance, trying to balance the various evidence.

Senator MOORE—And learning as you go along. It is still relatively new, isn't it?

Mr Moran—I think also learning, yes.

Senator MOORE—Ms Linow, it is positive to hear your comments about your own experience going to the panel. I think that will give people a lot of heart when they know that, because there is a genuine fear component in any of these processes. One of the other things happening in Queensland is a community campaign around the whole process. Have you got any information you can share with us about community awareness campaigns and knowledge of the process across New South Wales? I know that, Ms Smith, you mentioned that there has been some community awareness training for legal firms, which is really good, through Tranby, which is a pretty special organisation in many ways. I am interested in terms of the knowledge base and how people are being made aware, because some of the submissions have said that that has been starting slowly as well. One of the things we have found in Queensland is that people just do not know, and it is very hard to claim, let alone have a confident claim, if you are unaware of your rights.

Ms Smith—There is a similar situation in New South Wales. In March we travelled to Dubbo, Walgett and Bourke to have a series of community forums about the work that PIAC does and to give some information about stolen wages. The overwhelming response was: 'Tell us about stolen wages. What is stolen wages?' These are elderly Aboriginal people living in Bourke who do not know the term 'stolen wages', but they do know that they were apprenticed out when they were teenagers.

For whatever reason, the scheme has not been promoting its services probably as well as it could have been. There have been a number of community forums where people have been invited to come along to participate, the production of pamphlets and information sheets and things like that. We recently organised a large community forum at the Block in Redfern, when Mrs Eloise Cobell, an Indian-American woman, was visiting in Australia. We were very pleased that Robynne Quiggin, one of the panel members, came and spoke publicly for the first time in this community forum. I think that was very heartening for the people in the room to be able to ask her questions directly.

Senator MOORE—For the first time?

Ms Smith—For the first time.

Senator MOORE—Ms Linow, do you have any comments? I know that you have had a high profile in the community over many years. Senator Crossin has reinforced that information to me.

Senator CROSSIN—She is a very well-respected Indigenous woman in New South Wales.

Senator MOORE—Do you have any comments about awareness and how we can as a community raise awareness in of these issues?

Ms Linow—No.

Senator BARTLETT—Your recommendation 1 mentions repayment of wages to include all amounts that were owing whether or not they were paid to government. How big a problem is that? Is the New South Wales scheme predominantly dealing with actions of government rather than others—government funded bodies?

Mr Moran—We do not have a clear idea of how much is outstanding to church or community organisations.

Senator BARTLETT—Does the scheme here in New South Wales deal only with government moneys? We have a submission from them separately, I know, and I had a look at it, but I am just trying to refresh my memory.

Mr Moran—It deals with moneys that were paid to government. Some moneys may well have been held by other organisations on trust, but the scheme is focused on the moneys that were paid into government.

Senator BARTLETT—What sort of involvement has there been from, say, church bodies? I am not as aware of the situation in New South Wales as I am in my state, Queensland, where churches ran missions and so it was very direct. Were there similar sorts of things here? They ran some of the homes and things like that, I think. Have they been embracing this process and been vocal and present, or have they been leaving it up to government?

Mr Moran—The short answer is: I am not sure. Most of our experience has been in relation to individuals who were indentured, and those payments went from employers to the board. That has been the majority of our focus. That is not money that is going from the employer to the religious or community organisation and then to the board; it is simply going from employer to board.

Senator BARTLETT—With that and your recommendation, which says we should compensate Indigenous people for the widespread exploitation of the labour in New South Wales and elsewhere, I guess the two of them together sound, in principle, like a good idea. I guess we would get an idea of how that would work in practice, and the extent of what we are talking about, when you have got a clear example—at least in theory, assuming the records can be found—of an individual who was legally entitled to money that then went somewhere and they never got it. That is very different from general compensation for exploitation which in many cases, however appalling, may well have been in accord with the law, at least it its literal sense. Are you talking about a broader compensation scheme in recognition of exploitation in a more general sense?

Mr Moran—Yes, that is right. PIAC has over the past 10 years undertaken a lot of work in relation to both stolen wages and the stolen generation. We have produced a number of reports in relation to reparations tribunals for the stolen generation, and I think something similar might apply in relation to stolen wages.

Senator BARTLETT—There have been Senate committee inquiries that I have followed but have not been part of—I think Senator Moore was part of some of them—into forgotten children, children in institutions and those sorts of things. A lot of these link up down the track—they all involve vulnerable people who were being exploited either deliberately and malevolently or just by misguided, warped forms of altruism, all of which can have very long-term consequences. Have you been engaged in some of those sorts of activities as well, either for individuals or in a broader sense?

Mr Moran—No, and the short answer for that being that we simply do not have the resources. Earlier this week I received a call from a woman who was most distressed because her children had been taken away from her. On the phone she said, 'This is a new stolen generation—why are you not interested in us?' I could only say that it was simply a matter of resources and that we could only take on one very major issue at a time. That is not the first phone call I have had with that sort of information, so I assume that that is out there as well, that it is live issue.

Senator BARTLETT—I might pursue that with later witnesses as well. I have a final, overarching question, and I will try to contain it so it is not open-ended. We have had the issue raised of 'consequential poverty'—that this is not just about the direct issue of, 'This was money you were owed and you should get it back' but that it is also about the lost opportunity for that person from being kept impoverished. Some of the submissions to this inquiry have suggested that if there is a package of money made available it should be for addressing things like the housing crisis for Indigenous people or specialised health treatment for older Indigenous people, who were most of the victims of this sort of practice. Some have said: 'If it is about stolen money, it is our money, give it to me. I don't want other people deciding what to do with it again.' If we were to have some sort of compensation arrangement, do you have a view about which way that should go: whether it should be directed towards identifying individuals who were done wrong by or it should be a broader package aimed at addressing wider Indigenous disadvantage on the view that that is, at least in part, a consequence that affects a whole range of people?

Mr Moran—I think it is very complex question. I might be able to answer it by sending you a copy of our submission on stolen generation reparations tribunals, because we considered those very issues and there is no simple answer. If you would be interested, I could forward you a copy of that.

Senator BARTLETT—Thank you. Could I ask you what you think, Ms Linow? In very simple terms, should we be focusing on the individuals and making things right for them or should we be focusing on recognising that this is a broader historical wrong?

Ms Linow—You are talking about the wages. What if your wages got stolen? Honestly, wouldn't you like to have your wages back? Honestly. I think it should be owed to the ones who were slave labour. We got up and worked from dawn to dusk. I had to get up and milk the cow. I did not know how the hell to milk a cow. I

got there and I had to chop wood. I was only young; I was only a kid. So of course I want my money and the rest of them want their money. It belongs to them. Everything else has been taken off them. Why can't they have something back? Australia should give something back to us Aboriginal people. We lost everything—family, everything. You cannot go stealing our lousy little sixpence. We have got to have money back. You have got to give something back after all this country did to the Aboriginal people. You cannot keep stealing off us. I see the old Aboriginal people walking around. I was brought up in a different way, in a white culture way. I am on two sides of the world. But I worked hard for that money and I deserve to get my stolen wages back. It should come to me. And it is up to Australia to try to help Aboriginal people out. Do you know what I mean? What about Howard? He is doing nothing. All he is thinking about is Bush. He is not thinking about Aboriginal people. I am sorry, but that is all I can say.

Senator BARTLETT—Thank you.

CHAIR—Before I go to Senator Crossin, I have one quick question about who is doing the work in this area—and PIAC is obviously doing the bulk of it. What are the Aboriginal legal services doing, to your knowledge, if anything?

Mr Moran—I do not think they are doing a great deal. The majority of their focus is still on crime. I think that is overwhelmingly their workload.

Ms Smith—Yes. There are very few civil lawyers in the ALS. I think there are two based in Dubbo and one up on the North Coast, and we get referrals from those civil lawyers.

CHAIR—On these issues or generally?

Ms Smith—On any stolen wages matters, they refer to us.

CHAIR—They refer to you. Okay; that is interesting. I do not have all the details of the scheme in my head, but is there a requirement for independent legal advice?

Mr Moran—There is not, no.

CHAIR—No. Okay.

Mr Moran—Once a determination is made, claimants can make another claim or they can pursue legal action. There is no bar. That is my understanding.

CHAIR—Because you are not signing away your rights—

Mr Moran—That is right.

CHAIR—it is not perceived in quite the same way as the very helpful Queensland scheme!

Mr Moran—Yes.

CHAIR—Senator Crossin?

Senator CROSSIN—Can I just start by acknowledging you, Ms Linow. You are a very well-respected Indigenous person in New South Wales, and the Senate has had a lot of dealings with you and contributions from you. So it is lovely to see you again, I have to say. And I am impressed that you keep fighting. One day you are going to put up your feet and relax and know you have been well compensated. I want to go to a number of issues. One is that there is a 3½-year limit on this scheme. Does that mean you have to have applied or just expressed an interest within the 3½ years, or is that yet to be determined?

Mr Moran—It seems to us that it is the end of the scheme in 3½ years. We do not know how that is going to be achieved, because I think there are still a lot of people who have to find out about the scheme and the process and make a claim, and all those claims have to be determined. So I think, as it currently stands, it is anticipated that the whole process will be finished in 3½ years. I think that is ambitious.

Senator MOORE—Very.

Senator CROSSIN—It has only started in February 2005 but, already, is there any suggestion the New South Wales government is coming to some realisation that this is a very short time line and the time line needs to be either abolished or extended?

Mr Moran—I am not aware of any public statements. I think the government will perhaps be relying on the scheme and the panel to provide advice to them. I am aware that the panel does provide reports to the minister about the ongoing process.

Senator CROSSIN—Are those reports public?

Mr Moran—Not that I am aware of.

Senator CROSSIN—The scheme relies heavily on written material. Does it rely not only on written material?

Mr Moran—I think we were pleased that in Valerie's case, which was our first appearance before the panel, quite a significance was placed on oral evidence. I think that is very useful. We actually provided a written statement from Valerie. Because Valerie has the luxury of having some solicitors acting for her we can do that. Nevertheless, the panel asked a number of questions and it examined Valerie fairly extensively.

Senator CROSSIN—Just take me through this process, then. You have put in written evidence. Have you actually worked out an amount that you think would be fair compensation for Valerie? Is that right?

Mr Moran—That is right. I will take a step back to the first claim. We do not file any other information other than the claim form, initially. The scheme tries to collect as much documentary evidence as it can and then the scheme comes to a determination. In that determination, there are some assumptions that have been made. Our client then receives the determination. We advise them on the basis of their evidence about their history and the documents that were collected under the assumptions that are inherent in the determination, and then our client says to review or not to review. We then file a statement from the client, an analysis of the statement from the client and the documents in the form of submissions, and then also a calculation of the number of weeks in employment and the wages paid per week.

Senator CROSSIN—With the initial claim, is the client the person who has to justify the amount, through documents, in the initial claim?

Mr Moran—No, the initial claim is simply on the documents that have been collected by the state. So it is the scheme analysing the state records.

Senator CROSSIN—So people in the panel actually then go and do the research?

Mr Moran—No, sorry. The scheme itself has an internal unit and has a panel. So there are two tiers. The first work is done by the internal unit, which collects the documents, analyses the documents and then comes to an initial determination. It is then up to the individual to seek a review by the panel and, if they do, the panel looks at all the information.

Senator TROOD—Sorry to interrupt, Senator, could I ask Mr Moran—

Senator CROSSIN—No, I want to ask a question now. I am just trying to get clear in my mind who does the initial calculation. Is it not the person filing the application but this internal unit?

Mr Moran—That is right.

Senator CROSSIN—So they, on behalf of the person making the claim, go off and look in the archives and try and come up with some assessment?

Mr Moran—Yes.

Senator CROSSIN—Okay, thank you.

Senator TROOD—Is the internal unit part of the scheme or part of the department?

Mr Moran—It is part of the scheme.

Senator CROSSIN—So where are we at with Valerie's claim, now? You have asked for a review of that, have you?

Mr Moran—Yes. We have had a hearing. We are, I think, waiting for the minister's final determination.

Ms Smith—The panel took into account the oral evidence of Valerie Linow, and then they made a recommendation to the administrative unit of the scheme for a significantly higher amount than that which was originally determined. But that is still only a recommendation; it is not a formal decision. Then the scheme takes that recommendation and gives it to the Special Minister of State who has the ultimate say in whether he accepts or does not accept that.

CHAIR—On what basis can he not accept it?

Mr Moran—We do not know yet!

Senator MOORE—It has not happened before.

CHAIR—I did not think that was a particularly amusing question. All I was wondering was whether there was any process set out in the guidelines for the way—

Mr Moran—There is a very broad discretion.

CHAIR—But how would the discretion operate?

Mr Moran—The discretion for the panel is broad and there are no particular criteria for the minister to consider, other than simply looking at the recommendations.

CHAIR—Thanks.

Senator CROSSIN—Since February 2005, have there been any payments?

Mr Moran—Yes.

Senator CROSSIN—Would that have mainly involved people who have not sought a review?

Mr Moran—Up to this stage, I think very few people have sought a review.

Senator CROSSIN—Do you have an idea of the average payment? I suppose that is pretty hard to say because they vary.

CHAIR—There could be privacy issues attached to that.

Ms Smith—We could probably give you the range.

Senator CROSSIN—That would be an idea. I am asking that question because I am trying to work out how it compares to the $4,000 offered by the Queensland government.

Ms Smith—The assessments we have received range from nil to $25,000.

Senator CROSSIN—I see.

CHAIR—Thank you very much. I do not think we have any further questions. Given that as an organisation you are very actively engaged in dealing with the New South Wales scheme and have clients like Ms Linow involved in the process, if, during the next little while, PIAC becomes aware of any relevant and appropriate information which you think may be helpful to the committee's inquiry then we would be very grateful if that could be brought to our attention. I understand that you have enough work to do without having us in the back of your mind.

Mr Moran—We think this is a very significant process, so we would be glad to contribute.

CHAIR—Thank you, Mr Moran, I appreciate that. If anything further pertaining to New South Wales comes out of the rest of today's consideration of matters, we may come back to you with questions on notice. I do not know whether that will happen, but if it does I hope that you will be able to assist us.

Mr Moran—We will.

CHAIR—Mr Moran, Ms Smith and Ms Linow, thank you very much for appearing today.

[10.33 am]

WOODROW, Ms Marjorie, Private capacity

CHAIR—Welcome, Ms Woodrow. Thank you very much for joining the committee today. Would you like to make some opening remarks?

Ms Woodrow—I am an elder of my tribe of people, the Wonburrwa tribe. My language is the Ngiyambaa language. The history of my people has been recorded by the government. I am one of the stolen generation. I was taken from my family a long time ago. What I would like to talk about today is how I wrote my little book and, before that, how I met a young man in my young days. I was supposed to be 18 years old and got myself into trouble on the property I worked on for 2½ years. When I got in touch with the welfare department to ask for consent to marry, they sent the police to the property, which I thought was very harsh at the time. They questioned me separately to the young man that I was going to marry and embarrassed us quite a bit. They told him he did not have to marry me. I was a state ward and could be sent back to the home, have my baby and have it adopted out. The young fellow was not very happy about that. He put them very straight that he was there to marry me, that it was his baby and his responsibility to care for me from then on. That is how we got the consent to marry.

Later in years I wrote it down. I waited for so many years for the pay to come that was owed to me but that I never, ever received. I was living in a tent for 6½ years with some of the children from my marriage. Nobody seemed to care whether we had the right to have the things that we were entitled to. Although we were brought up decently by the government, we had hard times in our lives when we went through these institutions. They were not easy. We were not called out by our proper names, not as 'Marjorie'; we were always called out by numbers, like a person in jail. These are the sorts of things that have to be made known today—what we suffered in the past as young children brought up by the care of the government and what they did to us. It should be known all over the place that we had to tolerate this.

When I wrote my little book later in years, he had found my mother very much alive, whereas in my files my mother was deceased and I had no brothers and sisters, which was not right. I had brothers and sisters and I had a mother still alive in 1993. I found her very much alive. I went back to the reserve and found her. I was not very happy with what I found, because at that time I was aged 70 and she was 99. I learned from my mother that she had been a prisoner in a house for eight years, waiting for one of us to come home and claim her as a mum and to be reunited with her. I found she was suffering from breast cancer and lung cancer. Not a soul cared for my mother on that reserve. That was something that I was very disgusted with—to think that people could be put on these reserves and the way their children were taken away from them. This was the way we had to come home and find our families.

I was not the only one; there are thousands of us that went the same way. I was lucky to find my mum and find out what was there for me to learn. I had no birth certificate. I could not leave this country. I only just got my birth certificate two months ago and found out that I was two years older than I should have been according to the paper. I have just turned 80 and I was 82 when I received the paper to fill in for my birth certificate. These are the things we faced as children growing up then. We had a struggle with this and we are still fighting for our wages to assist us, which was wrong.

What is written in the files on us is disgusting. We are alive today to correct all that and we know half the stuff that is in there is lies; it is not true. We know we never got the money that they say we claimed. I never, ever received it. I only ever received five pounds to buy my wedding frock and my shoes at that time; that is all I ever got from the government. But they claim I was paid out—yet they offered me $2,060, and I said no. The panel offered me that.

CHAIR—The panel?

Ms Woodrow—Yes. I have had all my wages done. It cost me $165 to have my wages done for Premier Carr, when he said he wanted the bill and that he would pay me out, but he did not keep his word. You are looking at the person who is the reason why he left his job. I am why he left his job. It was not because he had to retire; it was me. He could not face me. He knew that if he had faced me he would not have gone out with all that he went out with.

I am telling you now, in front of you all: I aim to get my wages that I suffered for. When I was young I got up at four o'clock in the morning at shearing time and rode a horse to go out in the dark to bring the sheep in to be shorn. Then I had to knock off, clean the house and all of that for the person I worked for, then get back

on that horse and take them out again and put them in the paddock. That was how hard we worked, and we never got paid for it. I think we are within our rights to fight for every penny that was owed to us. That is the reason I came here today, to tell my story to you all.

CHAIR—Thank you very much for coming today, Ms Woodrow. I know you have come from the Central Coast, so thank you very much for coming down. When you said that you had been made an offer by the fund, how has that happened? Did you make an application?

Ms Woodrow—I went and saw the panel with my lawyer. My son was with me. My son said, 'No, that is not my mum's signature, I can vouch for that.' He said: 'My mum is not a very tidy writer, she's very sloppy in her handwriting. That is not her signature.' But they still said that I was paid out. We went home, and then my brother passed away a couple of months ago and we had to bury him. He did not have any money. And because they found out I was looking for money they offered me $2,060, because they thought I would take it. I said, 'No, I would battle it out and bury him the best way we could,' which I did.

CHAIR—Are you still talking with the fund and working with the fund to pursue your rights?

Ms Woodrow—They have never got in contact with me since, and I am not running after them. I have done enough running. I think it is up to them to do the running from now on. I am there waiting for my wages. If I have to go to court, well, court it will be.

CHAIR—Do you have a lawyer who is helping you?

Ms Woodrow—Yes, I have a lawyer who is present here today.

CHAIR—You said you had worked very hard, that you had worked with the sheep and in the house as well and done all of that. Can you tell us some more about your work history, what you did and what you received for that—and therefore what you did not receive?

Ms Woodrow—The first place I worked for was in Griffith in a boarding house. I would have been nine years old when I worked at that time in a boarding house. That is where I was accused of stealing a pair of stockings. I never wore stockings in those days. But it is all on my files that that is what I was put in the institution for—stealing the stockings. Then I was sent to Cootamundra Girls Home. I ended up in Parramatta Girls Home, in the institution. We were sent there from different places, and I can tell you we never had a very good life. We were all molested in Parramatta Girls Home—not only the Aboriginal children, the white women—and we have all now met again because we have gone public on that matter. We have all talked about it together. We are all adults now. Whites and blacks, we were all molested in that home. We were not under good care of the government's hand, I can tell you that now. We are lucky, some of us, to be alive to tell our story today.

CHAIR—After those awful experiences, what sorts of jobs did you have to do after that?

Ms Woodrow—I was sent to a place, to different jobs, where they needed someone to work for a while. They could not get anyone and we were sent out from—

CHAIR—By the government?

Ms Woodrow—The department, yes. Our money was paid into the government. We never saw no money, any money. We never even saw pocket money. It is in our files that we were paid pocket money to spend. I was 136 miles out of town. How could you have pocket money to spend when you were that far out, for 2½ years, on a property? We never had a holiday. If my boss went for a holiday I went to her son's farm and worked there till she came back, and probably never got paid for that job. These are the sorts of things that went on in our lives. We had to put up with that. That was where we were sent.

So with all the departments that they had that cared for us, they did not care very well for us. Admittedly, they taught us to be clean and taught us how to be brainy—and some of us are pretty brainy—but they did not send us home. I often wonder why. Maybe some of our missions would have been up in the right circle if they had sent us home for us to teach our people the right way from the wrong way. So they made the big mistake, not us. And we are here today to fight for it. My old friend who is with me is 93 and we are both fighting for our rights today. We worked hard for our money and I think we are entitled to it. And the government has to listen.

CHAIR—We are listening to your story and the stories of people who have experienced the same sort of situation, in this inquiry process. Hopefully putting some of those stories on the record will help us deal with this issue as well.

Senator CROSSIN—Thank you for making the effort to come down today. How did you find out about the scheme the New South Wales government have now put in place?

Ms Woodrow—They owed us the money. I was in Queensland. I cannot remember his name, but a politician in Queensland gave me a newspaper cutting. He brought it up in parliament and it was mentioned in the Cairns paper. I did not copy that piece of paper; I left it to give it to my solicitor and it got lost on the way. It was very valuable because it had the man's name on it and everything. He was put out of politics over it in Queensland. He said to me, 'I know that you may want to learn a bit, but this is something that maybe you can go after.' That is what he told me. We looked at it and started doing some research on it. We found that it was true and that it was owed to us all. It is in my files, and in the last book that I wrote I put all my files in for the whole country to read. It has gone all over the place. I sent a copy to America last week—that was the last state that had to give it. So it has gone all over the place.

Senator CROSSIN—The New South Wales government introduced this scheme in February last year. How did you hear about that?

Ms Woodrow—I was chasing after this when I was in Sydney—I think it was in 1950. I was in the *Sydney Morning Herald*. They came to my house when I lived in Parramatta. A copy of that piece from the newspaper is in my book to show everyone that I was after my pay back then. So I was searching for our wages at that time.

Senator CROSSIN—So the panel have offered you only $2,060. Have you asked for that to be reviewed?

Ms Woodrow—No, I have not. I thought, 'They only offered me $2,060; they probably want to offer me less.' If they waited for someone to die and knew you were in the position of having to bury someone, of course they would make that offer because they would think that we were ignorant and would take what was offered to us. But they taught us—and they taught us well up here.

Senator CROSSIN—Some people have told us that they have asked for the amount to be reviewed and it has come back at a higher rate so I am just wondering if you have talked to your solicitor about actually getting that reviewed.

Ms Woodrow—No, I have not discussed it with my solicitor. I have been trying for so long—I have been fighting for this for 70-odd years. It is time now for me to put it somewhere where I will get answers—perhaps it will have to be in a court room. It would not be the first time. I have been to court 17 times and I have had 17 wins so I am not a fool.

Senator CROSSIN—How long did you work on the station for?

Ms Woodrow—I worked on the station for 2½ years. That was the station where I got married. I had eight children: four sons and four daughters. I had one family killed in a car accident by a drunken driver: that was my youngest son, my daughter-in-law and my little granddaughter—she was two years old. I had their other child with me on holiday, and she is still alive today. I fought for compensation for that child. We never fought for any compensation for the loss of our children—me or the other mother. We went through terrible trauma at that time. Nobody said, 'We're sorry for what was done to you.' We do not forget those things. We have had a hard struggle in our life. To think that we lived in tents for six-odd years on a property waiting for a cheque to come that I could have bought a house with—somewhere for my children to live. It would have been comfortable and I could have brought them up there.

Senator CROSSIN—Have you been in contact with, or do you know any other people who worked with you on the cattle station at the time?

Ms Woodrow—Yes, but the one that worked on this cattle station is deceased now. I met her in Dubbo five years ago and we had a reunion. She died long ago and she died with all her money owing to her. I know all her family. I went to see her and she said if anything ever happened to her would I see that her money went to her children. Quite a few women I knew in the past who were in the home with me have died and they asked me that same question. They have sent for me from their dying bed that if ever I got my wages to make sure their children got theirs too.

Senator CROSSIN—I see. Thank you.

Senator BARTLETT—Thanks for coming along today. You mentioned that a group of you who used to be at the girls home had got together and gone public.

Ms Woodrow—Yes.

Senator BARTLETT—It is slightly outside our terms of reference so I do not want to dwell on it for too long, but has that gone anywhere in terms of any legal action or other?

Ms Woodrow—A lot of girls have put their case to court for that because some of them went to Hay and had a rough time. Some of the girls were my nieces from the 1950s and 1960s—I am from the 1930s. We went back to do that story with *Stateline* to open it up—we went on TV with that case—and within one hour the ABC got 200 calls from all the white girls wanting to meet up with all of us children again. We are all adults now and we have all met together and discussed the whole thing, and we are ready now to go together to put it in front of the government on that matter as well.

Senator BARTLETT—So that is potential legal action. Was that a government run facility?

Ms Woodrow—Yes.

Senator BARTLETT—How has the government been responding to that?

Ms Woodrow—I have not approached that yet. So far I have only gone for my wages more or less. I have not got up to that stage yet. But I said I was willing. We went back; I could not go near the place where all this stuff took place. I could not go into that room because it made me sick at our age. We could not take it; we went back into the dungeon at Parramatta as we called it; it is still there. They did it all on video; we have copies of the video, all of us.

Senator BARTLETT—It is the same government body that you are dealing with in regard to your wages as with—

Ms Woodrow—We went to work from Parramatta Girls Industrial Home to go out to the property where I went on the other side of Nyngan. It was 136 miles out from there; a property called 'Mangplar'. I spent 2 ½ years on that property and I tell you it was a tough place to work on.

Senator BARTLETT—Did you get information at the time about what you were supposed to be paid, or your entitlements?

Ms Woodrow—When we were sent out from the home, we signed three papers with our signatures on them. One was for it to go into the bank and one was for something else; the signatures were there. We were only children; we had no idea what it was all about, but we had to sign those with the superintendent of the Protection Board office. Her name was Mrs English and she said, 'You have to sign these documents,' which we did, because we were going out to work on these properties. One lot was to go and get a set of new clothes to go out and a few other things. We had to get these new clothes so that we would have decent clothes to go to work and all that sort of thing. Our bosses were to replace those clothes when they wore out and all this sort of thing. That is all on our files.

Senator BARTLETT—So who had control of your bank account?

Ms Woodrow—From what I can understand, it went back into the government, into the Commonwealth, and from the Commonwealth it went into a trust fund. That was what we were told. We found out later, going into it more, it goes back to 1904 where they took the endowments and the pensions and also gave them free food and put the money into that trust fund also. So some of the old people never got their pensions or their endowment for their children or their bonus money for the babies that were born. It was only five pounds and they even took that and that is all recorded.

Senator BARTLETT—Did you get any sort of documentation about the amounts that were in your bank account at the time, or updates of pay?

Ms Woodrow—On my files it shows how much I earned and that it went to the Commonwealth Bank. That is all in my files.

Senator BARTLETT—But you could not access it?

Ms Woodrow—I have a copy of my files, yes.

Senator BARTLETT—You could not access it at the time though. You had to seek permission?

Ms Woodrow—No. They had to be the one that had to pay that money to us. We signed a form when we turned 21—we were not allowed to get married until we were 21 and we were not allowed to get our money until we were 21 years old. Now that is on a document.

This is the life we had to go through from the government's care. But it was not only us. The English children that came out that we associated with in the Parramatta girls home was the same as us. They were

brought out from England the same way as if we were all slaves to help to put this country together. That is the way it has been put. That is the way we see it now we have grown up, that we were used for that system and we should sit down and do something about it and not keep quiet. Aboriginal people have a tough enough life to battle today with our families, to try and bring our children up the right way. I am lucky I suppose that my seven children are in good positions and they say to me, 'You fight for it, Mum, because if you do not and you die, we will fight for it,' so my children aim to go after it if I do not get it.

I have seven children to deal with it and a lot of grandchildren and great-grandchildren as well into the bargain to go after it too. I say, 'Well, you will have the government to deal with,' and they said they do not care; they can save it up and do it. 'If they do not pay it to you, we will go after it.'

Senator TROOD—Ms Woodrow, when did you start working?

Ms Woodrow—By my age now, I started working in my first job when I was nine years old. I thought I was 10 years old when I went there, but I find this out now by my birth certificate. When I went home my mother gave me a piece of document that the ladies that looked after me kept in contact with my mother—they knew where my mum was so they sent her things—and she kept them all hoping that one day I would return, which I did. Now I have them in my hands when I was grown up.

Then when she gave me this document where I went to school on 14 August 1933 and I was seven years old—that only makes me 80 now. When I got married and got my consent, when they said I was 18, I was only 15; I was only a minor. So the government did not even have a birth certificate for me to get married; they did not have it to show; I did not even have it now until I had it two months ago with this piece of paper. They have given me my birth certificate now. I could not even leave the country.

Senator TROOD—So you were married and then you continued to work all this period of time? Is that right?

Ms Woodrow—Yes.

Senator TROOD—So you have worked continuously through this period?

Ms Woodrow—That is right, yes.

Senator TROOD—For various entitlements, for wages which you have not received?

Ms Woodrow—Yes.

Senator TROOD—At 21 when you signed these pieces of paper, what did you understand to be your entitlements? Do you recollect what you should have been getting?

Ms Woodrow—We did not actually. When you are young you did not follow up much because we were young, uneducated kids. I only went to fourth class so that did not give me much class up there. I am brighter now than what I was in those days; I can tell you that now because I have learned a lot since and I have studied a lot. I am still studying and learning at my age today. You cannot expect people to put up with what we put up with and never got what we worked for. As I said, how would our government officials like their wages to be taken away from them if they had a family, the same way as we had? How would they feel? They have to stop and think how they would feel.

Senator TROOD—Yes, I agree. You talked about pocket money earlier.

Ms Woodrow—Yes, I never got it.

Senator TROOD—So you did not get any pocket money?

Ms Woodrow—No.

Senator TROOD—You did not get any other wages either?

Ms Woodrow—No.

Senator TROOD—Have you seen your records that the government has?

Ms Woodrow—Yes, I have a copy of my records.

Senator TROOD—Are they very comprehensive or not?

Ms Woodrow—Dreadful, dreadful things in it. The only things that are in it are the price of my wages that I made. That is the only thing in the documents that was handed to me. Everything else that they wrote about me—in one part they wrote I had syphilis which was not true. And the doctor that put that in should have been

hung anyway because he was one of the men that molested all of us girls in that home. We were told to keep our mouths closed or we would have our throat cut. We lived in terror in that place at Parramatta.

Senator TROOD—Yes, it sounds terrible.

Ms Woodrow—It is a place that should be knocked down now and not let anyone even there at all because I think it would be a haunted house with what we went through there; what we lived through.

Senator TROOD—So your records have lots of entries about all the bad things you are supposed to have done?

Ms Woodrow—Yes, that is right. There was not a decent thing there about me.

Senator TROOD—But there is no information, or very little information, in these records about your wages and how much you were entitled to financially?

Ms Woodrow—It is all there; how much I was paid, because I have sent it to an accountant and he did it all up. It is well done. An accountant did it up from pounds to dollars and it is a large sum of money, I can tell you. But with the entries are still attached to it as well.

Senator TROOD—So is there information there that says how much you were entitled to receive, or is it money that you were supposed to have been paid?

Ms Woodrow—With the interest it is quite a sum of money that is there.

Senator TROOD—A lot more than $2,000.

Ms Woodrow—Yes, a lot more than $2060.

Senator TROOD—So you can document this entitlement?

Ms Woodrow—Yes, that is right. It has been done by an accountant and my solicitor has that.

Senator TROOD—Thank you.

CHAIR—Do you have any other questions?

Senator CROSSIN—No, but I just want to make a comment. Ms Woodrow, I just read through some of your papers in fine detail. Eight children and thirty-six grandchildren?

Ms Woodrow—I have a lot more than that now.

Senator CROSSIN—And 45 great-grandchildren?

Ms Woodrow—That is right. There is a lot more than that now.

Senator CROSSIN—And two great-great-grandchildren.

Ms Woodrow—That is right.

Senator CROSSIN—You must have to buy five or six birthday cards every week when you go shopping, I figure, on those figures.

Ms Woodrow—I cannot buy them much; I make a lot of things with my hands, and with my hands the way they are now—because I had a fall on the escalator—I have lost a lot of the use of my hands and my hip. That is why I have to use a stick. It has put me back a bit.

Senator CROSSIN—That is a wonderful family.

Ms Woodrow—Yes, I am very proud of my family. I have some in the police force; I have nurses; they are everywhere. I make my grandchildren really earn their money—none of this dole with my grandchildren; they go to work.

CHAIR—Marjorie, thank you very, very much for coming to talk to us today and for giving us a copy of your book; all those wonderful photos and your history. We will stay in touch with you so that you know what is happening with the inquiry. We really appreciate you making the effort to come all the way down from the Central Coast with your friends and supporters. Thank you very much.

Ms Woodrow—You are welcome.

[11.06 am]

BRENNAN, Mr Sean, Centre Associate, Indigenous Law Centre, Faculty of Law, University of New South Wales

WESTMORE, Mr Anthony Ian, Coordinator, Indigenous Law Centre, Faculty of Law, University of New South Wales

CHAIR—Welcome, Mr Brennan and Mr Westmore. We have a submission from the Indigenous Law Centre which the committee has numbered 98. Do you need to make any amendments or alterations to that submission?

Mr Westmore—No.

CHAIR—Would you like to make an opening statement and then we will go to questions from members of the committee.

Mr Brennan—Thank you for the opportunity to participate today. I am appearing as a member of the UNSW Faculty of Law and also as an associate of the Indigenous Law Centre. I have been involved with the Indigenous Law Centre's investigation into the government management of Aboriginal trust money in New south Wales which started in 2004 and culminated in the publication of the research report, which is part of our submission, called *Eventually they get it all*. That is the major part of the ILC submission to the committee's inquiry.

I would like to first pay tribute on the record to the work done by Zoe Craven who is currently overseas and is not able to attend the hearing today. She is now a graduate of UNSW but at the time the project started she was a social justice intern at the ILC. With her research and writing she did a tremendous job in tracking down material and piecing together much of the picture which is conveyed in the research report.

We specifically address the committee's terms of reference in our covering letter. Much of the detail of our submission is contained in the research report itself and it is to that I will address myself mostly in the opening statement. We are hoping the committee will find the report itself useful and relevant to its task of reporting back to the Senate on these very important issues. To explain its relevance to your investigations, it is probably worth recounting the genesis and objective of the research project, because I think it does have some modest parallels with part of the task that the Senate has set your committee, that is, to plug a very large information gap in the nation's collective knowledge bank about these issues.

In 2003 news of the action that was being taken on these issues in Queensland, which I am sure you are all familiar with and have been refreshed on this week, was filtering down to some of us in New South Wales. Aboriginal people in the state, such as Marjorie Woodrow who you have just heard from, and Les Ridgeway and others, had been working hard for a long time to alert people to the issue.

ANTaR, who I believe are also on the program today, through the work of people like Sally Fitzpatrick, Leigh Bowden and Christine Howes, got together a meeting of interested people in early 2004. From that meeting two things were clear: firstly, that there were major issues wrapped up in the administration of Aboriginal people's money in government trust accounts that many of us non-Indigenous people had known nothing about—well-known though they probably were to most Aboriginal people in New South Wales. Secondly, it was complex and there were large gaps in knowledge and information about how these controls worked.

As a result of that community meeting identifying the need for much more research into the issues, the ILC decided to get involved. From the outset the ILC wanted to add some pieces to the very large puzzle—the puzzle being what had happened to people's money in New South Wales. And progress towards answering the question has been, I think, painfully slow for the people who were affected by it. Our research report does not try to provide conclusive answers but it does offer a number of clues and it pieces together, as best it can from the information we were able to locate, the legal and policy framework that enabled New South Wales government authorities to control people's money.

So we are conscious that the Senate has a very large task in front of it with its national perspective and its wide terms of reference. Hopefully, the report and the solid, factual and technical material it contains will, along with the many other submissions and, importantly, the oral evidence that committee receive, help you to piece together the complicated and fragmented story. That, I guess, is a precondition to your other important task of making recommendations that began to address injustices that have occurred.

I would just like to make two other brief points about the research report. Firstly, it has a geographical focus on New South Wales, but there is some relevance at a national level in what it says. Secondly, it has a legal focus but some policy detail as well. I will expand a little bit on each of those.

The report is about New South Wales and mainly the trust accounts that were operated by the authorities in this state. The Aborigines Protection Board was reconstituted and renamed the Aborigines Welfare Board in 1940 but it does have some national dimensions as well. The primary reason for saying that is that it deals in some detail with the diversion of social security payments away from the individual Aboriginal people eligible for them and into the coffers of the board.

In New South Wales, social security policy often followed a general pattern. The state government would pioneer the payment of a particular kind of pension or benefit and then it would be superseded by a similar social security measure authorised by a federal law. That was not always the case but child endowment is probably the best example.

Jack Lang's state government introduced family endowment in 1927, and the New South Wales Aborigines Protection Board rapidly acquired the legal ability to annex Aboriginal people's payments. So instead of reaching the mothers who were eligible for it, the money was funnelled to the board which then administered it and, so the evidence shows, sometimes ran up large surpluses in individual trust accounts in the 1930s or put it to uses other than for the benefit of the child it was meant for.

In the 1940s the Commonwealth decided to take over that area and pay a national child endowment. In this instance the New South Wales authorities urged the Commonwealth to let them maintain their scheme for diverting Aboriginal people's money into broad trust accounts. The Commonwealth not only obliged by paying the money direct to the board in New South Wales from 1941; it went further and urged other states to adopt the same approach, providing helpful details to their bureaucrats about how the system worked in New South Wales and Queensland.

By the mid-1940s all the social security entitlements we looked at in the report were being made under federal law and most of them contained provisions—essentially legal loopholes—that allowed indirect payment to third parties, of the kind I have just described. Obviously, archives and government records are an important part of piecing that whole story together, and we know that recordkeeping practices in New South Wales for much of the 20th century were poor. That has created a lot of problems for the people who are seeking to identify and quantify the amounts that may be owing to them.

On the social security front, there is a prospect that Commonwealth records may alleviate some of that problem. The Senate is in a good position to recommend a proactive policy of search and retrieval in this area at the Commonwealth level; at the very least—and I am conscious of the submission from Professor Ann McGrath on this issue—an initial scoping exercise to identify whether it is a cost-effective measure of redress for the Commonwealth to put serious resources into a records search, researching and making appropriately available the records it has at its disposal. Page 33 of the report identifies one example where Commonwealth records, if they still exist, may well assist with tracking down child endowment payments in New South Wales. We did rely on some Commonwealth records from the National Archives in putting the research report together.

The second point is about the legal focus of the paper. The research report is only a small part of the story, if an important one. Constitutionally governments cannot just take over people's money. So the law lurks very closely around the operation of these trust accounts. If, as a community, we are going to come to grips with this issue then we need to collectively understand how it was that, for example, child apprentices found it so hard to access their money; how they ended up with so little of their wages in their hand; how Aboriginal mothers who never saw their child endowment cheques could be told their benefit was to be found amongst items purchased in bulk by the station manager from the local store dropped off at the reserve.

The most important people this committee can hear from are the Aboriginal people who experienced this system in action and their descendants. The legal and policy details contained in the ILC research report are designed to complement those accounts and the research carried out by historians and others. Our report explains the framework under which this prolonged system of paternalistic management—and also, it must be said, mismanagement—of people's money occurred. It relies on documents for that explanation, and in that there is a weakness as well as a strength. The weakness is that the evidence shows in practice—and I think the next witness, Dr Susan Greer, will be able to give you more detail on this—that the board's conduct could depart substantially from what the law required. So the full picture really requires the stories of actual human experience with these controls to be told.

Mr Westmore—I will keep my remarks brief. I would like to remark that Sean has produced an extraordinary document, with the help of a number of social justice interns along the way. I think one of the things that makes it remarkable is that it was cleared of individual people's stories and it does go to the law. There are two things that I want to say. Firstly, the appalling statistics that we read all the time at the moment about the state of Aboriginal health and welfare derive in part from these practices over a century that are actually attributable to them. The intergenerational nature of poverty means that the situation that we are seeing now began in the early 20th century. The situation that, for example, people like Marjorie Woodrow find themselves in, just to recall a conversation that I had with her about 18 months ago, is that it is about the simple things. They are not after large sums of money. Marjorie at the moment needs to replace her refrigerator. So that is the situation that we have got to.

My second point is to reprise a remark from Dr Elouise Cobell, who was visiting recently. She said at the end of a presentation that one of the things we do need to bear in mind when we are talking about sorting this mess out—and we are talking about money and where the money is going to come from—is that despite the fact people will say that it is taxpayers' money, it is not. This was money paid to or paid on account of Aboriginal people. It was their money and they did not ever see it.

CHAIR—Thanks very much, Mr Westmore. The committee has been the beneficiary of that line and has dealt with it appropriately. Thank you for your submission and for your remarks this morning Mr Brennan; and thank you very much for providing the committee with your research report, which is an exceptional body of work. I would like to know a little more about the Indigenous Law Centre for starters. As a graduate in prehistory from the University of New South Wales law school, I do not think it was there then. Perhaps you can give us some idea of its genesis and the work it currently does.

Mr Westmore—We are about to celebrate our 25th birthday. We began in the early days of the law faculty at New South Wales, which had and continues to have a bent towards teaching law differently and towards practising law while people study social justice.

CHAIR—Praise the Lord for that.

Mr Westmore—Indeed. Various members of the faculty early on were involved in the establishment of Aboriginal legal services and the direct provision of services to Aboriginal people who were in need. Along with celebrating the 25th birthday of the centre, we are about to celebrate the 25th anniversary of publishing the *Indigenous Law Bulletin* which is a magazine that now comes out eight times a year—partly with the support of the Attorney-General's Department.

CHAIR—Is that the Commonwealth Attorney-General's Department?

Mr Westmore—Yes. It is designed as a kind of round-up of current affairs and practitioner issues but is presented in such a way that it is of interest, we hope, to people who work in community organisations. It has never received core funding and it has never been a huge enterprise.

CHAIR—Just on the question of funding, does it receive its funding from the UNSW law school or from elsewhere?

Mr Westmore—It has varied over its lifetime, but currently we receive funds from the Commonwealth Attorney-General's Department for two of the publication that we run. But that is pretty much it; it is run on the smell of an oily rag. We do a little bit of work on contract and we receive in-kind support from the faculty.

CHAIR—But you do not provide professional legal services?

Mr Brennan—No, it is absolutely not a service provider. It has a bent towards research publishing, teaching, conferences and events; those sorts of things.

CHAIR—Mr Brennan, in your initial remarks you made an observation about how much people knew about the process. It seems to me the irony of this is that the statutory underpinning of it was all there; it was going through parliaments and so on. I think you alluded to the fact that it was probably well known to Aboriginal people, but it seems to me from what I have been reading—and even just from remarks that my colleague Senator Crossin has made—that probably they did not really know that the schemes were in place and that there was any alternative available to them.

Mr Brennan—Yes, I take on board what you say; and I am sure that is right in the sense that, from what I understand about people's recollections of that period, particularly people on those reserves that were actively managed by the board, the paternalistic nature of those controls meant that people were not necessarily aware of any other alternative. I think, though it has been said by historians about New South Wales, that there is a

need not to assimilate—to use a bad word—across different jurisdictions. While there are a lot of similarities in the statutes, and perhaps in some of the practices across different states, there are also significant differences.

One point that, for example, has been made by historians like Heather Goodall is the degree to which a very high percentage of the Aboriginal population led lives independently of the board as well. So it was not a monolithic experience, and I think that also has to be said. I suppose my comment went more to contemporary knowledge in the sense that I think, from the stories from Aboriginal people that I have heard—particularly in the context of this issue, I suppose—there seems to be a fairly good family based knowledge that these kind of systems were in place and there have been these kinds of injustices in the past.

CHAIR—That is now.

Mr Brennan—Yes, that is right. That is a contemporary observation.

CHAIR—Yes.

Mr Brennan—And, by comparison, now contemporary non-Indigenous Australians are still relatively ignorant.

CHAIR—I have one other question about one of the observations you made in relation to Commonwealth payments and the diversion of social security payments. I want to try and clarify something with you. I think you said that payments were diverted to third parties because of loopholes that existed in the then Commonwealth legislation; is that right?

Mr Brennan—That is right.

CHAIR—So it was not so much a case of payments being ordered to third parties by the Commonwealth; it was a diversion by the state agencies?

Mr Brennan—No.

CHAIR—I am just trying to get my head around it.

Mr Brennan—In the area of child endowment, for example, after the urgings of the New South Wales government, my understanding, piecing it together from records, is that the Commonwealth agreed that it would send the individual payments to the state Aboriginal welfare authorities or other institutions. It did that in reliance on an express provision for indirect payment under the relevant social security legislation. So by the late 1940s the Commonwealth consolidated most, if not all, of its social security payments under a single social services consolidation act. Prior to that social security was fairly piecemeal, so there was a Child Endowment Act, there was a Widows' Pension Act and so on. In each piece of that legislation and subsequently in the consolidated one there usually appeared either one or both of the following kinds of provisions. One would be a provision that said the Commonwealth could make the payment of Aboriginal people's entitlements to organisations basically described as the state Aboriginal Welfare authorities, and then secondly, sometimes in the absence of that or sometimes alongside that, there would be another generic provision for indirect payment that made no reference to race. It may make reference to other circumstances or any circumstance in which an indirect payment might be permissible. So there were two provisions of that kind typically in the legislation at the time.

CHAIR—Okay. Finally may I ask, given your extensive knowledge and research in the area now, whether you have a view of the Aboriginal Trust Fund Repayment Scheme put in place by the New South Wales government?

Mr Brennan—A personal view? I am not going to commit myself too much on the answer to that question, because I think the jury is out on the operation of the scheme. It is a really opportune time, with the committee's hearing, to hear some consolidated information from the New South Wales government and also if possible from—

CHAIR—They would have to appear for that to happen, Mr Brennan.

Mr Brennan—Right. I understand they have made some submissions. Is that right?

CHAIR—Yes.

Mr Brennan—I have not had the chance to look at them, but it would be—

CHAIR—It is not a bad submission. We were just hoping to have the opportunity to speak to them and perhaps contrast their approach with that of the Queensland government, but they did not take it up.

Mr Brennan—Sure. What I would say is that on the operation of the scheme people are still waiting—the judgement of the jury is still out. There has been some concern about delays and that is very understandable. There is a concern about the degree to which written evidence may drive the conclusions of the panel and that is an issue that has continued to be worked through in individual cases for the moment. But it has to be said that the starting point for the scheme in New South Wales was much healthier than in Queensland on a number of fronts and I imagine those features have been pointed out to you already.

CHAIR—Sure. They are self-evident actually.

Mr Brennan—That is certainly the case.

CHAIR—Okay, thank you very much.

Mr Brennan—One other thing.

CHAIR—I am sorry Mr Brennan. I did not mean to cut you off.

Mr Brennan—I wanted to add one other response to that. I think the Public Interest Advocacy Centre is the organisation which has had the most experience, that I am aware of, with the operation of the scheme as a non-government organisation and so their opinion on that is well worth it.

CHAIR—Yes, they have 50 direct claimants on foot at the moment with whom they are dealing. But as you say, the results are yet to be seen. I was interested in their evidence this morning. They made a reference to some private practitioners doing some pro bono work in the area and I am interested to hear from some of them but I do not think we have any submissions from practitioners. We may have to search those out.

Senator BARTLETT—I am interested in the social security payments. They were clearly consciously redirected to state authorities and presumably, we know what happened in Queensland, quite feasibly therefore it was the same in most other states. What happened to the money then, at least in New South Wales? Did it go into a trust fund or into the general operations of the Aboriginal department, board, protection authority or whatever it might have been?

Mr Brennan—There is probably no single answer to that question, I suspect. I will give an answer but I think Susan Greer in her evidence will probably be able to supply a more detailed answer to that question because of her experience with tracking the financial records of the board in much more detail. My general understanding though is that, for example, if you take child endowment, the individualised nature of the payment was meant to be preserved and that is including because of what the statute says in the sense that the money was meant to be expended for the benefit of the child whose birth created the eligibility for the parent.

The basic arrangement the board in New South Wales practised was that they would hold the money and they would issue a voucher to an individual Aboriginal parent for use at the local store. From what the records suggest, that may have been quite restricted in its nature. It may have been for defined purposes—that is my surmise. But also the evidence suggests that while that was the practice the board recommended in its documents to station managers, practice on the remote stations and reserves could depart from that. There is evidence, for example, in one of the inquiries—a parliamentary committee inquiry in 1937—which we have referred to in the report a number of times. There is evidence that it was much more slapdash than that. For example, there was no conferral with an individual parent as to what their family or their child might need and no autonomy in the sense of where the money got directed. Instead the station manager might go once a week to the local store, buy goods in bulk and just bring them back to the reserve, where I imagine they were just distributed without reference to individual need.

That is an example of what happened in child endowment. I think typically the practice should have been the maintenance of an individualised payment and an individualised trust account in some cases. But it is clear from those inquiries that the board tended to blur the distinctions around where money had come from. Money could end up being expended, for example, on capital works on reserves by the board.

Senator BARTLETT—Do you think the federal government would have been aware of those sorts of practices? I am always conscious of an extreme dislike, which I imagine has existed since the dawn of Federation, of cost-shifting and of states taking federal money and then using it to replace money they had otherwise spent. Would the feds have been aware of that type of use of it, do you think? Do you have any evidence either way?

Mr Brennan—I cannot recall any evidence. I think, from the late 1930s, that Commonwealth and state officials were meeting on an annual basis to discuss the implementation of assimilation policies and administration of things like apprenticeship schemes and social security entitlements. So there may have been

an avenue. There may be evidence in the records of those meetings, for example, of the Commonwealth being apprised of what was going on in more detail. It seems to me that the board was not very vigilant in checking what was going on on individual stations and reserves around the state, and so perhaps the authorities in Canberra might suffer from the same problem. I do not know.

Senator BARTLETT—I appreciate you have focused on New South Wales here. I just wondered whether as part of doing that you have any insight at all about what the situation may have been in the Northern Territory where the Commonwealth was the administering authority. What would have happened with these payments?

Mr Brennan—I do not. I can only say two things about that, I guess. One is that in making a pretty limited review of the kinds of records that are available just through website access from the National Archives—and we are talking about mainly titles of files rather than knowing what is in them—it seems pretty clear that there is quite a bit of relevant information dealing with these issues in Commonwealth records. I think there is quite a bit on the administration of social security and the controls over labour in the Northern Territory by the Commonwealth government.

The second thing I will say is something I have only just come across in teaching, which is that the statute which was the subject of the Kruger litigation about the stolen generations resembled very closely the act we looked at here in New South Wales, the Aborigines Protection Act. The wording of the kinds of duties and obligations of the authority in the Northern Territory of the Commonwealth welfare officials was very similar, and so there is certainly that level of exchange of information going on. Along the same lines, I imagine there may well have been shared practices.

Senator BARTLETT—You mentioned and suggested if not a comprehensive thorough national inquiry then at least an initial scoping study to get a better handle on things. Given the sort of work you have done—what you have done here with the research report—would that be something you would call a scoping study: that type of thing, but on a national scale? I am just wondering how you would define a scoping study.

Mr Brennan—I would distinguish that suggestion from the broader term of reference the committee has in terms of a larger inquiry into the matters or an opportunity for Aboriginal people to speak about these matters. Just in terms of the records, and the evidence, and what that body of evidence might be, I guess that, again, Dr Susan Greer probably has more detailed information about what has been done in New South Wales, but I think it has been quite an extensive exercise in New South Wales to investigate what is held by the state. And I know that part of the scheme is in reviewing and cataloguing the contents of boxes of files where really no-one is aware at the moment what they contain.

For as long as Aboriginal people are going to have the onus put on them to establish entitlement—and I think PIAC has made some very good points about presumptions that should perhaps operate the opposite way, given the paternalistic nature of this scheme—and for as long as evidence is going to be critical, I think that it is incumbent on government to do its utmost in terms of making records accessible and making the contents known, and so at least initially scoping what is there.

I do not sense it is an exercise like the one we have been in; I sense it is a much bigger exercise, because of my understanding of the kind of labour required to do the task in New South Wales. I think they have had to dedicate quite a lot of staff and resources to it.

Senator BARTLETT—I will just ask one more question, though I might ask a few more of the next witness around that theme. You have mentioned, in going through all these different payments here, the war pensions and service pensions.

Firstly, it seems that they are a bit different in that there was no provision for indirect payments. But you are suggesting that perhaps there is some evidence that it may have happened anyway. I am just wondering if there is anything extra you can give on that.

The second part is this. I have been told personally by a few people, and I think we have had some evidence on this in submissions as well, that upon returning from war—it was the First World War in particular I think—all soldiers were offered a block of land, but that that did not happen for Aboriginal returned service people. Have you got anything about that that you could enlighten us on?

Mr Brennan—I have not really, beyond the detail in the research report there. I suppose I would say a couple of things. That is not the only example where people who have gone a bit closer to the system have discovered that perhaps the board was doing things that the law did not authorise in terms of keeping people's money. I think the maternity allowance was one example, where Victoria Haskins' historical research

suggested the government getting its hands on what was called the 'baby bonus' in those days. So the mere fact that the law did not authorise the authorities to access war pensions and service pensions is not conclusive. And William Ferguson's comments suggest that he thought that was exactly what the board was doing.

We tried to provide a little bit more information in the research report on this front, but it was strangely difficult to access lots of information in that respect. We thought there might be more information available. For example, just by internet research, given that there was so much information we were able to access by internet research from the Veterans' Affairs department and so on about the entitlements of Indigenous peoples, it does seem that there was some activity towards the end of the 1990s on that front, but then it seemed to run very much into the sand. It was very quiet on that front, subsequently, at least from the researches I did. That made it difficult for us to say anything more.

CHAIR—Did you think about talking to the Indigenous veterans' association?

Mr Brennan—It was something on our list but in the end we did not. Because of the absence of the indirect payment scheme and the interest in getting the information we did have out, it was one of the things we did not get to in our report.

CHAIR—They are an excellent group.

Mr Brennan—Yes, I think that is a very good suggestion.

Senator MOORE—I have two questions—one is a comment. I would have thought this would have been an archivist's dream. If you actually had the resources to do it, this would be the kind of work that a trained archivist would be excited about getting their hands into. That is a comment.

I am interested in this research that you have done in that it refers to the term 'apprentice' all the way through it, which as a comment and a reference is not made in the similar Queensland research. I am interested to know if that is a peculiarity of New South Wales law that the word 'apprentice' was linked in to particularly junior wages. Was there any attempt, in terms of my understanding even then of apprenticeship, to provide training for work or is it just something that happened?

Mr Brennan—I am just having a look at the statutory provision. I think what happened was that the act originally referred to the apprentices act but that was quickly removed from the legislation. Historical accounts I have read suggest that the education generally that Aboriginal people received at the time, if any, was pretty poor because of the poorly resourced nature of stations and the usual lack of training in the people who staffed them. It was more a production line of children at the age of 14 supposedly—but apparently even younger; 12 or 13—through government run institutions and out into jobs such as rural labourers or domestic servants.

I think the term 'apprentice' does not appear in the Aboriginal Protection Act. What it says is that the board could by indenture bind or cause to be bound the child of any Aborigine. I cannot recall whether in the regulations, for example, they refer to apprentices but I think they might—I can check that and send it to you on notice. I do not think we are talking about a very sophisticated apprenticeship scheme where the government, in a sense of mutual obligation, might have invested a fair bit of training resources in the exercise.

Senator MOORE—In terms of the relationship, the word is not used in the Queensland research in any way and we have seen it in the New South Wales stuff a bit. Is it a way that perhaps the training element could be counted as something that was given?

Mr Brennan—I am not aware of that.

Senator MOORE—Thank you. But if you have any further comment on that, you could just let us know.

Senator TROOD—How long would one remain an apprentice? It was not obviously for a four-year period or anything like that. It had a special meaning in this context.

Mr Brennan—According to the board, the act and regulations, my understanding is that for the first part of the 20th century you were meant to be an apprentice from the age of 14 up until the age of 21 and then the maximum age was reduced to 18. Historical research by Victoria Haskins suggests that there were children the age of 12 and 13 being sent out as apprentices, so that is the age we understand.

Senator TROOD—And you were entitled to a certain payment or a wage, an apprentice wage—is that right, Mr Brennan?

Senator CROSSIN—Was that their equivalent of junior rates?

Mr Brennan—For a number of decades, until the early 1940s, what the regulations said was 'unless the employer contracts otherwise'. So whatever appeared in the law was actually subject to contract and so the word 'entitlement' has to be qualified in that sense. But after the forties, it was obligatory that the employers did what was said in the regulations. What it did say was that the board would collect 80 per cent essentially—the percentage varied a little bit, but they would collect 80 per cent of the wage. After the forties that was transferred in legal terms to an obligation on the employer to send that on a quarterly basis, I think, to the board. Roughly 20 per cent of the wages were meant to be given in hand to the employee, and officially it was called pocket money in statutory law.

Senator TROOD—Presumably the records on the transfer of the money from the employer to the trust, the board, are inadequate?

Mr Brennan—They are very patchy and Dr Susan Greer can fill you in on the precise nature of what times they are better than at other times. I think they are non-existent in some cases; they may exist at some other times.

Senator TROOD—In relation to the overall relationship between the government and the apprentices or the people who are entitled to wages, what, in your view, is the legal situation they obtained? If we did not have compensation schemes in place, or the scheme in New South Wales anyway, and a person wanted to recover the wages that they claimed they were entitled to, what would be the basis in law of seeking that recovery? Would it be for moneys owed, for example? Would it be in relation to a fiduciary relationship that existed between the entitled person and the government? Would it be a trust obligation that had been breached and therefore the trustees had responsibilities to meet their obligations under the trust? These are all means by which civil litigation could be undertaken obviously. Which, if any, or all, of those might apply in these circumstances if we did not have a scheme available?

Mr Brennan—I think the answer is it is potentially all of the ones that you have mentioned and possibly more because, I would say, of the particular nature of the board's obligations under the statute. But I cannot offer you expert technical advice. As an answer to that question, I think that is one reason why there are law firms investigating issues on a pro bono basis, because there are significant sums in some cases.

Starting with the statute itself, there were clear obligations imposed on the board and there is remedy of breach of statutory duty in torts law. I understand the courts are not going to automatically allow individuals to recover against a public body that has a duty to do something, but it seems to me that in this case, where the government was doing individualised things with people's money, some of those arguments do not apply. I would also point to the strength of the wording in those obligations. In the case of the Aborigines Protection Act they were things like:

… to 'exercise a general supervision and care over all matters affecting the interests and welfare of aborigines', to manage and regulate reserves and Stations upon which Aboriginal people resided and to provide for the custody, maintenance and education of Aboriginal children—

and this one is significant as well—

… 'to protect [aborigines] against injustice, imposition, and fraud'.

So there are statutory duties, and it seems pretty apparent that they would have been breached.

Whether an individual has a course of action I guess gets down to the individual cases. Fiduciary duty arguments in Australia for Aboriginal people have not proved very promising so far in our courts—not because of a lack of merit in a lot of situations, but because of our courts' reluctance to expand their thinking about fiduciary duty in the particular Aboriginal context. But my impression is, again, so far fiduciary duty arguments have applied in areas where it was easier for government to wriggle out from under, whereas here, again, we are talking about people's money and we are talking about individual cases with clear duties.

You have the language of trust accounts; the fact that the common law and equity is always prone to impose fairly onerous duties, fiduciary duties, on people who have other people's money and are meant to be administering it for their benefit. It seems to me that it is much more than some of the test cases that have been run on that front so far in Australia, suitable for fiduciary style arguments as well. So there are arguments based in statute and then are common law and equity arguments that seem to me could well have a lot of merit. But as I say, I have not gone into detail.

I guess another positive thing, which you would be aware of, about the New South Wales scheme is that while there is the panel scheme and people are waiting to see whether it is the desirable alternative I think most people want to litigation—that is, something that is much more accessible, less adversarial and quicker,

particularly for the elderly—that scheme does allow people to preserve their remedies under the broader law and that contrasts with Queensland's very unfortunate—

Senator TROOD—You made the point earlier about the fact that these are entitlements. That they are moneys due that they are to be recovering is the point that we have all been forcefully reminded of, certainly so in Queensland. It is not a case of saying: 'I want compensations for things; I want to recover a debt. I want to recover funds which were owed to me and which have not been paid.'

Mr Brennan—Yes. I overlooked that very fundamental point in my answer. In that sense there are two levels in the answer to your question. There is that one level at which there is simply the recovery of money entitled, but those remedies I just talked about have the capacity to escape the really narrow technicality of that issue as well. That narrow technical issue is vital and must be addressed as quickly as possible, but we are talking about a larger system—the apprenticeship system, for example—the paternalistic nature of controls where the damage suffered by people was not just the failure to get their money when they asked for it, for example. The kinds of things I just talked about are relevant to that simple recovery of money owed, but they have a broader application as well in this context.

Senator CROSSIN—I have a couple of questions about access to these records. There does seem to be, particularly in Queensland, a requirement that individuals will be the people who would actually try to prove this case—almost a reversal of the onus of proof I guess. Do you think there is a need to set up some funded facility that would facilitate this work for individuals? Or should the emphasis and pressure be put on governments to fund such a unit to do this sort of research?

Mr Brennan—On the one hand, an authority that is independent of government that is investigating the evidence that may be prejudicial to government has an appealing ring to it. On the other hand, the knowledge required to find these things and the capacity and resources to do it, I suppose practically you wonder whether it is going to be some agency other than government that is going to be capable of doing the job. So in principle there might be a good argument for an independent agency, and if that is possible I imagine that would be desirable. But if that is not practical or possible, then it is going to be government. Then it gets down to the transparency of that process, the resources that are committed to it and the faith and the trust that Aboriginal people are able to develop in the system and the faith they can confidently have in its operation. That has a lot to do with information and processes and setting up systems well informed by community opinion. It also has to do with the personnel in a tintacks way too, that the government is able to recruit people who, as a senator suggested, are really committed to the task. I understand from what I have heard anecdotally that there are people of that kind involved in New South Wales and that is really heartening to hear. That level of commitment makes a big difference. So there are structural issues and then there are those more day-to-day things.

CHAIR—Thank you very much Mr Brennan and Mr Westmore. May I again thank you for the research report. It provides the committee with a very useful tool in the process of this inquiry, particularly as it pertains to New South Wales. We will be in touch through the secretariat if there is any further information that we need. Thank you both for your presence here today and for your remarks and your assistance to the committee.

[11.58 am]

GREER, Dr Susan, Private capacity

CHAIR—Welcome to this committee hearing. In what capacity are you appearing today?

Dr Greer—I am appearing before the committee in a private capacity. My recent PhD research is directly related to the New South Wales context of this inquiry.

CHAIR—You have lodged a submission with the committee, which we have numbered 42. Thank you very much for that. Do we need to make any amendments or alterations to that?

Dr Greer—No, you do not.

CHAIR—I would like to ask you to make an opening statement. You have indicated there are a number of matters you think you can assist the committee with in terms of clarifying questions that have arisen in this discussion. We will go to questions at the end of that.

Dr Greer—Thank you for the opportunity to appear here today. I want to say that I think the submission is very clear in its brief. The reason it is brief is that I thought I had a deadline to lodge it and did not realise there had been an extension. My goal is very much that expressed by Sean in that I wanted to create information for the committee that they may not be able to access easily. In particular I wanted to explain about the records of the Aborigines protection boards and the New South Wales Aborigines Welfare Board because this is the area that I researched. So I am familiar with all of the records that are available, though not in as much depth as I would like. So I can give information to you.

To summarise, the reason that I put the submission together, my primary aim, was to bring to the attention of the committee that, while you will have access to regulations and acts that tell you how the organisations were to perform, the records—and by the records I mean in particular the minutes of the boards and the correspondence files of the boards—indicate that the actual day-to-day practices were very discriminatory; and they had immense financial and social impacts on Indigenous people in New South Wales.

I am particularly keen to bring to your attention the underlying philosophy of these organisations—which was that Aboriginal people had no financial capacity. The evidence that will come to your attention in these inquiries will show the absence of money in Aboriginal hands over time. The reason the trust funds existed was that Aboriginal people had to be taught how to handle money. The mentality of governments at the time was that if we put them into employment and we actually controlled the money and built up savings accounts then that was evidence that they were able to save. That went on into the 1940s and 1950s in New South Wales.

I briefly wanted to bring to your attention how the systems failed the beneficiaries of these accounts. It is a trust accounting system that was set up under the Treasury regulations. It was audited and regulated, but the system itself failed the people whom it was intended to benefit—that is, the Aboriginal people. I think the best use of my time would be to answer any questions that you have. There is something I want to clarify first of all. You were asking Sean about whether or not in New South Wales they were apprentices and whether it was within the regulations.

CHAIR—Yes, Senator Crossin and Senator Trood were asking about that.

Dr Greer—Yes, I have a copy of the regulations in front of me and it is labelled ‘apprentices’. It stipulates the rate of payments to be made to apprentices. They were called apprentices up until the change from the Aborigines Protection Board of New South Wales to the New South Wales Aborigines Welfare Board in 1940. As a result of the agitation of particularly Professor Elkin, who was the deputy chair to the board who wanted to change the mentality in New South Wales from protection to welfare, they changed the name from ‘apprentices’ to ‘wards’. Prior to that, it was an apprenticeship scheme; but it was in no way a training scheme. The mentality of the board—that is my jargon from my research—was about putting girls in as servants and boys in as manual labourers. To enforce that system they actually introduced, in cooperation with the department of education in New South Wales, a specific curriculum that enabled them to make sure that they actually had plenty of manual labour and training in how to do housework and very little education in terms of reading, writing and arithmetic. They were actually being trained for their position in life, which did not really require them to have an education as long as they could work—the girls as servants and the boys as manual labourers. So that apprenticeship scheme did exist, but it was not about creating an informed labour force.

CHAIR—What was the age bracket for the scheme, as it was known?

Dr Greer—It was supposed to be 14 years. So what the board undertook—

CHAIR—So that was at the bottom; what about at the top?

Dr Greer—It was 21 years of age, and then eventually 18. But a lot of the records indicate that people did not know that they could stop working at 18. I actually came across the records of a gentleman who was applying at the age of 35 for money out of his trust account to pay a dental bill. The existence of these accounts was very much secret government business.

Senator CROSSIN—Dr Greer is that your thesis?

Dr Greer—Yes, it is.

Senator CROSSIN—Can I have a look at it while we ask questions?

Dr Greer—If you would like a copy, by all means I can send you a soft copy.

CHAIR—Let me ask you a practical question: what have you been doing—wading through knee-high piles of paper in the virtual library or something? How have you gone about your research?

Dr Greer—I applied to the Department of Aboriginal Affairs to access the state records of the Aborigines protection and welfare board. The reason I became interested in this was from an accounting perspective. Heather Goodall makes a reference in one of her books to the fact that they changed the definition of 'Aboriginal' in New South Wales—strictly as a budgeting decision in my perspective. In New South Wales the government bodies, the Aborigines Protection Board and welfare board, were not the same as in Queensland. It was not a pervasive system, so they did not want to have Aboriginal people under their control as long as they were considered to be assimilated. Their financial constraints meant they had to get more people off the reserves and stations, so they changed the definition of Aboriginal so that fewer people were considered Aboriginal and therefore could claim rations from the boards.

CHAIR—Isn't that an irony considering the board was getting the money for the—

Dr Greer—No. Prior to 1930 they did not have family endowment moneys, and the board received votes from the government for specific medical rations, education, and so they had to balance these budgets. They did not receive any funding other than they were starting to take the wages from the employers under the employment contracts. But the funding was to care, as Sean said, under the act. It was their duty of care.

CHAIR—In your submission you refer to the official inquiries into the boards. Could you tell us a little more about that?

Dr Greer—As a result of the agitation by Aboriginal people in New South Wales, led by Professor Elkin and other prominent Aboriginal people—and there was also a lot of anxiety going on within government over changes of government—a legislative inquiry was called but it never produced a report. Then there was a change of government, I think, but I would need to go back and reread my documents. The outcome was: a Public Service Board inquiry sat and in a very short time produced a report that was quite condemning of the practices of the protection board and was the impetus for the changes that became the welfare board. Significant features, however, were that they recommended the continuation of the trust accounts and the apprenticeship scheme.

The other inquiry came about because in 1963 children were dying on Aboriginal reserves, and there was a lot of agitation going on. There was the 1967 referendum. In 1963, the Aborigines Welfare Board took out the discriminatory practices within the act but by then you could say the writing was on the wall. There were a lot of problems with Aboriginal housing and, consequently, there was a change of government, an inquiry and the board was disbanded in 1969.

CHAIR—You used the term at one point 'bureaucratic failures'. How do you discern between bureaucratic failure and a completely inappropriate bureaucratic policy and its application or misapplication?

Dr Greer—I was concerned not to sit with 21st century eyes in judgment of practices and policies that were happening in the 1800s, 1900s. When you read the documentation and the minutes of the boards, the underlying sentiment is they believed this was correct practice. The policies they put in practice, the programs they put in practice, would often have the best of intentions for the times but the coming together of all the pressures under which they were operating and, in particular the white communities and the pressures that they forced on to the boards to discriminate in a much more powerful way than they were intending, brings me to call it failures rather than intentional racist practices.

CHAIR—I appreciate that perspective. When you are coming at this from our position, which is acquiring an extraordinary volume of information in a relatively short period of time and trying to keep it all straight, it is difficult to do.

Dr Greer—From my perspective, the absolute outcome of this is institutionalised poverty, and I write in my thesis about how the social responsibility agreements that the government is currently writing are the modern equivalent of an exemption certificate. In my own personal view, I think it is very discriminatory.

Senator CROSSIN—Can I get you to expand on that last statement you made. In your thesis you make an analogy with current federal government policy?

Dr Greer—I was looking at social responsibility agreements, because theoretically the thesis is written in a Foucauldian model of history of the present, saying: 'How could we have done this differently? How did we get to where we are now?' At the time of writing this, the federal government was talking with mining companies in the Northern Territory about how we need to get more financially responsible Aboriginal citizens. The way that they were talking about it was to have the mining companies control the wages of their employees, to pay them the equivalent of what I would say is pocket money and to control their movements so that they actually would not be able to attend ceremony because it took up too much time. That is one aspect where I saw strong similarities with what had gone down in the 1940s in particular under the welfare regime.

Also, you have agreements where communities are signing off on receiving the rights and the entitlements that everyone else has. The fact that they live in an isolated area means that they have to sell behaviours in order to access rights. That is exactly what exemption certificates were about. They were about Aboriginal people selling their rights to be in communities in order to access things like education for their children, health care and pensions.

Senator CROSSIN—So you would put it to us that on a broader scale today—similar but different: your history at present concept—signing an SRA, a shared responsibility agreement, for example, is in some way similar to the expectation of Indigenous people, say, 40 years ago?

Dr Greer—I see similarities. If we have the recognition of the right to exist in communities in remote stations, if we accept that that is truly a right of an Indigenous community, then you need to question why they need to sign some of these contracts. It is very hard to comment because the government is keeping these contracts very much under wraps. At the moment it is anecdotal as to how pervasive this is and how difficult it is. But, just on appearances, it has that sentiment.

We talk about Aboriginal welfare dependency, but we never question where the welfare dependency has come from and how government's role has pervaded this whole idea of dependency and created this dependency. I was reading through the thesis last night and I could not find the references, but I was talking about the idea—as you know, in the Northern Territory—that we have to create these economic citizenships, and one of the things is the right to own your own property and all of that that comes into the individual economic rational person.

When you had these people who were on the stations in New South Wales, men were restricted to owning one horse, and it had to be held for legitimate purposes, as defined by the board. The houses they built became the property of the board, so they could not own the houses. They were restricted on how they could work. They were not allowed to use the land to generate any money-making activities. If you want to create an economic individual, you have to give them the models and you have to give them the access to create that economic model. That was denied under the legislation. There are constant references to this. The board, in its desperate plight for money, sold off reserves and sold off stations to individual farmers that were being worked quite economically at some stage by Aboriginal workers. You have this whole denial of the capacity of Aboriginal people to be economic citizens. Then you have this underlying mentality that says: 'We will create you as economic citizens.' It is a no-win situation.

Senator CROSSIN—We could probably have a discussion for a lot of the time. I think you raise some very good ideas. That is my personal view. I think we are doing something very similar today by suggesting that Indigenous people sign 99-year leases. It goes to this notion of an individual economic person. Now, as then, non-Indigenous people seem to think that owning your own home is the be-all and end-all of economic success. I do not have to put it to you, but if I owned Kakadu National Park—if I were the titleholder of that magnificent piece of land—having a home would be the least of my worries. That is how some Indigenous people still think. I think probably what you say is right. I think you are the first person who has put to us that

analogy about Indigenous policy. I know your research is not about the Queensland situation, but can I go back to that. Can I have a comment from you about the cap of $4,000?

Dr Greer—It is outrageous and insulting. The reason I say that is that, when I started this research, I was very aware that I had to fight to get access to these records because they contain the names and the stories of Aboriginal people, and it is very sensitive. So, in my research, I tried to kind of avoid getting into story or being aware of people's stories, but when I was looking at the ledger accounts there were some records that were transferred from Queensland in the 1920s. You would be looking at New South Wales records, and they might have £10 at that stage or £20 at that stage. I made a note of two: one had £64 and one had £106. These were dramatically different amounts at that time. Then you have a Queensland system that continued a very long time after that. So I am very suspicious of the government's argument that it does not have the records, and I am disgusted by the amounts.

Senator CROSSIN—You would have heard our comments this morning about what we heard from the Queensland government. In terms of accessing records and awareness of this, I still come back to where I started this morning—that is, before we even talk about amounts of money or what is owed to people and who is eligible, there is this whole issue, as there was with the stolen generation people, about just trying to piece their lives together to try and find out what the act was at the time and what they may or may not have been paid. Then, if we go back the next step, it is just about making people aware that this might be an issue. What are some of the ideas you might have about trying to resolve that? You are a person who has obviously got into the records. You have seen how comprehensive or inadequate they may be. What are some of the things that we as a committee could look at suggesting to overcome those problems?

Dr Greer—That is the $64,000 question, isn't it. I was at State Records on Monday providing a training session to members of the repayments panel, State Records and the Department of Aboriginal Affairs on how to read the accounting records. What we are aware of is that up until 1934 in New South Wales, with the chunks of information, we have the ledger records of every trust account and we have the cash records so we can reconcile. In 1934, there was a change because, as a result of the inquiries going on around the Public Service Board, there was very much a lot of tension between the government and the protection board, and there are documented records saying that the government really wanted to take away the financing from the board and make them truly focused on welfare.

The bottom line was that they transferred the accounting to the chief secretary's office and to the accountant there. And then, apart from one ledger that has turned up, which is a cashbook, they ceased to exist. The actual accounting records in New South Wales are gone—unless they turn up in these magic boxes 123 or 128; we do not know. My suspicion is that they will not. I have racked my brains to try to find out where they could be. We know that these records were audited, and we know that the auditor-general's reports told the boards to constantly look at inactive records. If they were not active, they were to remit the money to consolidated revenue. I have contacted the Commonwealth Bank, but they cannot give us any records. They say that if the account was inactive, it would have gone into their version of consolidated revenue. There are snippets of—

Senator CROSSIN—Can I just ask you a question about that. I am sorry to interrupt your train of thought.

Dr Greer—That is okay.

Senator CROSSIN—I raised this issue in Brisbane the other day. Are the Commonwealth Bank saying that they still have a record of an inactive account and they have closed that account and the money has gone or did they destroy that?

Dr Greer—They destroyed it.

Senator CROSSIN—They destroy it.

Dr Greer—I have asked whether Treasury has records. My understanding from state records personnel—who are outstanding—is that the records would have all gone to state records if they survived. There is no reason to expect that any would be held privately because it was a centralised accounting system in New South Wales. So even though you have station managers controlling accounting, accounting was a priority of the board because money was so tight. They were admonished from time to time and fined over their failure to keep accounts correct, but they were never fined over the fact that they failed to pay rations or do anything that harmed Aboriginal people. Their accounting was sacrosanct, and people were sacked because of bad accounting.

So my feeling is that they did not survive accounting-wise. Where do we go from there? We have surviving minutes of board meetings. So we know the practices; we have insights into how the boards thought and what

they did. There are total amounts for trust accounts referred to within those records. We have the surviving correspondence files, which go to something like 300 reels of film, and within those are the records. These are what they are drawing on in the repayments panel to make the offers to the claimants. The fundamental problem with that is that those records are kept from the point of view of outgoings and not incomings. So they get a clear record of what went out of the account, but they do not necessarily have any indication of what was going into that account. In my view what you have to do is look at the regulations in the legislation and say, 'That is what was supposed to happen,' being mindful of the fact that there was so many avenues for abuse in the system, and then err on the side of the claimant.

CHAIR—Thank you. Dr Greer, I have indicated to Senator Bartlett that if perhaps he wants to canvass issues which we have already addressed, you might indicate that and he can go back to the *Hansard*.

Dr Greer—That is fine, anything I can do to help.

Senator BARTLETT—Yes, I apologise for not being here at the start of your evidence. I will review the transcript. If I do ask something which you have already answered, just tell me to go back and read it. One of the questions that comes to mind when I see the work that you and some others have done—for example, the work of the previous witness or Dr Ros Kidd's research; which I presume you are aware of?

Dr Greer—Yes.

Senator BARTLETT—It is a pretty big job to go digging through all this, particularly if you are trying to establish an individual entitlement as opposed to a broad practice. One of the questions I assume the committee will need to consider—particularly if it is something that needs examining nationally, as it appears it is—is how many resources and how much time would be taken to really do a thorough investigation and whether that is the best use of resources. Is the amount of time involved also something which is a problem given the age of some of these people, the mists of time and that sort of thing?

Dr Greer—I am not sure I can answer that. As I said to the panel, I was at state records on Monday doing a training session for them on how to read the accounting records. I am extremely impressed by the dedication of state records people and by the person primarily responsible for doing the searching. So I am assured, and I know that she will find anything in those records if it exists. I think the job for an individual claimant is not as big as we might think in terms of we have a time frame of the person's life, so we can set the time frame, and we know whether the ledgers and cashbooks exist for that time frame. Working with them, I know they are now much better informed on how to go about doing the reconciliation in a more timely frame. Then it is a case of coming to the correspondence files and the minutes of the boards, which are the only other primary sources of information. There are a number of other places where you will pick up anecdotal information.

On an individual claimant, I do not see it as that big a job. From my own perspective, I do not see how we cannot do it. This is somebody's money that they worked for, that they had no control over as they had no entitlement to control. I have a case in 1947 involving a young girl. I am not sure of her age. As I was saying to the other members of the inquiry, I specifically tried not to become aware of individual cases when I was doing my research in order to assure DAA that I was going to do that; that was the only way I could get access to these records. It took a woman six months to get money out of her trust account for clothing that she desperately needed for her child. It was only after the police inquiry came back and said, 'Yes, it's legitimate,' that she got the money.

This is one of many indications, and that is the reason I brought it to your attention in my submission. While it says that the beneficiary was entitled at age 21, the controls were extremely patriarchal in this position and claimants still had to prove that it was a legitimate expenditure. Claims were knocked back. As I pointed out to the other members, there was one gentleman at age 35 asking for the payment of his dental bill out of his trust account.

From my perspective of having seen these records and seen these mechanisms in operation and hearing the stories of claimants and knowing the abuse that went on was often just a result of budgets, if somebody were to ask me what would be the budget on this I would say, 'As much as it takes.'

Senator BARTLETT—How much broader is it than what has been addressed by the reparations panel?

Dr Greer—The repayment panel?

Senator BARTLETT—Yes, the one here in New South Wales.

CHAIR—Yes, terminology is important.

Dr Greer—It is important.

Senator BARTLETT—It is a reparations scheme, though, in New South Wales, isn't it?

Dr Greer—No, it is a repayment scheme.

CHAIR—Reparations is in Queensland.

Senator BARTLETT—Sorry, I was reading off a submission in front of me to make sure I got it right. Dr Greer, it was not your submission; I was reading somebody else's. So they have both—okay.

Dr Greer—I put a submission to the panel about the name change. In New South Wales it is a repayment scheme. Having met the people who are involved, I consider them to be entirely dedicated and willing to do what it takes. They have gone beyond legally what I think they could justify. By that I mean that they are undertaking to repay deductions out of trust accounts for things like medical treatment, dental treatment et cetera—which the board had a right to deduct under the regulations. They are extending the repayments as far as they can to the claimants. Having said that, I also saw one of the original offer letters—I was called in to advise a claimant on what the letter actually meant—and I went back to the panel and gave some advice and made some recommendations on changing the way the letter was written.

These letters come out with documents. They come out with copies of all of the files that the panel finds in referencing to that person. As I say, it only documents payments out of the account. You cannot document anything else because the ledgers that would document the payments are missing.

Senator BARTLETT—So is it fair to say that, whilst the repayment scheme goes so far, there are still wider issues that it is not really able to get into?

Dr Greer—I think so. As I said, I think this is an issue of institutionalised poverty. I make the point in my thesis that you are brought up in an institution from the time you are one year old, you are taken to, say, Bomaderry until you are old enough to be put into Cootamundra, then you are sent out at the age of 14 and you work until you are 21. Then you may or may not be told whether or not you have money and then you go into employment. If your life is being completely controlled, my question is: how do you learn to be an economic citizen? Then there are the repercussions of that—I cannot think of the right word now; I am starting to get stirred up about this.

Part of this process as well is the lack of education, and I have talked to the women who have been in Cootamundra. I said to them, 'You went to school. How was it?' Then I heard the stories of the racism inherent in the schooling: how the Aboriginal girls were treated differently to white girls in terms of what it was expected that they could or could not do. There is enough documentation in historical records to say that that would have occurred. My question is: how do you create economic, rational citizens that have the same life opportunities as the rest of us? Is the government responsible for that? I think they are—and if they are where is the compensation?

Senator BARTLETT—I have a final question. I understand you are focussed pretty much solely on New South Wales, so you may not feel able to comment on this. Assuming that there are variations on the same sorts of practices in a few other states at least, would do you think would be the sort of compensation payment arrangement that you would endorse as your final recommendation or as part of Professor McGrath's recommendations? Leaving aside where the money comes from, would that be best done nationally, not least because people did move, at least some of the time, between states?

Dr Greer—I would be very surprised if this was not national. The reason I say that is because until 1967 control of Aboriginal people or protection of Aboriginal people—or whatever policy you want to talk about—was a state based system and the states talked to one another; it was very much so. Not only did they talk to one another, they also drew on foreign experiences such as Canada's and how the Canadians were treating the First Nation peoples. So there was a coming together of philosophies about what you should and should not do. Inherent in the systems that I have looked at is this idea that Aboriginal people could not control money. So if you have that government mentality happening in other places, then there had to be some way for wages to have been controlled. In the Northern Territory system that is the reason the money was going into the stores, because while Aboriginal people cannot have money 'we can give them access to the shops and then they can actually take the rations out of the shops and run up credit'. That mentality of government, that rationality of a perspective of Aboriginal people as not capable of handling money until they were fully assimilated, was inherent in all systems.

CHAIR—Dr Greer, I see you submitted your thesis in February 2006. When did you commence the research?

Dr Greer—In 2001. Can I say something in terms of the endowment records? Can I clarify how that was handled for you?

Senator BARTLETT—Sure.

Dr Greer—In 1929 the board was approached to take over endowment. It was eager to do so because it could see it as a way to reduce its costs. It set up a system where the money was banked centrally into the Rural Bank, so there was a trust fund established by the board. Then local managers and police were advised of the amount of credit that Aboriginal people were to experience, and the credits were held as local orders on shops within the locality of the station or the reserve that the Aboriginal people were resident on. The manager of the station or reserve signed off on the amount that they were to receive and then they were taken to the shop and allowed to buy, but what they could buy was contained within a list of what purchases were acceptable or not acceptable. On the records they make a point that one woman had to be chastised because she bought face powder. So that was the system in 1930 when they started to access. There was an amount of something like £29,000, so they were substantial funds.

CHAIR—Thank you, Dr Greer. We would like to take up your offer to provide the committee with a soft copy of your thesis document, if you would email that. Thank you for your attendance here today and for your assistance to the committee.

[12.38 pm]

FITZPATRICK, Ms Sally Ann, Member, National Management Committee, Australians for Native Title and Reconciliation; and Vice-President, Australians for Native Title and Reconciliation (New South Wales)

HIGHLAND, Mr Gary, National Director, Australians for Native Title and Reconciliation

HOWES, Ms Christine, Queensland President, Australians for Native Title and Reconciliation

CHAIR—ANTaR has lodged a submission with the committee which we have numbered 78. Do you need to make any changes or amendments to that submission?

Mr Highland—Following Senator Bartlett's comments I think we do. We inadvertently referred to the repayment scheme as a reparation scheme and clearly there are differences there, so if we could just amend page 14 of our submission, which has a couple of typos, I would appreciate that. On paragraph 4 there is one error and then on paragraph 7.

CHAIR—Thank you very much, Mr Highland.

Ms Fitzpatrick—Actually, paragraph 7 is correct because at that time it was a reparation scheme.

Mr Highland—Oh really?

Ms Fitzpatrick—They changed the name after the initial panel.

CHAIR—Okay.

Mr Highland—We are in the clear. That is okay then.

CHAIR—We have resolved that. We are in the clear for paragraph 7. As with our other witnesses, I would like to ask you to make an opening statement and then we will go to questions from members of the committee.

Mr Highland—Australians for Native Title and Reconciliation welcomes the opportunity to give evidence before the committee. Before we do that, we would like to acknowledge that the hearing is taking place on the land of the Gadigal people. We know from the research of Dr Ros Kidd and others that governments around Australia have controlled the wages, savings and benefits belonging to Aboriginal and Torres Strait Islander people for much of the 20th century. Much of that money was held in trust and withheld from its owners. These trust account funds were, in many cases, then transferred to public revenue or they disappeared through fraud or negligence, along with many of the records surrounding them.

This practice condemned generations of Indigenous families around Australia to lives of poverty. At the same time as that was happening, the labour of these people was vital to the establishment of crucial industries like beef cattle and pearling. ANTaR believes that governments—state, territory and federal—have yet to come to terms with the extent of this practice or its legacy and that governments have yet to face up to their responsibility to end the intergenerational poverty that resulted from this practice.

Of course, when you are talking about stolen wages, you are talking about a double injustice, because many of the people who had their wages taken from them were themselves taken from their families as part of the policies of child removal. The twin elements of those pressures forced many Indigenous people in Australia into a form of cultural and economic exile. They were removed from their culture, from their land and from their families and therefore denied a place in traditional society. They then had their wages removed from them, which denied them the chance to establish any sort of economic stake that would lead to a decent life in the mainstream. ANTaR considers that the fact that the issues of stolen wages and stolen generations are unresolved remains one of the greatest barriers to reconciliation and justice for Indigenous people in Australia. We hope that this inquiry will play a significant role in removing that barrier.

We made 16 recommendations to the committee. If you boil them down into four key themes, they are: firstly, we would like the state, territory and Commonwealth governments to examine their records so that we can accurately determine the extent of the practice, the numbers of people affected and the value of payments withheld. We want to emphasise that we consider this a national issue. Much of our submission relates to New South Wales and Queensland. That is only because those are the two states that we have been most active in. But we are aware that this practice occurred in other parts of Australia, and there is a submission I would commend to you that has been put together by Charmaine Smith, who appeared as a witness earlier today on behalf of PIAC. She has put in a separate submission on behalf of her family from South Australia.

Submissions like that indicate that a lot more work needs to be done in other parts of Australia by ANTaR and also by other organisations.

The second element that we think is important is that more research needs to be done—both archival research and also research sourcing oral history—so that we can more accurately determine the extent of this practice and its impacts. That could take place in the context of a broader national inquiry, perhaps administered by HREOC along the lines of the *Bringing them home* inquiry. Thirdly, we consider that wages owing to Indigenous people need to be paid to those people or their descendants, in full—not as a gesture of reconciliation as a small portion of the wages owing. We believe that wages need to be paid in full. The fourth element of our recommendations deals with the issue of intergenerational poverty and the responsibility of governments to address that.

Finally, I want to give you an indication of how the three of us may be able to assist the inquiry. I am the principal author of our submission, but Sally and Christine have had far longer experience with this issue than I have. I know the inquiry has not been able, for various reasons, to hear from as many Indigenous claimants and their descendants and community representatives as it might have liked to. Sally and Christine have both worked very extensively for many years with Indigenous claimants—in New South Wales in the case of Sally and Queensland in the case of Christine. They might be able to give you an indication of what they have been told by claimants from around the country.

Christine, in particular, has done a lot of work in regional Queensland and in Far North Queensland and has written a number of profiles for the *Koori Mail* newspaper. That has resulted in her having to interview numerous people who are seeking to make claims. Sally has been very involved in helping elders in New South Wales establish an elders council. That has necessitated her also talking to many Indigenous claimants—many more than I have. So we thought it would be a good thing for Sally and Christine to make themselves available to the committee.

CHAIR—Ms Howes and Ms Fitzpatrick, do you wish to say anything at this stage, or would you rather wait for questions?

Ms Howes—We will wait for questions.

CHAIR—Mr Highland, could you put a little more information on the record for the committee about ANTaR: how you operate, how your membership operates and how you are funded?

Mr Highland—ANTaR stands for Australians for Native Title and Reconciliation. We will celebrate our 10th birthday next year. We are a national organisation and primarily an advocacy organisation. We have had more than 300,000 people sign up to our Sea of Hands. You no doubt would have seen it outside Parliament House and in other locations. Those people signed up because they were committed to reconciliation and to the aims of our organisation. We have around 20,000 active members or donors from around the country. We have committees in every state and territory, with the exception, temporarily, of Tasmania. We are hoping to reinvigorate that early next year. We also have a number of institutional representatives. Organisations like Amnesty International, Oxfam and ACOSS are members of ANTaR. We are an organisation committed to the rights of Indigenous people in Australia.

You asked about funding. We do not receive federal government funding. Some of our state affiliates have from time to time received some state government funding for projects. However, we fiercely seek to maintain our independence and, as a result, our funding comes almost exclusively from the contributions of ordinary Australians, who very generously donate to us.

CHAIR—Thank you very much. I am not sure whether ANTaR has come before the committee before, so I think it is helpful to have that detail on the record. We will go to questions.

Senator CROSSIN—Thank you very much for your ongoing efforts and energy in this area. Can I go to Ms Howes or Ms Fitzpatrick and ask what sorts of difficulties you have encountered when people try to get access to records or paperwork that is 30 or 40 years old to verify their memory about happened?

Ms Fitzpatrick—I can answer some aspects of that for New South Wales. The stolen generations have had access to their records as individuals for quite some time. At the start of this process in New South Wales, that was still the case. With the establishment of the scheme—and one of the reasons the scheme took a long time to be established was that they did an exhaustive investigation of the implications through the Privacy Act of third parties accessing these records—there are now a few gates people have to pass through to access their records. I think the community will become used to that, but it has made people a bit upset that they have to—

Senator CROSSIN—What sorts of gates are you talking about?

Ms Fitzpatrick—Instead of being able to pop down to archives for your records, you now have to make an application through DAA, as I understand it.

Senator CROSSIN—And prove your legitimacy in wanting those records?

Ms Fitzpatrick—It is about chasing up in this area. I am not qualified to comment further than that, but it is in terms of chasing up in this area. In the latter stages of the scheme in New South Wales, you will have descendants or families or people who might be establishing claims who are not directly related. You need to refine who gets to the records, how the community legal centres will get to the records—all those kinds of things. I think the prudent course that the scheme has recommended about the records is good, but it will take some time for the community to adjust to the checks and balances that have been implemented.

Senator CROSSIN—Ms Howes, in your response, because you might not have seen the transcript from Brisbane the other day—

Ms Howes—I have not seen it, no.

Mr Highland—We are very interested to see it.

Senator CROSSIN—The Queensland government—and I am paraphrasing here—decided on the scheme they have offered, because they had come to the conclusion the records did not exist, were patchy or pretty scarce, so to save all those problems they have offered this blanket amount to people. What is your experience with people trying to access documentation in Queensland?

Ms Howes—One of the most prohibitive factors in Queensland for people accessing the archives is distance. The archives are held in Brisbane. They were moved—I can never remember if it is from Coopers Plains to Cannon Hill, or Cannon Hill to Coopers Plains—in the mid-1990s. I have always been very conscious that I first became aware of stolen wages as an issue in 1995 and became actively involved in what has been a campaign since 2002. This has been a campaign that has gone over many years—over the last 20 or 30 years—but, as recently as 2002, I have had community people say to me, 'Did we have records kept about us?' It is not common knowledge in some remote areas that those records exist, that somewhere someone else had written about their lives—for all of the mystery of their own lives.

Distance is quite prohibitive. The government holds the records and controls them, and people can access a government department to ask the family histories unit, I think it is called—it has had a number of different names over the last four years that I have watched more closely what has been involved. So people still have to go through a government department. Even in cases where people have been rejected for the offer, we have held community meetings in places like Normanton, Woorabinda, Rockhampton, Yarrabah, Mareeba, Roma, St George and other places this year. Surprisingly, there were large numbers of people who have been rejected in two of the biggest beef cattle areas of the state. In Rockhampton and Normanton, there were a lot of people who where knocked back for the government's reparations offer.

They will not appeal if they are knocked back because they have to appeal to the same department that knocked them back in the first place. There is no independent person to appeal to. Unless they can get to the archives themselves or take legal action, there is no other way for them to appeal the decision. Some people have even said to me, 'It was an amount we did not want in the first place. We're not going to go back begging and asking for it again.' Does that make sense to you?

CHAIR—Yes, perfect sense.

Senator CROSSIN—Even though these might have been people who clearly remember working on these beef cattle stations for, say, two or three years and have similar stories to other people, they have had their claims knocked back, have they?

Ms Howes—Many years longer than that and, on at least two occasions, I have heard stories of people working side by side and one being accepted and one being knocked back.

Mr Highland—Christine's comments underline one of our major criticisms of the Queensland scheme and that is oral evidence is not admissible in that scheme—and this is in a state where things like cyclones in the wet season and courthouse fires have meant that the records are patchy. Unlike the New South Wales scheme, oral evidence is not admissible in Queensland. We also think that Indigenous people should not have to pay for the negligence of government who have lost the records, and the onus of proof should, in fact, be on the people that had the records, not on those people who are desperately seeking to find out about these records.

Ms Howes—There was one instance in Queensland—and a story appeared in *Koori Mail* about it at the time—where a woman who was considering applying for the offer was sent a photocopy of a picture of a school on the river in Brisbane during the 1974 floods, and I do not think it was actually circled on there but it was basically, 'Your records were in the basement of this building, so we don't have access to those records so we don't think that you should apply for the offer.' So the 1974 floods were a big factor. There were also courthouses and police stations, and I am sure that Yvonne Butler might have outlined these stories to you about what happened up north.

Senator CROSSIN—Yes, she did.

Ms Fitzpatrick—Can I make one further remark that Christine's remarks have spurred me to say. Because of the mistrust that has developed over all this time, there is a mistrust of what is stored in the records in the community and people who have been to the records once might go back a second time and be handed a different set of records. That is probably being addressed by state records all of the time, but there is a sense from community members that their records are being manipulated; they feel like that.

Ms Howes—There are also literacy issues for people who are chasing up records. One of the profiles that I wrote in *Koori Mail* was that of Alf Neal from Yarrabah. He showed me some original documentation where he was looking for some other records extended on that. They had been looking at these records and wondering for years why they could not find anything else on them. I noticed that there was an 'e' on the end of the name, and 20 people might have looked at that piece of paper before then and never noticed there was an 'e'. There can be different spellings. Many of these elderly people did not have that schooling. Should I relate the story of the postcard?

Mr Highland—Yes.

Ms Howes—One of the initial meetings that I held with elders out at Normanton was with a fellow who was on a postcard campaign that ANTaR and the trade unions and the community in Queensland put together. I went to see the elders out there and explained to them that there was support for their issues down south, and that was very exciting for them. I showed them the postcard campaign which featured one of the local elders there, Fred Edwards, crouching on the ground in front of a group of cattle—I am not sure if you have seen this or not. The postcard idea was a fairly simple idea. It involved an A4 sheet that tore into three cards: the bottom card was to keep, the middle card was to be sent to Peter Beattie to ask him to reconsider the offer and the top card was to go to the Queensland Council of Unions thanking them and encouraging them to continue to support it. It was a matter of filling out names and addresses on the cards and signing them. I had offered to take them and send them for them. We often sent them in batches for people to the required places.

I explained to the group of probably 15 to 20 people what this was about. I then spent the next 45 minutes helping them individually to fill out the cards and explaining again to almost everyone in the group what it was all about and what it meant. It illustrates the mistrust of putting their name to anything. It is also indicative of doing something that is supportive of what they are trying to do, and then you imagine these same people sitting down in that situation with a lawyer saying, 'Sign this or you'll never get anything,' for $4,000, and offering them a huge ream of papers with a complicated situation on it. It really threw me and made me realise what a lot of this is all about and what the effect of this whole thing is on people.

Senator CROSSIN—Finally, can I ask you about the role of HREOC. You might have heard them this morning. Do you believe they could play a role in just collating some research, or pulling all of this together in a more comprehensive way than we as a Senate committee are going to be able to do?

Mr Highland—There is an expectation by some people that there needs to be a national inquiry. I am sure that this committee will do fantastic work and it will give an important report, but I suspect you do not have the ability or the resources to commission your own research, for example, in the way that was commissioned for other things like *Bringing Them Home* or the Royal Commission into Aboriginal Deaths in Custody.

I suspect you also do not have the capacity to have hearings in many parts of the country where Indigenous people are seeking to have their story told—even places like Cairns or Townsville, let alone places in Cape York Peninsula and the gulf—so we think there is a bit of a gap there. It is not a criticism of your inquiry; it is simply an understanding of the reality that this inquiry faces. There is also the fact that, as HREOC has done the *Bringing Them Home* inquiry, it seems to us that Indigenous people have faith and trust in HREOC. They believe that HREOC are fair and decent in how they go about things. So we thought that one way might be to have HREOC conduct an inquiry of this kind. However, we are also mindful of HREOC's capacity, so it would need to be properly resourced, and I imagine they do not have the resources right now to do it.

Senator CROSSIN—Isn't there also an element that it would just be another report and another bit of research? There is already the work that people like Dr Greer, Dr Anthony and Dr Kidd have done. We know it is there. We know it happened.

Mr Highland—We know it is there. We know it happened. We know it is really good work—but it is patchy work, unfortunately. There has been some fantastic research done. You have heard from Dr Anthony; you heard from Dr Kidd yesterday; you have heard from the Indigenous Law Centre. It is no coincidence that those states where much of the really hard slog in research has been done are those states where this has been a prominent issue—New South Wales and Queensland. We know that there are records in, for example, Western Australia. There has been a lot of research done into Aboriginal labour in Western Australia, but there has not been any research to actually tackle it looking at this particular issue. Ros Kidd has done that in Queensland, but that has not really been done in other parts of the country. It should not be an alternative to taking political action and resolving these issues, but the understanding is still patchy and we need to get that understanding. It would be a long process. Eventually I guess you would get PhD students from around the country doing theses like some of the people you have heard from today. These people are old and they need justice now. A properly resourced inquiry which was able to commission research would actually help fast-track that process.

Senator CROSSIN—Is there also value in HREOC doing some sort of national research in terms of the political pressure it can apply? In my circles, for example, we often talk about the *Bringing them home* report or the deaths in custody report. With all due respect to the senate committees, I do not hear as many people use senate committee reports in their everyday language when they are talking about the national spotlight of issues in the Indigenous arena. Is there value in HREOC doing this anyway, just for that purpose?

Mr Highland—Part of the problem is that not enough people know about this issue, and clearly the *Bringing them home* report raised a far greater awareness of that issue in the public consciousness.

Senator CROSSIN—That is true.

Mr Highland—And unless you follow these things carefully like we do, many people do not even realise that things like stolen wages happened. So, if governments are going to act, we need to let people know. The community needs to give them permission to act and if the community is not even aware that the process happened, then we are really limited in what we can achieve.

Senator CROSSIN—Thanks.

Ms Fitzpatrick—The two HREOC reports that you have mentioned contain the voices of the Aboriginal people in them quite clearly, and perhaps that is one of their enduring features. Those true stories then become part of the lexicon of the country and you do not end up with us as a non-Indigenous group blaming Aboriginal people for being poor. This is what we have to remedy together. We have to show the country that their poor state of health and their poor state of economic circumstances are a result of these policies, not the fault of individual people.

CHAIR—I think it is important, to the extent that it is possible to do that, to clarify the capacity of a committee process like this one. In an ideal world, the committee would do all the things that ANTaR envisages, all the things that HREOC envisages, all the things that the Cherbourg Historical Precinct Group envisages and all the things that each of the individual witnesses who have attended here envisage, plus our own expectations of what we regard as appropriate and necessary. But we do operate with limitations. We operate with the limitations of the Senate's instructions, sitting periods, other inquiries the committee undertakes and so on. In all of its work—I think it is fair to say that of every Senate committee, but I can speak specifically for this one—the committee endeavours to do the best it can with the resources and the capacity it has. We have very hardworking secretariats. We have very hardworking senators.

We will speak soon in a private meeting about further hearings and processes from here. I certainly hope to be able to take the committee to Western Australia, if we can identify a process to do that. There will be witnesses we can potentially hear from in other places. We will see what we can do in relation to that. But we are not a replacement for a comprehensive national inquiry. I think it is very important for me to make that very clear.

Mr Highland—I absolutely agree with that. My comments were not a criticism of the committee—

CHAIR—No, and I did not take them that way.

Mr Highland—but simply a realisation of the limitations that you have.

CHAIR—I was meeting you in the middle!

Mr Highland—However, one thing the committee may wish to consider is communicating what its powers are. I know you have been doing that. One of the things I am really careful about is that we have to give the maximum amount of support we can to Indigenous people on these issues, but we also have to be careful not to unfairly raise expectations and promise things that cannot be delivered.

CHAIR—Indeed, and that is what I am trying not to do.

Mr Highland—I imagine that is as important for you as it is for us. That is why it would seem to us that the sorts of things that the community are seeking are not going to be possible—

CHAIR—From this process.

Mr Highland—from this process. That is not to say that this process cannot be an extremely valuable one. That is why we thought: from this, there are going to be a lot of gaps still, so where do we go? Maybe an inquiry that has a longer duration, that has resources, that can commission its own research and that can have more hearings than would be available to you might be a good way forward.

CHAIR—I must say, though, that I am compelled by the fact that the people of whom we speak and whom we bring before us as witnesses are people in their 70s and 80s for whom the inexorable march of time has enormous impact on their health.

Mr Highland—Could I respond to that very briefly?

CHAIR—Sorry. I do not want this to go on forever in the scheme of the national debate. We all know what potential things have to go on forever.

Mr Highland—I agree with that, and another inquiry should not preclude governments from doing the right thing.

CHAIR—Indeed.

Mr Highland—A state we have a lot of information about—Queensland—has not done the right thing. There is no need for the Queensland government to sit on its hands to wait for some national inquiry to finish, because people know what needs to be done there. There has already been extensive research done there. So this should not be an excuse for governments not to act now.

CHAIR—I did not wish to take up that much time with that discussion, but I thought it was important to clarify our position. May I ask you one question, Ms Howes. I am not sure how many people you would say you have dealt with in Queensland in relation to their specific claims and the whole development of the applications for reparations—the $4,000 and the $2,000 and so on. What understanding can you give the committee of your impression of the sort of legal advice that was received by those individuals trying to make up their minds about what to do about the reparations offer—if any? If you cannot, that is fine. I just wondered what impression you had, given your experience.

Ms Howes—The impression I have from those I have spoken to about it—and I quoted someone recently saying it in one of the *Koori Mail* articles in the last fortnight or month or so—was that they felt that they were signing under duress. The complaint right from the beginning, in terms of the Queensland government's claim that they were offering independent legal advice, was that people felt that they were not, because they were not being presented with any other option than, 'If you sign this, you get $4,000. If you don't sign it, you will likely get nothing.' That is my understanding of what people were presented with. I believe you spoke to Aunty Ruth Hegarty.

CHAIR—We did. She was an exceptional witness.

Ms Howes—She has a story to tell about when she signed for the people coming in from the outer suburbs with walking frames. They were not even given individual legal advice when they were signing off but were grouped in a room together. That offended them as well. There is also the fact that people did not get an apology unless they signed away their legal rights.

CHAIR—Yes, we have seen that.

Ms Howes—I do not want to repeat what you have already heard.

CHAIR—No, that is fine. I do appreciate that.

Ms Howes—My impression is that people did not feel that it was independent legal advice. To them what would have constituted legal advice would have been the capacity to compare what was held in their own records and what their position actually was to the offer that they were accepting. The other angle to do with

the legal advice was the original consultation, which occurred between May 2002 and August 2002. That, as you probably know, was carried out by a firm called QAILSS. The documents that people were presented with at those meetings looked legal and felt legal. It was not actually drawn out of the government or any other source until fairly late in that round of consultations that what in fact people were being asked to sign at those meetings was merely a survey not an actual legal document.

Senator BARTLETT—This is where the 94 per cent came from.

Ms Howes—Yes, this is where the 94 per cent came from. The blue form that people were asked to sign looked like a legal document; to the extent that some people we spoke to, and who I spoke to in Cairns as well as in Brisbane, had the expectation that the cheque was in the mail and that they should receive it by Christmas. They thought that they were getting $4,000 and that they should have it by Christmas.

Senator BARTLETT—Also, if they had—sorry to interrupt, but I sense this is an issue that the committee is interested in and wants to clarify—'no' in the survey then that would have been, under their understanding, rejecting the offer.

Ms Howes—And it would have been on some kind of record somewhere they that were saying no. If they had known that it was a survey, if it was explained to them that it was a survey right from the beginning, then I am not convinced that they would have got 94 per cent out of it. I am sure that the committee has had the opportunity to have a look at the QAILSS report. The quotes, the direct quotes from community people, in there do not match the result of that survey.

Senator BARTLETT—Seeing we are on Queensland I will go a bit further on that. One of the things I hear all the time from Aboriginal people about this issue—and it blurs in with the Palm Island under-award wages case involving $7,000—is that some people get payment because they were under the act whereas others did not work under the act, they worked outside the act, and some were on government missions or church missions. Are you able to clarify what that means and how that impacts on not only whether people have got any sort of payment at all but also what it might mean in terms of legal entitlement if we were to get more action on this issue, whether at a state or national level?

Ms Howes—I might need you to rephrase the question. I am not sure I can answer a question about legal implications.

Senator BARTLETT—One of the issues raised, certainly in Brisbane, is that it one thing to talk about broader compensation for a whole lot of exploitation, underpayment and in some cases legal underpayment before the Racial Discrimination Act but it is another to say, 'You had a lawful entitlement to this money as an individual and you should get it back down to the last cent plus interest.' Those are sorts of two strands, if you like. I guess this covers Dr Ros Kidd's exploration of the fiduciary duty component as well. What is the difference between people who worked under the act in Queensland and people who did not in regard to how they were affected by stolen wages?

Ms Howes—I am not sure I can provide an answer to that question.

Senator BARTLETT—You can take things on notice, or we can ask other people.

Ms Howes—Yes. Ros might be the best source of that information.

Mr Highland—In terms of the historical stuff, Ros Kidd would be the one. You may be aware of the national report that we are publishing that Ros has written. We are happy to provide that to the committee. I suspect our publication date might be after your date. There might be some information there that would help you, but certainly Ros could help with the legal things. We are not lawyers and there are plenty of legal people who would probably be better placed to give you the legal entitlement.

Ms Howes—There is one short comment, though, that I would like to make about that. Before an earlier round of meetings that occurred in January this year I mentioned a list of places. One of the issues was that the offer was about to close. The offer was due to close on 31 December 2005 but was extended until the end of January 2006. In January 2006 we did quite an extensive round of community meetings, as I mentioned earlier.

The closure of the offer was imminent and people at Woorabinda in particular and Rockhampton, were still asking questions about who the offer was aimed at—whether it was aimed at people who had just worked on the missions and reserves or whether it was aimed at people under the protection act. When we talked about that in Brisbane, people used to scratch their heads and say, 'Yes, but if you were not under the protection act, you spent your life avoiding being under the protection act, which meant you were effectively under the protection act anyway.'

Some people were told verbally that they had been knocked back because they had exemption certificates. However, the exemption certificates were under the protection act. So there was still confusion as recently as January this year as to precisely who the offer was made to. That does not answer your question.

Senator BARTLETT—It indicates that it is messier than a neat dividing line.

Ms Howes—Yes, it is messier. It is not clear.

Senator BARTLETT—Can I ask about the New South Wales situation, just because it is one I know less of. We have had some indications that it is more positive than Queensland's response, which perhaps would not be hard. But we have not had the government here today to help us explore some of those things ourselves, which is frustrating. How adequate do you think it has been? We have heard evidence, particularly from Ms Woodrow, who was less than satisfied—and quite rightly. What other things do you think need to be done in New South Wales? What is your feedback from the community about satisfaction or the adequacy?

Ms Fitzpatrick—There is still a mystical area regarding the entitlements—the pensions, as it were—in the social security area. And there is still a great deal of upset that the pocket money is not being dealt with, because it was in the hands of the employers. I suppose that is one step too far for the present scheme to address. The long time it took to get going was a problem. There was a lot of confusion. For a long time people have been confused between what is repayment and what is reparation. We had the two names for a start. I can talk as an insider because I understand why they agonised over privacy, tax and Centrelink. And all these other things had to be agonised over. I think they have put in some very good processes. I know that the panel wants to go for an extension of time. I know the panel wanted to be here. I think there was a miscommunication in the government.

CHAIR—We will seek to address that problem.

Ms Fitzpatrick—We know that there are a lot of descendants waiting in the wings, and there are probably another 50 direct claimants to get through the scheme before the descendants can start. They will have to extend. It is inevitable.

Senator BARTLETT—May I ask about the descendants. Dissatisfaction with Queensland about anybody who has passed away has come through very strongly. You miss out. There is no acknowledgment at all. I think some of the stories we have in the appendix from *Koori Mail* articles about people using their payments for headstones for their parents or for funerals and the like are very telling. To be a bit of a devil's advocate or even just to explore the issue, I know that there is some dissatisfaction in Indigenous communities about native title having ended up pulling families apart over who is entitled to what. Is that just something that you have accepted as a possibility, and do you have systems in place to minimise that?

I know it has happened in Queensland as well that, when people get access to records, they discover siblings they did not know anything about: unknown children, illegitimate births, parents having been raped, and all those sorts of things they knew nothing about. I suggest we should protect people from those things. How much of a factor is that? Does that need to be considered so that we just do not blunder in with all the good intent and stir up a lot of Pandora's boxes?

Ms Fitzpatrick—I think what you are saying is very relevant. There is a bit of anxiety that the secrets, I suppose you might want to call them, or the unknown truths in those records—or the unknown lies—are going to affect families. We are on the road, in New South Wales, to informing these other third parties who might assist with descendant claims, and anybody else associated with supporting descendants, that you must forewarn these families. They will find things, and there are already cases where things have slipped through and they needed to be forewarned.

There was a whole discussion about the law of inheritance in the establishment of the panel, and I think this is why the descendant claim form has taken some time to resolve. There are a whole lot of things about establishing a process for the descendant claims that has taken a long time to work through. The guidelines have come and gone from the website a couple of times in the last year for the descendants. I expect they are trying to do the best they can with a very difficult process. Most people would say to me that the old people must be paid first, and then in a family people should be treated equally—but families are families. It will be difficult. The other thing is supporting those families through the same process. There is no earmarked funding to support those families. I am not sure how community legal centres will be resourced to do that, but I think it will be in their bailiwick to do that.

Mr Highland—In our submission we talk about the key factors that we think should be a part of a scheme, and one of them is appropriate case management counselling support for the very factors that you talked

about—people finding out some very disturbing things about their family history when they access the records.

Senator BARTLETT—Certainly there are families in the wider community that can have ugly arguments about inheritances. Nobody argues we should, therefore, stop people getting inheritances just to avoid the danger, I suppose.

CHAIR—The order of succession would not operate very well if we did.

Senator BARTLETT—Could I ask just about the nation as a whole. You have actually already made the point that we do not know how much we do not know in some of these other states. Are there any things that you can point us to—submissions here or other evidence—that you think is sufficient to justify moving this up to a national level, a national inquiry, and as a part of that, how much movement across states was there in the past? I presume there was plenty.

Mr Highland—Ros Kidd indicates that there was some movement between different states, and we have got a section in our submission about that. As I said in the opening remarks, a submission that Charmaine Smith has put together on behalf of her own family in South Australia, is really valuable and I would commend that to the committee. I think there was a submission from the Western Australian Aboriginal Legal Service which talks about records that are potentially available in that state that have not been accessed.

The work of Anna Haebich in Western Australia indicates that it is an issue in that state. The work of Thalia Anthony in the Northern Territory indicates that it is an issue both in the Territory and also in the Kimberley. There are moves afoot in Victoria. There is a stolen wages working group established in Victoria, and there are moves afoot by that group to urge the Victorian government to investigate this issue there. It is not as far advanced because the research has not been done to the extent that it has been in Queensland and New South Wales, but in all of those states, it would seem to us, there is enough evidence to indicate that this practice operated there.

Senator BARTLETT—A lot of submissions, yours included, have recommended some sort of HREOC, and you referred to the stolen generations inquiry, the *Bringing them home* report. This is some of ANTaR's core business in that broader area of reconciliation. The *Bringing them home* report is politically controversial in part, as you all know, and I would not be so naive to suggest you could have an inquiry into this and it would remain completely non-political, non-partisan and non-contentious. But in terms of a total assessment of the pluses and minuses, some people argue that the *Bringing them home* report has caused a lot more hurt and anguish through responses to it—as much as what was in it. I am just being a devil's advocate, I suppose.

If we are thinking about this possible recommendation, would you think, despite all the contention and division that has in part come from the *Bringing them home* report, that it was still on balance a positive for reconciliation—however you want to define it? And is there any way, if HREOC were to go down a similar path with this, to minimise the potential for it to get caught up in history wars or whatever? Or is that just an inevitable risk you have to take?

Mr Highland—I think that we have to operate on the basis of sound research, and in many parts of Australia we still do not have that. That is why it is important. People have talked about a national forum. That may be one part of the response, but it should not excuse governments from actually acting. People link stolen wages to stolen generations for the obvious reason that it is in many cases the same people that we are talking about, but the policy response is a bit different. We cannot go back and prevent the horrible things such as people being stolen from their parents and never knowing their parents and their siblings, or the abuse that they suffered in institutional care. Therefore, clearly there need to be reparations, there needs to be compensation and there needs to be an understanding of those things.

In terms of stolen wages, at least one element of the solution is a lot simpler. People worked and they were not paid. The money was taken from them. There is a relatively simple remedy there and it is simply paying people what they are owed. For a lot of people, that is what they want. I am not suggesting that that should be the only thing, because clearly there is exploitation in the workplace and there may be issues relating to compensation, greater recognition and those sorts of things. But I would be very concerned if people thought that a national inquiry or a national forum was the end of the matter. In fact, there are some simple things that could be done right now that would ease a lot of the suffering of indigenous people, and that is simply paying them their legitimate entitlements. We do not have to wait for a national inquiry or a national forum to do that.

Ms Fitzpatrick—Most people say to you: 'Why do I have to ask? Why don't you just pay me back? Why do you want to put me through all that pain again?'

Senator BARTLETT—That is another aspect to an inquiry. People say, 'I have already told my story; I have got to tell it again.'

Ms Fitzpatrick—But then you cannot have reconciliation without truth, if you are going to use the word reconciliation with any kind of authenticity. So you are in a bit of a bind there.

CHAIR—It is an interesting note on which to conclude. Mr Highland, Ms Howes and Ms Fitzpatrick, thank you very much for appearing today and for your patience with the committee's dynamic timetable. Having your comprehensive submission is very helpful to us, as is having the benefit of your experience in both Queensland and New South Wales, Ms Fitzpatrick and Ms Howes. If there are issues the committee wishes to pursue with you, we may take those up on notice in due course and, as I said, the committee will be considering how to proceed from here. Thank you very much.

Mr Highland—Thank you for the opportunity.

CHAIR—May I thank all of the witnesses who appeared before the committee today and indicate that the committee will make public in due course its proposals for further work on this particular inquiry. I thank my secretariat staff, our sound and vision support who have been with us this week and my colleagues. I declare this meeting of the Legal and Constitutional Affairs Committee adjourned.

Committee adjourned at 1.30 pm