



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Indigenous workers whose paid labour was controlled by government

TUESDAY, 28 NOVEMBER 2006

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

Tuesday, 28 November 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 Crossin, Bartlett, Brandis, Moore, Payne, Siewert 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.

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Committee met at 3.38 pm

CHAIR (Senator Payne)—Good afternoon, ladies and gentlemen. Welcome to this hearing of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into Indigenous workers whose paid labour was controlled by government or, as it has come to be known, the stolen wages inquiry. The inquiry was referred to the committee by the Senate on 13 June 2006 for report by 7 December 2006.

The inquiry will consider, amongst other things, the approximate number of Indigenous workers in each state and territory whose paid labour was controlled by government, the measures taken to safeguard Indigenous workers from abuses, what trust funds were established from Indigenous earnings entitlements and enterprise and commitments by state and territory governments to quantify wages, savings and entitlements missing or misappropriated under official management of Indigenous moneys.

The committee has received 124 submissions for this inquiry. All 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 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 an answer, a witness may request that the answer be given in camera. Such request may of course be made at any other time. At the end of giving evidence, I ask that witnesses remain behind for a few moments in case the Hansard staff need to clarify any terms or references.

This committee is convening during the meeting of the Senate and, as such, we are occasionally required to attend votes and quorums in the Senate chamber during these proceedings. Serendipitously, I have an example of that for you right now, so please excuse us for a moment while we attend this division. We will resume as soon as we can.

Proceedings suspended from 3.41 pm to 4.15 pm

PETERS, Miss Dorothy Betsy, Private capacity**WRIGHT, Mr Joel, Indigenous Officer (Federal), National Tertiary Education Industry Union; and Member, Victorian Stolen Wages Working Group**

Evidence from Miss Peters was taken via teleconference—

CHAIR—Miss Peters, I apologise very much that we have been delayed in coming to you and that we have left poor Mr Wright sitting here for half an hour while the Senate was voting on a number of motions. My apologies to both of you in regard to that. I welcome Miss Dot Peters, who is appearing by teleconference, and Mr Joel Wright from Wampan Wages: Victorian Stolen Wages Working Group. Do you have any comments to make on the capacity in which you appear?

Miss Peters—I am an elder of the Healesville community. My mother was born on the Coranderrk Reserve here at Healesville and my father was born on the Cummeragunja Reserve.

CHAIR—Wampan Wages has lodged a submission with the committee, which we have numbered 84. Do you need to make any amendments or alterations to that submission?

Mr Wright—No. We would like to leave that as it stands.

CHAIR—Thank you very much. Miss Peters, I understand there is some material you would like to share with the committee in relation to your own experience and perhaps that of your family.

Miss Peters—Yes.

CHAIR—I will ask you to do that, and we will listen to that without interrupting you with questions and so on, and then we will go to Mr Wright and move on from there.

Miss Peters—Thank you. My dad was born on the Cummeragunja Reserve in 1903. As teenagers, they were encouraged to leave the reserves. He never got paid wages for whatever he did there. Their payment was food et cetera and, if they did anything wrong, that was limited too. My dad came to Healesville, met my mother and they married. My mum was born, as I said, on Coranderrk Reserve. As a young girl, she worked in the manager's residence. I do not know how many years she worked there, but I know that she did not get paid. She certainly learned how to clean a house.

Mum and dad married and they had five children. We all lived in Healesville. I have lived here for 66 years. In the Second World War my dad joined the Army and fought in the Middle East with the 2nd/2nd Pioneers. He was taken prisoner on his way home and died a prisoner of war on the Burma Railway. My brother Harry, who was 16 at the time, put his age up, like a lot of the young ones did, and went and fought in New Guinea. When he returned home from the war, he got a pension. I think my mum must have got a pension, because otherwise she would not have been able to rear four kids. I know that when we got word that Dad had died she owed

money to tradespeople in town and they wiped that debt, which was rather good for us. We seemed to move house a lot when we were young, and I realised as I got older it was because of money. Mum and Dad must have had trouble paying the rent.

Coranderrk itself was sold in 1923 and broken up, and it was supposed to be for soldiers' settlement. My brother never got anything in that direction, and I do not think I know of any Aboriginal person that got anything from that soldier settlement scheme. That is about it for me at this stage.

CHAIR—Thank you very much, Miss Peters. That is very helpful for the committee, and we appreciate you giving us that family and personal information. I will now ask Mr Wright if he would like to make a statement, and then we will go to questions.

Mr Wright—Thank you. Firstly, I would like to acknowledge the Ngunnawal people in this country where we meet today and pay my respects to their ancestors and the elders in their struggle for recognition. I am here today reporting to the committee in two capacities. I would like to address the issues in my capacity as a member of the Wampan Wages Working Group in Victoria and provide evidence of some of the cursory research that we have done relative to the issue of stolen wages, particularly the experiences in Victoria.

If I could provide a snapshot of stolen wages in Victoria from 1839 to 1957, it clearly demonstrates the existence of trusts that were operated under the sole control of the state in precisely the same circumstances as have since been revealed in Queensland and New South Wales. For example, the Board for the Protection of Aborigines was established in 1869 and prescribed the terms of employment contracts entered into by Aboriginal people. The board had the power to modify contracts to direct money to a local guardian or other specified persons.

This process continued for 88 years until 1957. From 1869, moneys received from the sale of goods produced on reserves from Aboriginal labour were collected and distributed by the board. In 1890 one-half of the wages of child apprentices was to be paid to the board to be held for the child's credit in a savings account and paid to such child at the end of their service. From 1931, the board modified employment contracts to keep moneys in a trust fund set up in the name of the Aboriginal person involved. In addition, a separate trust fund—the Aborigines Board Produce Fund—was established in Treasury in 1931 to collect moneys received from the sale of goods produced on reserves.

In 1957 the Board for the Protection of Aborigines and the Aborigines Board Produce Fund were dissolved and replaced by the Aboriginal Welfare Board and the Aboriginal Welfare Fund. From 1957, employment conditions prescribed by the board were subject to industrial awards and determination, finally. The Aboriginal Welfare Board and the Aboriginal Welfare Fund were abolished in 1967 and were replaced by the Ministry for Aboriginal Affairs and the Aboriginal affairs fund. From 1974, moneys contributed to the fund by the Commonwealth were returned and all other credit in the Aboriginal affairs fund was paid back into consolidated revenue.

This clearly indicates the existence of trusts in Victoria, similar to those that were established in Queensland and New South Wales, and the management of those particular trusts in relation to the payment of moneys due to individuals is questioned in the context of further evidence that we have been able to uncover. For example, a select committee found that in 1845 most

Aboriginal workers were paid only rations, whilst many resented not being paid cash. In 1852 groups of Aborigines often worked at weeding and reaping acreage and were paid around £2 each, plus rations, tobacco and clothing, for two months work while non-Aboriginal workers were paid 10s to 15s a week and went on strike successfully for this to be increased to 25s per week. In addition, Aboriginal workers on an Aboriginal reserve in Victoria, after one year of striking for a cash wage instead of rations, were paid about one-third of the white wage.

With respect to further evidence demonstrating that there may have been some inappropriate activities in terms of the operation of these trusts, I can refer you to the submission tabled by the Victorian Aboriginal Legal Service Cooperative Ltd where they provide some anecdotal evidence that, from between the 1900s to the 1980s, there were a number of incidents which raised questions about the operation of that trust. For example, a young man placed in an institution in the Bendigo region never received what he was told was his pocket money—that is, child endowment. A young male went to war and upon returning home did not receive any land. This is the issue that goes to Auntie Dot Peters's story. There are numerous issues that are now starting to emerge through further research that has been conducted by the Wampan Wages Working Group.

Just in relation to the campaign around stolen wages in Victoria, I would like to bring to the Senate's attention that it is in its very early stages and that, with respect to establishing a whole range of anecdotal evidence that will obviously come from the local community's experiences, relative to families' experiences under these particular regimes, we are just in the process of establishing the formal research into this area. Obviously, given the time frame that these sorts of practices had been operating, it is quite an onerous task for us to be able to fully investigate the financial impacts of the practice of stolen wages on Indigenous communities across the board. It is one of the issues that we have raised as an area of concern in terms of this inquiry and the time frame afforded submissions to be compiled relative to its terms of reference.

With respect to the community's response to what has emerged as clear evidence that the Victoria government was also involved in the practice, we have established the Wampan Wages Working Group, which is a voluntary group. It is not formally resourced in any way, shape or form as yet and we are continuing to negotiate with a whole range of community supporters with respect to completing the research to be able to formally lodge the issue with the state government in terms of getting a response to stolen wages in Victoria.

The second aspect of my evidence here today relates to the NTEU's submission to the stolen wages inquiry. I am sure the Senate is aware that the National Tertiary Education Union represents professional interests of around 27,000 academic and general staff employed in the Australian higher education institutions, including many Indigenous staff. As a result, the NTEU primarily through its Indigenous Tertiary Education Policy Committee has committed to the issue of stolen wages, supporting stolen wages, in the context that we have tabled a substantive submission to the inquiry which is looking at what would be the federal implications of stolen wages.

Given the research studies emerging from Victoria, coupled with the cases that have since occurred in New South Wales and Queensland and from some of the evidence that has been provided from other states and territories in their submissions to this inquiry, stolen wages is

clearly emerging as a national issue. From an NTEU perspective, we believe this requires a Commonwealth response. This is consistent with the position put forward by Dr Rosalind Kidd:

In cancelling the rights of hundreds of thousands of people, governments around Australia invoked a legal duty of care, a duty which we know they massively failed to honour. Quantifying the failure is difficult ... What can be quantified to some extent is the financial penalty.

Clearly, Dr Rosalind Kidd is talking about the Commonwealth's failure to uphold its fiduciary obligations to Indigenous people relative to the operation of these particular regimes on a state by state basis. Whilst we do recognise the states are obviously extremely complicit in the operation of the schemes, we could argue that, certainly post-Federation, there were some provisions that required the Commonwealth to diligently monitor states' activities with regard to ensuring that individuals' rights were not disadvantaged through the operations of state sanctioned legislation that was inconsistent with what the Commonwealth Constitution does prescribe.

With respect to that particular element, the NTEU firmly believes that there is a Commonwealth response that is required. In addition, and in the context of the current federal government's Indigenous socioeconomic welfare policy principles being based on mutual obligation and shared responsibility agreements, these particular policies, the NTEU believes, are established and pursued without a proper and full recognition of the historical context and impact on Indigenous intergenerational poverty and requires some redress within that historical context.

With respect to the submissions that have had some involvement from myself, in terms of the NTEU federal submission and the state based submission, both submissions recognise that the implications of the historical practice of stolen wages needs to be recognised in a contemporary Commonwealth context relative to federal government's socioeconomic welfare policies. That covers most of the issues that I wanted to raise here today and broadens some of the context in relation to the impact of stolen wages nationally.

The NTEU's submission is recognising, from the submissions that have been tabled to the inquiry, that the incidence of stolen wages is a national issue and we believe it requires a response somewhere in the magnitude that was afforded the black deaths in custody—maybe a royal commission—or even to the degree where we had quite a substantive national inquiry into stolen generations. We believe that unless there are provisions to deal with the issue in that magnitude, then we are not going to properly quantify the extent of stolen wages nationally and certainly its historical and, more importantly, contemporary financial impacts today.

Miss Peters—True.

CHAIR—Thank you very much for those submissions on behalf of both of those organisations. I am going to have to ask the committee to assist me in this process of making the next 56 minutes work effectively with three sets of witnesses to deal with in that time. We will go to questions now. Senator Moore?

Senator MOORE—Thank you, Miss Peters and Mr Wright. I have one question for both of you, because I think you have stated in your submission and your evidence the core of what you

are wanting to tell us. I want to clarify for the record that it seems that Victoria has not gone as far as either New South Wales or Queensland in a discussion about what they are going to do about this issue. I am sorry, I missed Western Australia, so I do not know what is happening there. Can you clarify for the record, both of you, the state of discussion with the Victorian government and what if any action has been agreed to or put in process for what is going to be that state's response to the issue?

Miss Peters—Joel, I might leave this with you.

Mr Wright—That is all right.

Miss Peters—This is actually the first time that I have been involved in something like this. I have heard about it before but never actually spoken to anyone about this issue.

Senator MOORE—That is good, Miss Peters. That is now on the record. Mr Wright?

Mr Wright—Sure. I first raised this issue with the Victorian Aboriginal Affairs Policy Unit of the ALP back in 2004. At that meeting, the state Minister for Aboriginal Affairs, the Hon. Gavin Jennings, was present and basically responded to the cursory research that we provided at that meeting—that certainly the ALP in Victoria would be prepared to consider supporting some further research into the extent of stolen wages and the impact on the communities. We have tabled a formal research proposal to the Victorian ALP with respect to conducting that research, and I suspect that the recent election has delayed a response in regard to supporting that project. Notwithstanding that, since then we have been able to get indications from a whole range of community support groups who would certainly be prepared to resource such research, and particularly from a number of legal firms in terms of preparing a bona fide legal claim in the event that there was evidence to support such a claim. In that context, it is certainly at a very early stage.

The second context is the awareness amongst the broader Victorian Indigenous community about stolen wages and what might constitute stolen wages; it is very limited. I remember having some discussions at, for example, some cultural heritage group meetings at which the issue was raised and some questions were asked about the activities on Aboriginal reserves. The legislation basically was that, if you were not prepared to perform unpaid labour on the reserves, then you were not allowed to stay, and in Victoria there are some personal experiences starting to emerge of those scenarios, and they will be collected to support the overall claim once it has been established.

Miss Peters—I would like to say that what happened then is still affecting a lot of Aboriginal people today in all areas in health and particularly in housing. The stats for Aboriginal owned houses are very minimal compared to migrants et cetera. So what happened then is still affecting a lot of people today.

Senator BRANDIS—Mr Wright, my question is directed to you. You said in your opening statement that trusts have been established and, if I heard you correctly, you said that, in the end, moneys standing to the credit of those trusts—in other words, trust funds—had been paid into consolidated revenue. Where do we look to find the terms of those trusts? Are they trusts

established by acts of parliament or are they trusts established by administrative orders? I am talking about the Victorian ones because they are the ones that we are talking about.

Mr Wright—Yes. With regard to the Victorian trusts, the Victorian Public Record Office has gone through its records, its archives, and, through a project which was done about six years ago called *My Heart is Breaking*, looked at all of the administrative records relating to the Board for Protection of Aborigines and certainly a whole range of correspondence and administrative records in relation to Aboriginal people on reserves. As part of that project, the Public Record Office of Victoria has established a specific Indigenous archive containing all of those records, which include examples of wages paid to people for particular work performed on reserves. That represents a huge body of documentation that we are identifying primarily as one of the sources that needs to be researched and investigated with respect to the terms of reference for the stolen wages.

Senator BRANDIS—Do you say that we look to somewhere in the Victorian public record archives for the terms of the trusts?

Mr Wright—Certainly there is an indication that there is a bulk of evidence that exists there but we are also of the understanding that there are elements of information and evidence that exist in the National Archives which, within our research terms of reference, we have identified as one of the areas that we would want to investigate.

Senator BRANDIS—It is all very well to say that you want to investigate something but we are bound to make some recommendations to the parliament and I do not think that we can make recommendations on the basis that, ‘Well, something needs to be investigated.’ We need to know—and you are our principal witness in relation to the Victorian aspect of things—what these trusts were. As I said in the question, we need to know what the terms of them were. Are you able to point me to anything in your submission—perhaps you would care to take the question on notice—as to where we can find the terms of these alleged trusts and, in particular, whether you say that they are to be found under an act of parliament or regulations made under an act of parliament?

Mr Wright—I would like to correct you on one point. They are not alleged: they are actually recorded as official entities within the Victorian state government records.

Senator BRANDIS—If I wanted to read a document that contained the terms of these trusts, or one of these trusts, where would I find it?

Mr Wright—You would find it in the body of documentation within the Public Record Office of Victoria.

Senator BRANDIS—Have you seen such a document yourself; a document described as a trust or something to that effect?

Mr Wright—With respect to me being personally involved in conducting the research into whether or not those documents still exist, I would like to point out that there is clear evidence in other states’ experiences of the stolen wages issues, and particularly Indigenous people’s pursuit of some sort of response, that state governments—

Senator BRANDIS—I do not mean to interrupt you, but I want to make my point.

Mr Wright—State governments—

Senator BRANDIS—We are short of time and I want to cut to the chase here.

CHAIR—Please let Mr Wright finish and then we will come back to you, Senator Brandis.

Senator BRANDIS—I want to cut to the chase and we are short of time. I do not want a political speech. I am looking for information. Can you tell me where we find the relevant documents in relation to Victoria? If you cannot tell us, can you direct us to a secondary source that can tell us?

Mr Wright—We are aware that state governments have in the past destroyed these records, and part of our research will be to ascertain whether or not that is the case.

Senator BRANDIS—So you do not know?

Miss Peters—Can I make a suggestion?

Mr Wright—Precisely. That is what I have stated from the beginning.

CHAIR—I think that Mr Wright has answered to the best of his information and ability. Miss Peters, did you want to say something?

Miss Peters—Could I make a suggestion? The minister is asking for proper evidence, which I can understand. Are we allowed any time to look into that?

CHAIR—Senator Brandis did say that he would be happy for Mr Wright to take the specific question on notice.

Senator BRANDIS—Or, indeed, you, Miss Peters: whoever can tell us. I am just looking for information.

Miss Peters—Yes, I understand that.

CHAIR—The only problem is that we have to report quite quickly. I might ask the secretariat to liaise with both you and Mr Wright on that question.

Miss Peters—Good.

Senator BRANDIS—I think I have gone as far as I can with you in relation to where we find the terms. I think you said in your oral submission that it was in 1967 that the trust funds were paid into consolidated revenue. Once again, how do you know that? To what source do you point to verify that statement?

Mr Wright—I have stated that from 1974 moneys contributed to the fund by the Commonwealth were returned and all other credit in the Aboriginal affairs fund was paid back into consolidated revenue.

Senator BRANDIS—How do you know that? What is the source of that?

Mr Wright—It is basically an extract from the public records relative to the transition of the Aboriginal trusts into the Aboriginal affairs fund.

Senator BRANDIS—Which documents? Are the documents that you say prove that this happened referred to in your submission or in some other submission on which you will rely?

Mr Wright—Certainly, with respect to our submission, it clearly identifies that that is what occurred.

Senator BRANDIS—Just take me to the paragraph of your submission which you say supports that claim, please.

Mr Wright—Paragraph 32.

CHAIR—I think what Senator Brandis is seeking, Mr Wright, is if you have any material which you can give the committee—not immediately this afternoon—in support of that that shows us that the moneys which were in the Aboriginal affairs fund were then paid to the consolidated fund. Have you got anything in your resources that you can come back to us with? Is that acceptable, Senator Brandis?

Senator BRANDIS—Yes.

Mr Wright—Certainly. I would take that one on notice.

Senator BRANDIS—I do not want to be unhelpful—

Mr Wright—I understand, yes.

Senator BRANDIS—but, for example, in Queensland the witnesses were able actually to provide us with chapter and verse to show how this happened. I found it extremely persuasive. No parliamentary committee is going to be able to make recommendations on the basis of assertions that are not supported by evidence.

CHAIR—So anything you can assist us with, Mr Wright, we would be grateful to receive.

Mr Wright—By all means. I can take it on notice.

CHAIR—Either from Wampan Wages or from the NTEU.

Senator SIEWERT—Has anybody got access to the archives? It is just that we have heard in other states that access to a lot of these records is restricted. Is that the case in Victoria?

Mr Wright—We do have access to those archives simply because, as I stated before, collation of those records had occurred as a result of a previous project to identify a whole range of historical issues relative to Indigenous people. So, yes, the short answer is that we are able to access certainly that information.

CHAIR—Thank you very much. I know this has been a very disruptive process, Mr Wright and Miss Peters. I am terribly sorry about that, but in the environment of trying to hold a hearing during the sitting of the Senate it is very difficult. I was aware of your organisation's desire in particular for the committee to hear evidence in relation to Victoria, Mr Wright, and we did our best to facilitate that in difficult circumstances, with a tabling date of 7 December.

Mr Wright—I understand.

CHAIR—I know that you have made a significant effort to be here. We are very grateful for that. And, Miss Peters, we are very grateful for your personal story and the information about your family. Thank you so much for your help today.

Miss Peters—Thank you very much for letting me be a part of this. It makes me feel good that things are happening.

CHAIR—Thank you very much. We will make sure you receive a copy of our report.

Miss Peters—Thank you. A happy Christmas to you all!

CHAIR—Thank you, Miss Peters, and to you too. Thanks, Mr Wright.

[4.49 pm]

McGRATH, Professor Ann Margaret, Director, Australian Centre for Indigenous History, Research School of Social Sciences, Australian National University

CHAIR—I welcome Professor McGrath. Professor, you would have heard me say that the committee is now suffering under a difficult time frame because of interruptions in our hearing, so we will move to discussing your issues.

Prof. McGrath—I believe I have been invited to come and speak because I put in a submission. My submission was based on a submission I was asked to do by the now defunct ATSI, which was about the reparation scheme proposal in New South Wales. However, as a historian of Indigenous history, I hope I can help you in some wider ways. I certainly would not have an encyclopaedic knowledge of this very complex system, which of course varied from state to state, over quite a long period of time, under many different government departments and many different Aboriginal acts and policies. However, I hope I can be of some help, and I will make some brief points of introduction that I have just prepared.

I think this committee has a great potential to do things on a national basis. It has been a great shame that so far it has been a state by state approach, because a lot of the issues confronting the states are common issues that could have been addressed in a more coherent way. The title of the inquiry is interesting because of the history of Australia. The term ‘stolen land’ has been a political issue for Aboriginal people, the ‘stolen children’, and now the ‘stolen wages’, and I think that there is also an irony in that because of the number of Aboriginal people in gaols, often for petty theft. I think Aboriginal people find that term ‘stolen’ rather interesting, given their high prison rates—sometimes, as we hear, in the past, for stealing pencils and things like that. There are fascinating resonances also with our convict past which, as an historian, I can see.

I do think history is very important to our identity and how we see ourselves, so I do not think it is only a laughing matter, and, given the government’s discussion of the national history curriculum, this is also an issue of relevance because most Australians know virtually nothing about the economic history of Aboriginal Australians since contact. In fact, they do not know the history pre-contact either, going back 60,000 years. This has often led to negative stereotyping of Aboriginal people.

I edited a book some years back called *Aboriginal Workers* and we had quite a few interesting people at this particular launch, which was at the State Library of New South Wales. A lot of the Aboriginal people who were there said they were so excited because nobody knew they had a history of being workers, and I think that knowledge of the hard work that Aboriginal people did throughout post-contact Australian history is very poorly understood by the general public.

I also wrote a book called *Born in the Cattle: Aborigines in Cattle Country*, which was about Aboriginal labour in the Northern Territory. They were 95 per cent of the workforce. They played an incredibly important role in the cattle industry and in the pioneering of our outback throughout Northern Australia; and in fact in the south-east, too, they were very important in the sheep and cattle industry and so forth.

I know you do not have too much time, so I will try and keep this brief, but I do think that your final term of reference about having a national forum will create some really exciting opportunities for Indigenous people to have an authorised space in which to be heard about their histories and what they have experienced. I would also like to see a lot of research done on the economic history of Aboriginal Australians. This has been an area of real neglect by the history profession.

I certainly believe that the situation we see today amongst Aboriginal people in terms of inequality and unemployment is partly a product of cross-generational economic disadvantage and that this history that you are beginning to uncover in this inquiry has contributed a lot to that. I have looked at archives around Australia, and in the Northern Territory I saw specific cases in the 1920s under the Chief Protector of Aborigines where the funds that were earned by Aboriginal people and put into trust accounts were put into consolidated revenue. I do not have the explicit references with me but there is probably a reference in my book *Born in the Cattle* to some of that, because Dr Cook, the Chief Protector, was endlessly asking to have these funds released for Christmas cheer and various things, to be spent on the children that he had a duty to protect, who were in the homes around Darwin, but he was denied that right to spend it on the children, and on numerous occasions I have read that it went into the consolidated revenue in the Northern Territory, which would be Commonwealth because this is the 1920s.

Also, I saw in the Northern Territory cases where Aboriginal men, who were very highly regarded workers, asked to have their trust funds released to buy a motor car. The Chief Protector had the choice and he said 'No', this was not considered a suitable thing for an Aboriginal man to own. There was also a man who wanted a boat. So these prestigious items—by high-earning people—were prohibited. There is an interesting comparison. I was thinking in terms of the Chinese, because the Chinese in Darwin were kept out of the public service and all those government jobs but they were able to set up their own businesses and become money lenders and shop owners and so forth, and Aboriginal people were not allowed to buy land and set up their own businesses because they were not allowed to have the capital released.

So I am also familiar with the fact that Aboriginal wage earners did not get their trust funds in many cases in Queensland. You will see that in reconciling the historical accounts, one of the issues I wanted to point out in this report I wrote was the very patchy nature of the records in New South Wales. Even since this was written in 2004 they have actually found more of the records, so that is a hope that perhaps some of them will pop up, but so many are missing. A lot of people have tried to do research in this area, and those who have looked for individual family histories have often found not a single reference to their own family story of wage earning.

However, there are many cases where Aboriginal people have also been very upset by what they have found. It does reveal that this was sometimes quite a maligned system, even though it might have started out with benevolent ideas. There were domestic servants that I read about who asked for a good dress to wear somewhere and they were denied the right to have that. They even had to explain how cold it was in order to get a jumper and sometimes they were not given that jumper.

There is plenty of evidence in New South Wales but not for specific individuals to be readily traced, so I was quite concerned when I heard that the New South Wales scheme was going to be totally based on evidence. My argument here is that that does introduce a bit of a lottery. If we

are talking about inequality there is this problem that if you are going to only give people compensation because there is historic evidence about them, you are unfortunately introducing another inequality just because of the random nature of the records that were left and whether those records can actually be found as proof. I know in Queensland they have also used oral history to complement this.

I will just get back to that first point. I think that it is a symbolic issue. I think that Aboriginal people have worked very hard and they have been taught that working hard does not get you anywhere financially. They usually have not been able to buy their own houses because they have so often had to live on government owned reserves. They have not even owned their own furniture. I think it would be very good to understand this economic history of Aborigines better because the average working-class person like my grandfather, for example, was able to buy a house on a government subsidised scheme. Consequently his family get to inherit real estate which often goes up in value, and Aboriginals have been denied both that and savings opportunities by schemes all around Australia.

I think it would be really important if there was more research done to understand the long-term impact of this. I think you need economists working with historians; you need economic experts, accountancy experts and others to get together to really understand longitudinal impacts of this economic history. But I think it is about history, so I think you really need historical expertise.

Senator SIEWERT—Not only am I keen to know about what happened with wages of those people that came under the Commonwealth jurisdiction but also how much the Commonwealth would have known about what was happening in the states, particularly as it related to the federal government in federally provided entitlements such as child endowment. Have you come across any information as it relates to any of the states? I appreciate you know more about New South Wales, but is there any information available or have you seen any on that?

Prof. McGrath—I did try to look at that in the National Archives here in Canberra. It was quite difficult to get to the records because a lot of them apparently require some sort of conservation so they are not actually available to the public and, because a lot of them contain personal names, they are also not open. It would take several weeks and you would have to ask for each individual file. Certainly, in terms of getting the facts and getting the information, it would be very valuable to researchers to have more open access to these records, of course taking into account the privacy that is required. There has been a lot of blocking and gatekeeping right around Australia, both at the state and federal levels. That is one of the reasons Australians do not have this knowledge. PhD students cannot get to the sources. Historians do not do this research because they cannot get the evidence. It is blocked.

Senator SIEWERT—What about records that do not relate to specific people? I understand there was a review of the situation in Western Australia in 1965. I am presuming that review, at that time, may have been public if it did not refer to specific records. Are you aware of that review or any other reviews the Commonwealth may have done?

Prof. McGrath—I am aware of the reviews in New South Wales; that in the 1930s there was great outrage. I am not aware of 1965, but Anna Haebich, who I noticed also put in a submission, did detail those inquiries in Western Australia. She is very knowledgeable on that topic.

Senator SIEWERT—At the moment they are having trouble in Western Australia actually getting access to that review, I understand, so I was just wondering if you had come across it at the Commonwealth level.

Prof. McGrath—No, I am sorry. I cannot help you there.

Senator BRANDIS—Professor McGrath, I appreciate that you have only looked closely at this in relation to New South Wales, but I gather from your opening remarks that you have a level of familiarity with the position in other states and the Northern Territory as well. Can I just say by way of preface to what I am about to ask you that my approach to this issue is much narrower than yours. Without any disrespect to your broader perspectives as a historian, I think that we and the people against whom injustices were perpetrated would be on a much surer footing in making recommendations if we could actually establish some facts. I accept entirely what you say—that the documents might just be gone—and that presents problems of its own.

But it does seem to me—and this is where I am looking for your assistance—that ideally we would like to know three things. We would like to know what were the trusts or other arrangements—but the word that is being used is ‘trusts’—on which these funds were held because that will tell us what the entitlements were. We would like to know—and this is probably hardest—where we locate in archival material held by the state and territory governments payments into those funds against individual names. We have some evidence of that in the Queensland hearings. But that is the biggest hurdle of the lot, I suspect. Thirdly, we would like to know what happened to those funds. We heard the claim made by Mr Wright, who did not seem to have much direct knowledge of these matters, that they were paid into consolidated revenue, and that should be a discoverable act of a government, recordable either in the records of the government or perhaps effected by an act of parliament.

Now, without expecting you to have detailed knowledge of any of those three matters, I wonder if you could direct us to where we would expect to find—and take this on notice or supplement it by extra remarks on notice, if you need to—the best evidence of those three matters. I suspect the trusts were probably established under some act of the state parliaments, but they were trusts established by some administrative arrangement. You may know about that in relation to New South Wales, and it has been gone into in Dr Kidd’s work as well. We need to know about the accounting records, to the extent to which they exist, and we need to know about what happened to the money. To what extent can you assist us in relation to each of those three matters?

Prof. McGrath—In relation to the trusts and the enabling powers of government, I imagine they would have to be in the respective Aboriginal acts. These Aboriginal protection acts were of course published in parliamentary papers. There were regular amendments to these acts.

Senator BRANDIS—We had a very good barrister’s opinion in Queensland which actually traced the legislative history from one act to the next with great method and care, and that is ideally what we would like to see for each state, but we do not have a lot of time.

Prof. McGrath—The government-run missions in New South Wales also had their own sets of regulations.

Senator BRANDIS—They were government regulations?

Prof. McGrath—Yes.

Senator BRANDIS—Were they promulgated by the mission stations or were they just general regulations applying to all mission stations?

Prof. McGrath—They seemed to be individually applied to specific mission stations, but they were prepared by senior bureaucrats and not by the person who had the job. These mission managers were often ex-policemen or ex-Army. They were not highly trained. They were not senior bureaucrats. I think that most of the enabling legislation would be under the Aboriginal acts. They changed their names. They were called welfare acts in the 1940s and the 1950s and they were called protection acts in the 1920s. From state to state it was all quite specific, and they had endless amendments. Every year there would be something or other amended.

Senator BRANDIS—A previous witness, Mr Wright, referred to an archive, which seemed to be a collection of various source documents, as I understood him. Do you know what he meant?

Prof. McGrath—I thought that he meant that he and his interest groups were compiling an archive from the other state-government-run archives. A lot of the state government archives have employed Indigenous research officers, so those people are often quite proactive in enabling others to find material. In the case of the Commonwealth, Ros Fraser compiled a guide to the Commonwealth archives.

Senator BRANDIS—Is that referenced in your paper?

Prof. McGrath—Yes.

Senator BRANDIS—Good.

Prof. McGrath—From that index guide, you could quite readily find the reference to the particular cases where trust fund earnings went back into consolidated revenue. They would not be too hard to find in the Northern Territory and Commonwealth cases. The archival material is kept, of course, in the state repositories and the national repositories around Australia. It does take quite a bit of research, but of course legal researchers and historians are always doing this type of research into history.

Senator BRANDIS—Are they? For example, I know there is a bulletin of Aboriginal law. Would we expect to find within various editions of the bulletin of Aboriginal law detailed treatment of this topic?

Prof. McGrath—No. I actually meant that for specific inquiries, like royal commissions and particular court cases and so forth, lawyers would be doing specific research into legislation. One of the mysteries in New South Wales is: where are the passbooks and where are the bank accounts, because there were a range of different banks involved. I mention these banks on pages 13 and 16 of my submission. There was the Government Savings Bank, which is where the trust funds initially went, there was use of what was called the Rural Bank, which was also set up with government assistance, and then there was the Commonwealth Bank. I would imagine a lot

of those missing passbooks should have been kept by the respective banks, and that would be another place to look. With the state having the fiduciary duty and these being trust accounts, the onus was on the government to keep them well.

Senator BRANDIS—I think that is quite right. If the government is a trustee and there is a reasonably credible claim of a breach of trust by the beneficiaries, then it is really the government's problem to produce the documents. It cannot hide behind its own neglectful archival practices and say, 'You don't have a claim because we lost the documents.'

Prof. McGrath—Individuals did not have their own passbooks and bank accounts.

Senator BRANDIS—The practice in New South Wales was that the passbooks were held by, what, the department or the administrators of the missions, were they?

Prof. McGrath—Yes, or the banks. It would seem such an obvious fact, but it is not clear.

CHAIR—Senator and Professor, we are running very quickly out of time.

Senator BRANDIS—I do not really have any more.

CHAIR—There is a lot in Professor McGrath's submission, and there may be something you would like to provide us on notice, Professor McGrath, when you reflect on Senator Brandis's question.

Prof. McGrath—I would like to, yes.

Senator BRANDIS—I am morally persuaded about this, but I am not going to make any recommendations unless I am sufficiently legally persuaded as well. We cannot make recommendations in the abstract. Even though, of course, there will be missing pieces of the jigsaw puzzle, we cannot operate on nothing. I do not think we could make recommendations on no factual substratum at all. So the more of these pieces of the jigsaw puzzle we are able to locate the more credibly we can make the appropriate recommendations to the parliament.

CHAIR—Thank you, Professor. I again apologise for the disjointed nature of this afternoon's proceedings, due to the activities in the Senate, and the short amount of time we have had, but we thank you very much for your comprehensive submission, which provides the committee with a lot of very helpful information in terms of some of the questions that have been asked. We may come back to you, and if there is any material that you think, on reflection, you can assist with in relation particularly to Senator Brandis's question, that would be very gratefully received.

Prof. McGrath—Thank you very much, and good luck.

[5.13 pm]

CARLILE, Mr Christopher, Acting Branch Manager, Strategic Policy Branch, Department of Families, Community Services and Indigenous Affairs

FIELD, Mr Anthony, Manager, Legal Services, Department of Families, Community Services and Indigenous Affairs

YATES, Mr Bernie, Deputy Secretary, Department of Families, Community Services and Indigenous Affairs

CHAIR—I welcome our next witnesses, Mr Bernie Yates, Mr Anthony Field and Mr Chris Carlile from the Office of Indigenous Policy in the Department of Families, Community Services and Indigenous Affairs. OIPC and FaCSIA have not lodged a submission with the committee, but you have responded to the committee's inquiries and we are grateful for that information. Thank you very much for that, Mr Yates.

Before we begin, I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given a reasonable opportunity to refer questions asked of them to superior officers or to a minister. The resolution only prohibits questions asking for opinions on matters policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

Mr Yates, just to enlighten you if you were not in the building earlier, between 3.30 and four o'clock there were five divisions in the Senate. That is how we have ended up with such a truncated process, so that this afternoon in reality we have an entitlement to sit in the committee until half past five, but we will endeavour to make the most of the time that we have available to us. Do you have an opening statement you would like to make?

Mr Yates—Just briefly because of your time constraints.

CHAIR—Thank you.

Mr Yates—We are happy to appear before the committee. We are keen to assist in whatever way we can in line with our portfolio responsibilities. Of course, we are not in a position to speak or provide information on behalf of other agencies. We have not diverted substantial resources to the general investigation of the issue of wages, savings and entitlements which may have been withheld from Indigenous Australians who came within the Commonwealth jurisdiction, but obviously, following the committee's report, the department will provide any advice requested by government on its findings. We would be happy to address any questions from the committee.

CHAIR—Thank you very much, Mr Yates. In fact, I am advised that, unbeknownst to me, we have a termination time in the Senate’s agreement for us to have this hearing, so that might make life a little easier. Thank you very much for coming today and thank you for communicating with the secretariat during the period we have been pursuing these issues. It would be fair to say that, for my own part at least, what I am trying to get my head around in terms of the Commonwealth’s position is what reasonably we can suggest can be pursued at Commonwealth level in terms of finding information, determining what did happen, what did not happen, where individuals’ money went—I think we know why, by and large—and what records are available and what access would be available to those records. We have heard from a number of historians, not just Professor McGrath, about access difficulties and so on, and your general response to that would be helpful.

Mr Yates—Sure. We are bound as much as anyone to the requirements and regulations that Archives operates under, but clearly we would have access, as departmental officers, to any records which are the responsibility of our department or its predecessors. We have always been ready to investigate any substantive claims that have come to us about these issues where they fall within our responsibilities. In recent years we have not had any, and, where they have occurred in the recent past, where we have sought to go to the substance of the matters they have not been forthcoming.

On that basis, we did not feel it was sustainable to divert substantial resources away from Indigenous business to go spec-hunting across the range of possible sources in that regard. Clearly, the Commonwealth had responsibility for the Territory up until the late seventies, and there may be some basis for looking into that history, but we have not received any claims that warranted us seeking to investigate those particular historical circumstances. On that basis, we have not been able to justify doing a broad investigation, because we did not have a basis to know where to look or what to look for, given the wealth of material that probably sits in archival sources.

CHAIR—What we have noticed in recent hearings is a marked difference in the way states have engaged in this—for example, reparations in Queensland, repayments in New South Wales, not a great deal of progress in Western Australia, and we had the Victorian Stolen Wages Working Group in front of us this afternoon. As we are making recommendations, we obviously have to contemplate all of those differences and then where the Commonwealth fits into the scheme of things. And it is not just about the Territory, of course. It is about the diversion of Commonwealth payments, like endowment, maternity allowances and things like that, which were diverted from individuals, and with what degree of consent or awareness of the Commonwealth is unclear in a number of cases.

Mr Yates—We do not have any substantive evidence around that, Chair, to be able to assist the committee.

CHAIR—You the department?

Mr Yates—Yes, we the department.

Senator CROSSIN—Have you looked, or been asked to look, or asked to research?

Mr Yates—We were asked to identify relevant legislation which enabled certain social security entitlements to be directed to a third party, but, of course, such provisions still exist in the social security legislation. We have identified where they occurred in regard to pensions and maternity allowance and child endowment and the like, but we have not sought to go searching for any particular instances where those provisions may have been used by other parties in ways that are of interest to this committee.

Senator CROSSIN—I understand, I think, where you are coming from. I just thought perhaps FaCSIA might have done a little bit more work than what is currently before us in relation to these matters. In relation to the Northern Territory, when you say you have not had a claim put before you, with all due respect I do not think Indigenous people out there actually know there is a claim to be made. I am not suggesting it is your responsibility to make them aware of that, but when I was out at Kalkaringi a couple of months ago, people out there told me they were paid £5 a month—people on Vestey Station, for example. Ted Egan, the current Administrator of the Northern Territory, can confirm that. His job as a patrol officer was to go out and witness the handing of the £5 a month to workers. The question is: was £5 the amount that they were supposed to get, or was it £7 or £9 or £15? We are trying to find people who might have a recollection of that. When I talk to the old men out there, they say, ‘Well, we got £5 a month. We have no idea if that was right or not.’ Somebody probably needs to ask the question: was that what they were supposed to be getting? The people that have the most time and resources to do that, I suppose, would be FaCSIA, but you would need to allocate resources or a research agent, and so it is a bit of catch-22 situation, I think. Nobody is going to actually put in a claim because I get a feeling nobody out there is aware, particularly in relation to the Territory, that a possible claim exists. Do you know what I am saying?

Mr Yates—It is a bit of a dilemma.

Senator CROSSIN—Yes, it is.

Mr Yates—And part of the purpose of this committee was to seek to identify how to target any further investigations to enable greater light to be shed on the subject.

Senator CROSSIN—But I take it that, in respect to the Northern Territory, you have not done any investigation, given that this inquiry is now happening. Is it possible for a research assistant in your department to be able to look at the 1950 Social Services Act and—say in a five-year period—tell us exactly what was supposed to be given from the Commonwealth to an individual in that time frame, just so that we have an idea of whether we have got an issue or not?

Mr Yates—In terms of individuals—who would be, say, a parent with a child, the child endowment entitlement and so forth—we ought to be able to do that kind of thing, certainly, Senator.

Senator CROSSIN—Which is question 3.

Mr Yates—Question (b)?

CHAIR—Question 3, in relation to the question about what files and records the Commonwealth holds which might be relevant to investigating the issue.

Mr Yates—We would not have those materials pre-existing.

Senator CROSSIN—No, you would not have individual files, maybe. That is another thing you could help us with. Let us take Vestey's Meatworks, and Manbulloo Station is another one. My understanding—and this is something else your researcher could tell us—is that child endowment, or whatever other entitlement under the Social Services Act, was paid to the Chief Protector of Indigenous people, who put it in a trust account. Or was that money paid directly to Vestey's? And, if it were paid directly to Vestey's, what was Vestey's supposed to do with the money that was left over from the £5? All of these are unanswered questions that only you seem to have the answers to, because the Commonwealth controlled the Territory at the time.

Mr Carlile—There are a couple of issues there. One is the terms of the entitlement. That would be set down and that can be answered. But in relation to the fact that there is provision within the legislation to pay that money to a third party, the question that would then arise—once that money is paid to a third party, what benefit did the person who had the initial entitlement receive?—would be a different issue.

Senator CROSSIN—It might be, but your records must surely be able to tell you if you paid that money to Vestey's Meatworks, for example.

Senator MOORE—How much, when and where, and it would all be there.

Mr Carlile—In terms of a payment to a trust fund, that is possible.

Senator MOORE—It is.

Mr Carlile—It is just that, in terms of the actual records at the time, we have had—

CHAIR—You cannot expect the officers to agree with that, on the basis of this discussion.

Senator MOORE—I do apologise. I am just saying that the idea of question 3 was to get beyond, 'It is possible, but we haven't actually looked at it because we haven't had the resources to do it,' which is the answer.

Senator CROSSIN—I am just throwing up some of the dilemmas that I think this inquiry has thrown up, and, with some of the questions I have raised now, even within a five-year period, let alone an 80-year period, there must be some records as I am suggesting. That is all.

CHAIR—Mr Yates, I would observe from your responses that the view of FaCSIA and OIPC is essentially, at this stage—and this is not a criticism, merely an observation—a wait-and-see one in relation to where the committee's evidence takes it in terms of making recommendations on these issues.

Mr Yates—I think, necessarily, Chair, because of the need to target any investigation. We can provide any amount of information about what people's entitlements were and put them against the actual circumstances of any witnesses that the committee has access to. Then, if they were entitled to get £10 and they say they were receiving £5, I suppose that would provide you with

some prima facie indication of something. But we cannot necessarily assist with who paid what government entitlements to which third party.

Senator CROSSIN—I understand that, Mr Yates, from the evidence that we have had and the stories that we have heard. From my point of view, I am trying to decide if we are on the cusp of a stolen generation issue here; if we are bordering on something of that magnitude. When the stolen generation discussion first emanated, you would not have been able to answer whether Mrs X was the daughter of Mrs Y, for example. Do you know what I mean? You would not have known those details then. Some people do not know those details today. That whole inquiry uncovered access to records and services to provide link-up services and so on. If I draw an analogy, somebody at some stage must have said to themselves, ‘Were these children taken away from their parents?’ That must have been a threshold question. For me, in respect of the Northern Territory, I am trying to ask myself the question, ‘If people at Vesty’s Meatworks got £5 a month, was that their full and proper amount of entitlements?’ rather than on an individual basis. I do not know if I am making myself clear here. I am certainly not at a point of trying to argue an individual’s case. I am trying to argue whether a threshold issue exists. That is all.

Mr Yates—We should be able to readily identify what the entitlements for individuals were in a range of circumstances under the relevant social security provisions at any date that the senator may wish us to investigate.

Senator CROSSIN—If people believe that they do have a need to access records, would that be a possibility? There was an agreement and money provided so that people could access archives and libraries for the stolen generation people. We have had instances where we have been to states and territories in this inquiry and state governments are not providing people with the records, or are providing people with the records in some kind of guarded and limited way, and restricted access, which is not good. I am wondering if the Commonwealth has any reservations about that or whether you have not been asked to consider it.

Mr Yates—I cannot speak on behalf of the Commonwealth. I am not privy to the bars that may exist with access to records in the National Archives. I would have thought that individuals or family members may be able to have any constraints waived, but I would have to take that on advice. I do not have a view about whether there is a case for any resources to be made available. That is a policy question.

CHAIR—Which we will pursue. Senator Trood, do you have questions?

Senator TROOD—No.

Senator BRANDIS—I would like to pursue somewhat similar lines of inquiry as Senator Crossin. Can I go back to something a bit more fundamental. Before the Commonwealth had legislative power in relation to Aboriginal persons after 1967, I take it that what the Commonwealth did, in relation to Northern Territory Aborigines, it did as the relevant authority with jurisdiction over the Northern Territory under the Territory’s powers. That would be right, wouldn’t it?

Mr Yates—Yes, under self-governance. I believe so.

Senator BRANDIS—And because certainly in Queensland some of these claims go back before the First World War—so we are conceivably going back to the whole history of the Commonwealth—what were the administrative arrangements in relation to Territory Aborigines prior to 1967? Presumably they have changed over time. Would you be able to inform us, perhaps on notice, what the arrangements were? There must have been some local Commonwealth authority that ran the Aboriginal missions and so on.

Mr Yates—We will take that on notice, Senator.

Senator BRANDIS—Could you let us know that, please?

Mr Yates—Certainly. Let me simply say—because I did not say it before—that, whilst there may be evidence that in regard to other jurisdictions that are of concern to this committee, there is no presumption necessarily that the Commonwealth exercised or took action similar to those of any of the states.

Senator BRANDIS—No, quite. In fact, you have anticipated my next question, Mr Yates, which is: did the Commonwealth, in administering the Aboriginal population in the Northern Territory, at any time run one of these trust arrangements that seem to have been the common form of administering the financial affairs of Aboriginal persons by the state governments? Do you know?

Mr Yates—No, I do not.

Senator BRANDIS—I have never heard of it but I am not saying that it does not exist. But that is really a threshold question that we should know, should we not?

Mr Yates—I think it is, insofar as where the Commonwealth liability might lie.

Senator BRANDIS—Can you check that out?

Mr Yates—We will take that on notice, Senator.

Senator BRANDIS—In taking that question on notice—and I apologise for the breadth of this question but I think that it needs to be broad—if it were not done by way of trusts of the kind that this committee has heard about in relation to Queensland and New South Wales—the gentleman from Victoria had a very imprecise knowledge of what he was talking about, but we had quite specific evidence in relation to Queensland and New South Wales and, I think, Western Australia too—what was the arrangement, if there was one, whereby wages or other payments to which Aboriginal persons were entitled were held on their behalf by the Commonwealth? I suppose the obvious question which follows on from that is that, if there were such arrangements, how was that money ultimately disbursed? Were those trusts or other structures ever wound up and, if they were, was that money paid to the Aboriginal persons entitled to it? If not, what became of it? I am sorry it is such a big question but I think that is the whole issue. I am by no means sure that the Commonwealth does stand on the same footing as, for example, the Queensland government in relation to this but we need to know.

CHAIR—Thanks, Senator Brandis. Thanks, Mr Yates, for taking those on notice.

Senator SIEWERT—You probably heard me ask a previous witness the question about the inquiry in 1965 that the Commonwealth carried out in Western Australia and we have spoken about this at previous hearings. Do you have access to those records? Have you accessed those records? Were there other inquiries carried out in other states and what was the Commonwealth's response to those inquiries?

CHAIR—This is a Commonwealth inquiry that you are referring to, Senator Siewert?

Senator SIEWERT—A Commonwealth inquiry.

CHAIR—I am just clarifying for the witnesses.

Senator SIEWERT—Yes. My understanding is that the Commonwealth carried out, I know in 1965, inquiries into the way child endowment was being handled by the state, particularly in relation to pastoral companies, for example, and missions, I think. I am not exactly sure because we have not seen it. It was the old Department of Social Services. If you have a copy that you have accessed, can we have a copy? I would like to know what the Commonwealth's response was to that inquiry. We have only heard about an inquiry in WA, but were there other inquiries carried out that you are aware of?

Mr Yates—I suppose the former: it might be easier to identify if there was in fact an inquiry and perhaps a search might be able to flush it out. Whether we can readily ascertain the latter, I am not certain, but we will take it on notice.

Senator SIEWERT—We are reliably informed that there was in fact an inquiry carried out in 1965.

CHAIR—I think it was put in evidence in Western Australia at our first hearing by witnesses there.

Senator SIEWERT—I think Dr Kidd refers to it too, but my memory might be a bit hazy.

CHAIR—Dr Rosalind Kidd, the author of *Trustees on Trial*, amongst other things.

Senator SIEWERT—So you are not aware of this inquiry?

Mr Yates—No, Senator.

Senator SIEWERT—Are you are not aware of inquiries in other states?

Mr Yates—No, that is unfortunately why our answer was as brief as it was, otherwise we would have drawn it to your attention.

Senator SIEWERT—Is it possible to at least look into Western Australia? You will take that on notice?

Mr Yates—Yes.

Senator BARTLETT—I have, I guess, two main things. I appreciate the situations in Queensland and New South Wales relate to state government responsibilities and they have been pursued at that level. Were any of the issues arising from that considered at Commonwealth level? Given these days there is a fair bit of overlap in the Indigenous area in service delivery and policy and trying to make things work—reconciliation and all those sorts of things—was there anything prepared around this sort of issue at federal level in previous departmental incarnations, with ATSIC or anything like that?

Mr Yates—Certainly as part of the overview of developments of significance in Indigenous affairs we were aware of those developments in Queensland and New South Wales, but they were regarded essentially as the responsibilities of the state jurisdictions.

Senator BARTLETT—So were there any assessments done, or any advices pulled together, about the nature of the issues? It just seems to me in the context of this inquiry, which is in part trying to look at whether it has got broader traction than just those two states, that there are differences in each state but some similarities as well. There is a reasonable assumption even on a preliminary look at the evidence that similar sorts of issues may have arisen. Was there no attempt at national level to do an overview of what past practices may have been?

Mr Yates—I think, Senator, because the circumstances in each state—as they do in many aspects of Indigenous affairs—vary quite considerably, there may be some common threads. But typically the legislative or other bases or administrative arrangements that may have governed those activities vary considerably, and it is quite difficult to try to look for or establish some sort of a national picture, let alone any notion of a national resolution. But certainly in my experience, which only goes back four years to ATSIC, I am not aware—and that is reflected in the answer—of any overview that was prepared across all jurisdictions.

Senator BARTLETT—The other question, which goes to the response you have given us and it is probably going on what people have already asked—it is not so much a dilemma that the committee faces; I think it is a dilemma a lot of Indigenous people face, where there are a lot of records and it requires a lot of resources to go and look into them. You do not know how big a problem it is until you start to go and look. People that have the resources predominantly are governments. At least in some cases they probably have some interest in not looking. How do we get around that sort of problem? It does apply to some extent, I suppose, at federal level. You said it would take a lot of resources to do an investigation into these things. I know it is a bit of a catch 22. Is there any way to break through that?

Mr Yates—I have not been able to think of any, Senator, because I guess we do not know what we do not know. You could spend an incredible amount of money—

CHAIR—Please do not go down the Rumsfeld line. I am keen not to get to the known unknown—

Mr Yates—On that basis I guess we have taken the approach of, if there is any evidence or allegation or concern that has ever been raised with us, we chase it down because we think that is a legitimate and necessary expenditure of taxpayer resources. But it is just too broad, too diverse and too complex to try to unpack what is a multiplicity of circumstances for potentially any number of thousands upon thousands of clients who may not have been affected by this

whatsoever so far as the Commonwealth's responsibilities are concerned. It is very difficult to justify the redeployment of resources that would be applied to Indigenous purposes today in the expectation that something might be uncovered, and that is the dilemma we faced, and so we await the results of your investigations and the evidence that has been put before this committee.

Senator BARTLETT—Could you give us any indication—say, with that HREOC inquiry—into what became known as the ‘stolen generations’ area? That would have involved some digging into archives at federal level, I presume, to try to pull out information. Again, it is perhaps more a state area but I am sure there would have been some areas with a federal responsibility. Do you have any idea how much that generated in terms of resources required, or extra activity?

Mr Yates—No, I could not answer that. It is a fair way back now and I am not sure what resources were committed by the inquiry itself versus what was involved in terms of the submissions made by the federal government at the time.

Senator TROOD—Mr Yates, the committee received some evidence at the Sydney hearings, I think, from Dr Thalia Anthony from the Sydney university about the Northern Territory circumstances. Have you had an opportunity to look at that evidence and her submission?

Mr Yates—We have had a watching brief on the submission and one of our staff would be familiar with it, but I am not personally, but I am happy to take any questions.

Senator TROOD—There are two ways I could approach this question. The obvious way is to say, do you have any reaction to the evidence that she gave us at this stage?

Mr Yates—I think it probably best if I put that on notice. I do not have any particular feedback. Is this in regard to the Commonwealth's possible liability?

Senator TROOD—Yes.

CHAIR—Yes, she has a federal focus or a Commonwealth focus in her material and her research.

Mr Yates—I do not think I can say more than, as I understand it, that evidence postulated a number of legal arguments about the Commonwealth's fiduciary duty and we have not investigated the substance of that proposition to establish whether or not we see that there is any merit in it.

Senator TROOD—Well, perhaps I could help you. If it is suitable to the committee, perhaps the secretariat might look at that evidence again and extract some specific questions that we might put to the department and seek your responses to them on matters that are of very direct relevance to the inquiry. If you would be good enough and were able to respond, then we would be grateful for that.

Mr Yates—The only caveat I would have about this is that we have responsibilities around security. They may go into issues around the responsibilities for the territories which go outside of our particular bailiwick, but obviously feel free to put questions to us.

Senator TROOD—We will perhaps feel free to put the questions and you can feel free to respond in ways that you regard as appropriate, and we will deal with that information as is appropriate.

Mr Yates—Certainly.

CHAIR—If there is not anything further, I would like to thank you, Mr Yates, and your colleagues for coming this afternoon and for communicating with the committee in the process of getting to this hearing. We do appreciate that. There are a number of issues that the committee has raised with you there, and we are required to table by the last sitting day of 2006 or thereabouts, which is next week, not to put too fine a point on it, so your assistance with any material that you can provide us would be gratefully received. Please do not hesitate to communicate with our secretary or with me if necessary on how that is progressing.

I want to thank all of the witnesses who have given evidence to the committee today and apologise again—in fact, profusely—to our earlier witnesses, not only Professor McGrath but Mr Wright and Miss Peters, about the rushed manner in which we had to deal with that. At least we have the benefit of their written submissions as well. I again reiterate that we are very grateful for Miss Peters' personal and family submissions. I declare this meeting of the Senate Standing Committee on Legal and Constitutional Affairs adjourned.

Committee adjourned at 5.46 pm