

CHAPTER 8

SUMMARY AND CONCLUSIONS

Am I after money? Of course I am after money. But I am after closure too and I am after justification with regard to what happened to us. That you could go to jail for turning up late for work is not an issue. Things were done just because they could do the things they did. They were able to do whatever they wanted. I heard one of the ladies speaking at one of the meetings about welfare payments and stolen wages. 'It's not about the money,' she said. 'But it's about what was done to us as young women when we were sent out by the Government away from our own people at 13 or 14 years of age.' That is the kind of thing that everybody needs to hear about, especially people in government – including senators and everybody else – because there was a big hush-hush about it, it was all closed down and nobody was allowed to talk about it.¹

8.1 Evidence to the committee revealed some of the practical hurdles to redressing the Indigenous stolen wages issue as well as a range of views about how this issue should be addressed. In particular, evidence received during the inquiry raised the following issues:

- the difficulties in obtaining access to archival records and the incomplete nature of those records;
- whether there is a need for a national inquiry or forum in relation to stolen wages; and
- the advantages of acceptable compensation schemes, compared to litigation.

Access to records

8.2 The committee received evidence that researchers in some jurisdictions have experienced difficulty accessing records relating to the stolen wages issue.² Some witnesses supported the establishment of a neutral body to control records relating to stolen wages:

I think that we need some kind of a tribunal, who will basically ensure that the documents are acquired from the archives and wherever else they exist – whether they are hidden in community police stations or wherever else they have been over the many years. And the tribunal ought to ensure that the Queensland government makes those records available for the claimants to make adequate claims so that they can get what is rightfully theirs.³

1 Mr Kenneth Bone, Mayor, Cherbourg Aboriginal Community, *Committee Hansard*, 25 October 2006, p. 43.

2 ALSWA, *Submission 30C*, Attachment 3; Dr Cameron Raynes, *Committee Hansard*, Perth, 16 November 2006, pp 3-7.

3 Mr Bob Weatherall, *Committee Hansard*, Brisbane, 25 October 2006, p. 27.

8.3 However, Professor Ann McGrath cautioned against over reliance on written records in assessing stolen wages claims:

...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.⁴

8.4 Based on her study of Western Australian archival material, Ms Lauren Marsh argued that the onus of providing written evidence regarding stolen wages and entitlements should not fall on Indigenous claimants:

Given both the department's attitude in not consulting, informing, or holding itself accountable in any way towards Aboriginal workers and pension recipients regarding their trust accounts, coupled with the level of destruction of archival material relating to trust accounts, it would be both an impossible and unjustifiable requirement for Aboriginal people to provide comprehensive written evidence.⁵

A national inquiry to set the record straight

8.5 The committee received conflicting evidence in relation to the need for a national inquiry to 'set the record straight' on the stolen wages issue. Several witnesses supported either a national inquiry or a Royal Commission:

[W]e 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.⁶

8.6 Other witnesses noted that the committee's inquiry had not heard from all of the Indigenous people affected by the stolen wages issue and supported Indigenous people having an opportunity to 'tell their story':

I want it recorded that the inquiry is very limited with regard to providing Indigenous peoples – throughout the community of Queensland, at least – access to be able to come down to tell their stories or make their inquiries. I would encourage some other process being put in place so that Aboriginal people throughout the state have an opportunity to tell their story – so that

4 *Committee Hansard*, Canberra, 28 November 2006, pp 12-13.

5 *Submission 127*, p. 21.

6 Mr Gary Highland, ANTaR, *Committee Hansard*, Sydney, 27 October 2006, p. 48. See also ALSWA, *Submission 30*, p. 10; National Tertiary Education Union, *Submission 60*, p. 7.

our history here is recorded and they have the opportunity to basically give their comments to the inquiry itself.⁷

8.7 Ms Yvonne Butler noted that she had initially welcomed a national inquiry but later wondered what that would achieve:

At the time I wrote my submission I felt it was right to have a national forum, but you become disheartened because there have been many inquiries over the years – it is just prolonging the cause for us to get justice with our stolen wages.⁸

8.8 HREOC commented on proposals that it conduct a national inquiry:

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...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...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.⁹

Litigation as an alternative to payment schemes

8.9 The committee received some evidence suggesting that, if governments did not establish acceptable compensation schemes, some Indigenous claimants would be able to pursue their stolen wages claims through the courts:

...we think that at minimum the state Government in Queensland has a duty to account either pursuant to trust obligations or to a general fiduciary obligation. The duty to account has some potentially far-reaching significance for the Queensland Government, I would suggest—that is, if the Queensland Government is liable at law to provide an accounting to an Indigenous worker for the funds that were taken from them, in that sense, the obligation and the onus is on the Government to provide a full accounting. The significance of this in evidentiary and cost terms is that the Government will be forced to conduct a full investigation of its records potentially in respect of every individual who wishes to bring a claim and is found to be entitled, so there is potentially a massive task for the Queensland government if this issue continues to be ignored.¹⁰

7 Mr Bob Weatherall, *Committee Hansard*, Brisbane, 25 October 2006, pp 21-22. See also Mrs Pat Kopusar and Mrs Oriel Green, *Committee Hansard*, Perth, 16 November 2006, p. 46.

8 Ms Yvonne Butler, *Committee Hansard*, Brisbane, 25 October 2006, p. 27.

9 Mr Darren Dick, Director, HREOC, *Committee Hansard*, Sydney, 27 October 2006, p. 5.

10 Mr Patrick Hay, counsel instructed by QPILCH, *Committee Hansard*, Brisbane, 25 October 2006, p. 14; see also Dr Thalia Anthony, *Committee Hansard*, Sydney, 27 October 2006, p. 13.

8.10 Evidence to the committee indicated that litigation would be more expensive, more time consuming and less just than the establishment of compensation schemes. For example, Mr Robert Haebich who acted for the litigants in the *Palm Island Wages case*¹¹ noted:

Litigation] is expensive, time consuming, not necessarily helpful to litigants and unnecessarily stressful to Indigenous litigants. Bearing in mind that the Indigenous people affected by the regime were in some senses like wards of the state and that certainly their wages were under the control of the government, it does seem inequitable that the body responsible for keeping the records could escape its responsibilities to produce records or make just payment because its records are inadequate or destroyed, deliberately or through neglect.

This is especially so bearing in mind that at one stage such Indigenous people were denied even the right to see their financial records.

...It is submitted that justice is unlikely to be done through the usual litigation process. The problems could be sorted through the use of an appropriate formula with proof of employment being at a relatively low level justified on the grounds of the failure of the state to keep or maintain adequate records.¹²

What should happen next?

8.11 The committee acknowledges that there is a need for further archival research and consultation with Indigenous people who were subject to the protection regimes. However, the committee is concerned that establishing a national inquiry or a Royal Commission into stolen wages will not directly resolve the stolen wages issue and will only delay actions taken by state and territory governments to address these issues. The advanced age and ill-health of many potential claimants means that the expeditious resolution of claims must be a priority. It is time to resolve this issue.

8.12 Despite this, the committee accepts the evidence it received that an important part of redressing the stolen wages issue is not just monetary compensation but a chance for Indigenous people to tell their stories. It is equally important that those stories are recorded so that the wider community becomes aware of this part of Australian history. The committee therefore recommends that the Commonwealth Government provide funding for a national oral history and archival research project which seeks to record these stories.

8.13 The committee notes that submissions put forward arguments supporting a number of legal bases on which governments are responsible for the repayment or compensation of those who suffered financially, physically and psychologically under

11 *Bligh & Ors v State of Queensland* [1996] HREOCA 28.

12 Mr Robert Haebich, *Submission 77*, p. 3; see also Dr Thalia Anthony, *Committee Hansard*, Sydney, 27 October 2006, p. 13.

protection regimes. The *Palm Island Wages case*¹³ and the *Baird case*¹⁴ demonstrate that it is possible for Indigenous claimants to pursue the repayment of wages through existing legal channels. However, it is clearly not in the interests of governments or claimants to resolve these matters through expensive and time-consuming litigation. Such an approach would also result in substantial injustice as claimants whose records have been lost or destroyed by governments would remain uncompensated.

8.14 Both the Queensland and NSW Governments have recognised that claims should be resolved through a compensation or reparations scheme. The intense dissatisfaction with the Queensland Government's reparations offer illustrates the need for governments to genuinely consult Indigenous people in relation to the terms of such schemes and the process for assessing claims. The committee considers that other jurisdictions establishing compensation schemes should use the NSW scheme as a model, and should also ensure that genuine consultation with Indigenous claimants occurs before the terms and processes of the scheme are determined.

8.15 The committee accepts the view that compensation schemes should allow claims based on oral and other circumstantial evidence where the records held by the relevant government are incomplete. Governments were responsible for, and held, the records relevant to these claims and, in many cases, refused to allow Indigenous people access to their own records. It would be iniquitous if the failure to keep adequate records or the destruction of records allowed governments to avoid repaying money which is owed to Indigenous people.

8.16 The committee received substantial evidence that Aboriginal people in Western Australia were denied or underpaid wages and entitlements. There was also evidence that the system of government control of wages and savings in Western Australia was similar to the system in Queensland. The committee therefore recommends that the Western Australian Government consult with Indigenous people in relation to the immediate establishment of a stolen wages compensation scheme.

8.17 The evidence available to the committee in relation to the Northern Territory and the Australian Capital Territory, which were under Commonwealth jurisdiction during the relevant period, and South Australia, Tasmania and Victoria, was that protection regimes were in place in those states and territories. However, evidence received during the inquiry was inconclusive in terms of how control of Indigenous wages and savings was implemented by these governments and the extent to which, if at all, monies were withheld from Indigenous people.

8.18 The committee does not accept the view that these governments should 'wait and see' whether Indigenous people pursue similar claims to those raised in Queensland and NSW against them. Such an approach may amount to governments relying on the age, infirmity and social disadvantage of the claimant group to escape

13 *Bligh & Ors v State of Queensland* [1996] HREOCA 28.

14 *Baird v State of Queensland* [2006] FCAFC 162.

or reduce liability. Unless governments take a more proactive approach, there is a risk that past injustices will be compounded with further inaction. There is certainly sufficient evidence to warrant these governments conducting preliminary research of their archival material to determine whether there are issues to be addressed and how to address them.

8.19 There is also a responsibility on the Commonwealth Government and state governments to facilitate unhindered access to their archives for Indigenous people and their representatives for the purposes of researching the Indigenous stolen wages issue. While the committee understands the concerns about protecting personal information which appears on such files, governments should ensure that there are workable mechanisms to support access for researchers.

8.20 Evidence to the committee suggests that many Indigenous people remain unaware that they have been denied wages and welfare entitlements. The committee therefore considers that the Commonwealth Government and relevant state governments should jointly fund an education and awareness campaign in relation to the stolen wages issue in Indigenous communities. Funding should also be provided for preliminary legal research on Indigenous stolen wages matters. The two objectives of this research are: firstly, to establish whether grounds exist for pursuing stolen wages claims in states other than NSW and Queensland; and secondly, to establish whether additional grounds exist for stolen wages claims in all states and territories. In allocating this funding, priority should be given to jurisdictions where there is currently a limited awareness of the stolen wages issue. This priority will reduce the possibility that Indigenous people are unable to pursue the return of their money solely because they lack the resources to conduct this research.

8.21 Evidence to the inquiry identified a number of serious deficiencies in the Queensland Government's reparations offer. These included:

- the failure to fully compensate claimants for money withheld from them;
- the arbitrary exclusion of the descendants of claimants who died before 9 May 2002; and
- the extremely broad terms of the indemnity into which claimants were required to enter in order to receive a reparations payment.

The committee recommends that the terms of the Queensland Government's reparations offer be revised to address these issues.

8.22 The committee wishes to particularly acknowledge those witnesses who shared their personal stories with the inquiry. Some of those stories included painful personal memories. The committee was moved by these accounts and acknowledges that the inquiry would not have been possible without the assistance of those witnesses.

Recommendation 1

8.23 The committee recommends that the Commonwealth Government and state governments facilitate unhindered access to their archives for Indigenous people and their representatives for the purposes of researching the Indigenous stolen wages issue as a matter of urgency.

Recommendation 2

8.24 The committee recommends that the Ministerial Council on Aboriginal and Torres Strait Islander Affairs agree on joint funding arrangements for:

- (a) an education and awareness campaign in Indigenous communities in relation to stolen wages issues; and
- (b) preliminary legal research on Indigenous stolen wages matters.

Recommendation 3

8.25 The committee recommends that the Commonwealth Government provide funding in the next budget to the Australian Institute of Aboriginal and Torres Strait Islander Studies to conduct a national oral history and archival research project in relation to Indigenous stolen wages.

Recommendation 4

8.26 The committee recommends that:

- (a) the Western Australian Government:
 - (i) urgently consult with Indigenous people in relation to the stolen wages issue; and
 - (ii) establish a compensation scheme in relation to withholding, underpayment and non-payment of Indigenous wages and welfare entitlements using the New South Wales scheme as a model, and
- (b) the Commonwealth Government conduct preliminary research of its archival material in relation to the stolen wages issues in Western Australia.

Recommendation 5

8.27 The committee recommends that the Commonwealth Government in relation to the Northern Territory and the Australian Capital Territory, and the state governments of South Australia, Tasmania and Victoria:

- (a) urgently consult with Indigenous people in relation to the stolen wages issue;
- (b) conduct preliminary research of their archival material; and
- (c) if this consultation and research reveals that similar practices operated in relation to the withholding, underpayment or non-

payment of Indigenous wages and welfare entitlements in these jurisdictions, then establish compensation schemes using the New South Wales scheme as a model.

Recommendation 6

8.28 The committee recommends that the Queensland Government revise the terms of its reparations offer so that:

- (a) Indigenous claimants are fully compensated for monies withheld from them;**
- (b) further time is provided for the lodgement of claims;**
- (c) claimants are able to rely on oral and other circumstantial evidence where the records held by the state are incomplete or are allegedly affected by fraud or forgery;**
- (d) new or further payments do not require claimants to indemnify the Queensland Government; and**
- (e) the descendants of claimants who died before 9 May 2002 are included within the terms of the offer.**

Senator Marise Payne

Chair