

Hon Simon O'Brien MLC
Chairman
Standing Committee on Environment & Public Affairs
Legislative Council Committee Office
18-31 Parliament Place
West Perth 6000
By email lcco@parliament.wa.gov.au

23 July 2014

Dear Mr O'Brien,

Re: Petition No 40 – Stolen Wages Reparation Scheme

Thankyou for your letter of 19 June 2014 inviting KCLS to provide a short written submission, regarding the issues raised in the Petition, to assist the Committee in its preliminary investigations. Although this submission is longer than the two pages requested, I hope it can be considered in full.

We believe that the Legislative Council can play a major role in reviewing why the Government's response to the issue of 'stolen wages' has not found acceptance and in considering how this can be addressed.

The Petition requests that the Legislative Council ensure the establishment of a process, which fully consults with Aboriginal people affected, to review the operation and outcomes of the WA Stolen Wages Reparation Scheme. The Petition identifies a number of specific matters for consideration through such a process, in order to fully report to the people of Western Australia. In this submission we outline why this is needed.

It is important initially to recall the contexts in which the withholding of income occurred and the types of income withholding which many Aboriginal people experienced. That is, Aboriginal people were non-citizens and where Aboriginal people could live and go was controlled. Many were denied education, were excluded from social security benefits and were made to live in appalling conditions.

Many Aboriginal people were made to work for rations and keep. When Aboriginal people were paid, they often received 'Aboriginal rates', far below the rates for equivalent work by white workers. Additionally, many Aboriginal people were defrauded of their entitlements by warrantees and third parties and they were charged exorbitant amounts for rations, supplies and facilities.

As information was withheld from Aboriginal at the time, it is no surprise that many Aboriginal people today do not know the details about income withheld from them.

While the term 'stolen wages' includes money wrongly retained by the Government in trust accounts, from the description just given it will be clear that it is much broader than this.

Further, the issue of 'stolen wages' also involves recognition in a broader sense for work done. For example, in the Kimberley many Aboriginal people express pride and nostalgia for their work on pastoral stations and seek recognition for their important part in the development of Western Australia. They also seek amends for the appalling conditions they endured and the consequences of this.

Issues which have given rise to the Petition relate to the WA Government's response to the Stolen Wages Taskforce report. This includes:

1. No negotiation, no agreement, no settlement

The Government's response to the Taskforce Report was not negotiated with Aboriginal people. Neither the Government's response to the Taskforce Report or the Scheme itself - represents a settlement with Aboriginal people. The overwhelming reaction to the Scheme by Aboriginal people has been sadness, frustration and anger due to the gross inadequacy and injustice of the response.

Although many Aboriginal people talked to the Stolen Wages Taskforce in the consultations it arranged in different parts of the State in late 2007 and early 2008, neither the Taskforce nor the Government reported back after the Taskforce was completed in mid-2008, to explain and discuss what was in the report.

Instead on the 6 March 2012 the Minister for Indigenous Affairs announced that the Stolen Wages Reparation Scheme was starting that day and would be open for six months. For the first time the Minister released the 2008 Taskforce report, excluding the actuarial report commissioned by the Taskforce which has still not been released.

The Scheme offered a payment of \$2,000 to each Aboriginal person who applied and met the Government's criteria. The criteria were to the effect that an Aboriginal person born before 1958 would be eligible if they applied and had income withheld and not repaid by the Government for a time when they lived at a 'Government Native Welfare Settlement' (GNWS) in WA when aged 14 or over. 'Income' was not defined and neither was 'GNWS'.

As claimants to the Scheme were not asked to give up their rights, and none of those who received this payment have given up their rights, the stolen wages issue remains unsettled in every sense.

2. Aboriginal people and the people of Western Australia generally, were excluded

Over three years passed between the Government receiving the Taskforce Report and the Minister releasing it. Consequently, Aboriginal people and the people of WA were excluded from considering and scrutinising the report and from expressing their views about it before the Government finalised its response

The Taskforce made a wide range of recommendations applying a model of holistic response. This included symbolic and institutional initiatives and group and individual amends and healing. The former included constitutional recognition and an apology and the later included establishment of a 'Common Experience Fund' (CEF) and a 'Common Experience Payment' (CEP). The Taskforce recommendations did not indicate dollar figures for the CEF or CEP.

The Government rejected, and continues to reject, all recommendations except for the CEP. Additionally, in relation to CEP, the Government has not explained why it chose the figure of \$2,000. This figure was not recommended by the Taskforce.

3. Stolen Wages Scheme was grossly unfair

- *Thousands of Aboriginal workers were left out* – the Government's Scheme mainly related to income withheld at some missions and hostels, leaving out income withheld from Aboriginal workers in other contexts. For example, Aboriginal station workers, who typically received rations but no wages, were excluded. Applications to the Scheme by about 700 former station workers, many of whom included personal accounts of their life and work on stations, were refused out of hand.
- *Not tailored to individual experiences* – successful applicants received \$2,000 regardless of whether their income was withheld for 20 years or a month and regardless of whether their income was withheld at one, two or more locations. Further, even though there was no logic for the Scheme only applying to people born before 1958, the Scheme contained no discretion to address the numerous anomalies which resulted.
- *No apology was made* - this contrasted with the WA Redress Scheme, which applied to Aboriginal and non-Aboriginal people abused as children while in state care in Western Australia. Under the Redress Scheme every successful applicant received a written apology from the Government. Under the Stolen Wages Scheme, which applied only to Aboriginal people, no one received an apology.
- *Denied access to information* – the Scheme denied people access to information, including information about:
 - The locations covered by the Scheme;
 - The history of income withholding at those locations;
 - What records were available about this; and,
 - What information the Government had, if any, about income withheld from the individual concerned.

The effects included that:

- No one knew the locations covered by the Scheme when it opened, when it was operating and while applications were being assessed;
- Attempts to spread the word about the Scheme when it was open could not refer to the locations covered and this and other factors probably resulted in many people missing out;
- People who were successful did not receive any information at all about their particular case; and
- People who were at multiple locations could not tell, from the decision to approve their application, which location/s were relevant.

4. WA can do better

The Stolen Wages Petition is a plea to the Legislative Council to rise and address the stolen wages issue. This is an issue about historical injustices experienced by Aboriginal people which reflects on Western Australian identity and on many fundamental characteristics and qualities of the state.

In our submission future consideration of stolen wages in Western Australia must treat Aboriginal people's human rights and dignity as central issues.

The following rights, set out in the *Universal Declaration of Human Rights*, put the 'stolen wages issue' in a substantially different light to that conveyed by the Taskforce and by the Government's response. That is, that the historical practices referred to as 'stolen wages' violated the rights of Aboriginal people to:

- Freedom, equality and dignity (Art 1);
- Liberty and freedom from slavery and servitude (Art 3 & 4);
- Equality before the law and equal protection of the law (Art 7);
- Freedom of movement with the state (Art13(1),
- Not to be deprived arbitrarily of property (Art 17(2)), and
- Remedy for acts violating fundamental rights (Art 8).

These rights are also reflected in other human rights instruments, and International Labour Organization Conventions, to which Australia is a party.

Finally, an inquiry by the Legislative Council could draw substantial guidance from international standards regarding reparations, being another matter which was not adequately explored by the Taskforce or addressed by the Government's response.

We particularly refer the Committee to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* promulgated by resolution of the General Assembly of the United Nations in 2005.¹

¹ GA Res 60/147, UN GAOR, 60th sess, UN Doc A.RES.60/147 (16 December 2005)

WA Ombudsman

The Committee asked whether the complaint which is the subject of the petition has been taken to the WA Ombudsman. We can advise that we have helped some of our clients, who were directly affected by the Stolen Wages Scheme to raise their complaints with the WA Ombudsman. However, in all cases, the Ombudsman has indicated, in effect, that as the Stolen Wages Scheme was conducted by the Government on an *ex gratia* basis that the particulars of the complaints cannot be addressed by the Ombudsman.

Yours sincerely,

~~Thomas Allen~~
~~Principal Solicitor~~
~~on behalf of Liz O'Brien,~~
~~Director, Kimberley Community Legal Service~~