

Indigenous Labour Denied - Stolen Wages in Victoria

A response to the Victorian Government
'Indigenous Stolen Wages Preliminary Investigation': Stage One and Two Reports

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17/461 Bourke St Melbourne VIC 3000
Tel: (03) 8636 4400 | Fax: (03) 8636 4455
www.pilch.org.au



Gregor Husper
Director of Referral Services
Public Interest Law Clearing House
T: 03 8636 4400
E: gregor.husper@pilch.org.au

Contents

1. Executive summary	1
1.1 Purpose.....	1
1.2 Background.....	1
1.3 Government response.....	2
1.4 Recommendations	2
1.5 Defined terms.....	3
2. About PILCH	3
3. Paper overview.....	4
4. Summary of Government reports and investigation.....	6
4.1 Unfinished Business Report – Terms of Reference.....	6
4.2 The Queensland and NSW repayment schemes.....	6
4.3 Unfinished Business Report – Recommendations.....	7
4.4 Victoria’s response – the Stage One and Stage Two Reports.....	8
4.5 Limitations upon Victoria’s response.....	9
4.6 The need for urgency.....	10
5. Lack of education and awareness of unpaid wages issue.....	11
6. Lack of consultation.....	12
7. Restricted archival review during the Investigation.....	14
7.1 Deficiencies in the archival records	14
7.2 Obligation to keep records.....	15
7.3 Failure to keep records.....	17
7.4 Records excluded from the research.....	17
8. The importance of oral evidence.....	21
8.1 The cultural significance of oral history.....	21
8.2 The factual importance of oral evidence.....	22
8.3 The NSW Aboriginal Trust Fund Repayment Scheme.....	22

8.4	<i>The Victorian context</i>	23
8.5	<i>Conclusion on oral evidence</i>	24
9.	Restricted scope of the Investigation – persons and types of payment covered	25
9.1	<i>Persons covered</i>	25
9.2	<i>Type of payments covered</i>	28
10.	Time period covered	33
10.1	<i>Exclusion of the period prior to 1869 (Stages One and Two Reports)</i>	33
10.2	<i>Exclusion of the period prior to 1918 (Stage Two Report)</i>	33
11.	Status and integrity of the Investigation	35
11.1	<i>Information in the Reports</i>	35
12.	Government response and statements regarding unpaid wages	38
12.1	<i>Government response</i>	38
12.2	<i>Ministerial response</i>	38
13.	The legal landscape	40
13.1	<i>Experience in other jurisdictions</i>	40
14.	APPENDIX 1	42
14.1	<i>Submissions</i>	42
15.	APPENDIX 2	44
15.1	<i>List of Abbreviations</i>	44

1. Executive summary

1.1 Purpose

This Paper summarises and critiques recent Victorian Government investigations and reports into unpaid wages experienced by Aboriginal and Torres Strait Islander persons (**unpaid wages** and **Indigenous persons** respectively) in Victoria. PILCH considers much more could and should be done to thoroughly investigate and respond to the incidence of unpaid wages in Victoria. This Paper makes eleven specific submissions for advancing unpaid wages compensation (**the Submissions**).

This Paper arises out of PILCH's work with the Wampan Wages: Victorian Stolen Wages Working Group (**Wampan Wages**).¹ Wampan Wages is an informal working group made up of Indigenous and non-Indigenous people who have an interest in stolen wages and Indigenous justice. The group facilitates research into stolen wages and other entitlements owed to Victorian Aboriginal people. It also lobbies for funding of a research project into the incidents of stolen wages in Victoria.²

PILCH acknowledges the historical injustices and systemic disadvantage suffered by Indigenous Australians. These injustices betray their enormous cultural, economic and labour contributions. As agents for social change and advocates for human rights, PILCH is proud to work with Wampan Wages. The Submissions in this Paper are specifically prepared on behalf of Wampan Wages.

1.2 Background

This Paper cites many instances where Indigenous persons did not directly receive their full entitlement to wages. In some instances they only received rations or pocket money. In other instances, their wages were 'administered' or controlled for them by government or police authorities or other overseers. Wages and benefits were withheld for various reasons, including as punishment.³

Academic Stephen Grey has contextualised the issue as follows:

From the early nineteenth century colonisation of Australia was justified, in part, with the idea that Aborigines were 'idle' and 'thievish'.⁴ It was the moral duty of the higher races to uplift them by teaching them habits of industry. This stereotype – that Indigenous people do not understand the nature or habit of work – has persistently reinforced colonial practices, and has surfaced most recently, and damagingly, in the Northern Territory Intervention. This popular belief is particularly damaging because it obscures another, deeper reality. Indigenous people did 'work', in a way culturally familiar to Europeans, in most parts of the country. Moreover their work was un- or under-paid, and their pay was stolen from them often through the mechanism of the Aboriginal Trust Fund. Consequently the 'stolen wages' issue remains the sleeper in Australian Indigenous-settler relations. It is less known and less understood than the land rights or stolen generation issue, but just as significant, since it gives the lie to cultural assumptions about Indigenous people as non-contributors to a modern economy."⁵

1 Wampan Wages means 'pay back' in Kirrae Whurrong, an Indigenous language from Western Victoria

2 See: <http://www.creativespirits.info/aboriginalculture/economy/stolen-wages.html>

3 Koori Mail 406, 'Stolen Wages lifeline', p.1, and 'Report reflects wage claims', Koori Mail 467 p.12

4 See for example M F Christie, *Aborigines in Colonial Victoria 1835-86*, Sydney University Press, 1979, p.34

5 Stephen Grey, 'Indigenous labour in Victoria: setting the record straight', unpublished conference paper, Public Interest Law Conference, Melbourne University, 27 September 2010

Whilst not all Indigenous persons were affected, unpaid wages are a debt owed, and are symptomatic of the failure to redress past wrongs.

1.3 Government response

In 2006, the Senate Committee on Legal and Constitutional Affairs released its report on the issue of Indigenous wages in Australia, *Unfinished Business: Indigenous Stolen Wages (Unfinished Business Report)*.

In response to Recommendation 5 in the *Unfinished Business Report*, in August 2007 the Victorian Government, through the Public Record Office Victoria (PROV) and Aboriginal Affairs Victoria (AAV), engaged a private consultant to conduct preliminary research into selected Victorian Government archives on the issue of unpaid wages in Victoria (the *Investigation*).

Significant constraints were imposed in relation to the scope of the *Investigation*. The limited research was compounded by the past failure of Government bodies and affiliates to satisfy the statutory obligation to keep adequate records. These limitations in turn restricted the research and range of the findings made in the resultant reports, both of which were published in September 2009 (the *Stage One and Stage Two Reports*).⁶

The restricted nature of the findings appears to have been determinative in the Victorian Government not proceeding with further research or establishing a compensation scheme in Victoria. Given the limitations imposed on the *Investigation*, it is circuitous and unfair to point to the lack of available information as the basis for those decisions.

The situation is further compounded by the Victorian Government's failure to engage in education, awareness and consultation activities with the Indigenous community on unpaid wages, which was recommended in the *Unfinished Business report*.

1.4 Recommendations

PILCH observes that the steps taken by the Victorian Government in relation to the unpaid wages fall far short of the recommendations of the *Unfinished Business Report* and the steps taken by other Australian State Governments in responding to the issue of Indigenous unpaid wages.

The Victorian Government should address constraints in the *Investigation* by way of education, awareness raising and further research, so that a proper conclusion can be reached as to the extent of any withholding, underpayment or non-payment of Indigenous wages and welfare entitlements in Victoria. The research must be broad and exhaustive.

Once such research is conducted, and if the research shows that such practices did occur, then the Victorian Government should proceed to establish a compensation scheme. The design of any compensation scheme should have regard to any differences between the particular labour control practices which occurred in Victoria and in NSW, must be appropriate to the practices that actually occurred in Victoria, must apply an appropriate evidentiary test for claims, and must distribute funds in a timely and equitable manner.

⁶ History Matters, 'Indigenous Stolen Wages Preliminary Investigation: Final report to Aboriginal Affairs Victoria & Public Record Office Victoria', 'Stage One: Establishing the Legal Framework' (Stage One Report) and 'Stage Two: Determining Implementation' (Stage Two Report), September 2009.

These actions must be taken without delay, having regard to the advancing age of potential claimants and the potential loss of relevant oral evidence over time.

As a first step, the Victorian Government should publicly respond to the Stage One and Two Reports. It should indicate whether it intends to proceed to establish a compensation scheme as referred to in Recommendation 5(c) of the Unfinished Business Report.

This Paper makes 11 Submissions in response to the current state of unpaid wages in Victoria. The Submissions appear in the text, and are set out in full at Appendix 1 below.

1.5 Defined terms

Defined terms are noted in bold when first appearing in the text, and are reproduced at Appendix 2 below.

2. About PILCH

PILCH is a leading Victorian, not-for-profit organisation. It is committed to furthering the public interest, improving access to justice and protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education. In carrying out its mission, PILCH seeks to:

- ▶ address disadvantage and marginalisation in the community;
- ▶ effect structural change to address injustice; and
- ▶ foster a strong pro bono culture in Victoria; and, increase the pro bono capacity of the legal profession.

PILCH recognises the right of Indigenous persons to country, self determination, participation, respect and to appropriate redress for past wrongs. PILCH has advocated for Indigenous persons within its human rights advocacy, has facilitated pro bono legal services for Indigenous persons in a positive manner (including stolen generations matters) and has undertaken Indigenous projects (including its regional Aboriginal Credit and Debit Clinic).

3. Paper overview

Following is an overview of Sections 4 to 13 of this Paper.

Section 4: Summary of Government reports and investigation

Section 4 of this Paper examines the Unfinished Business Report - its terms of reference, investigations (including of the NSW and Queensland repayment schemes) and recommendations. Section 4 examines Victoria's response to the Unfinished Business Report and the limitations of that response.

Section 5: Failure to conduct education and awareness campaigns

Section 5 addresses the fact that, contrary to Recommendation 2 of the Unfinished Business Report and the June 2007 agreement of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA), no education or awareness campaign regarding the stolen wages issue has taken place in Indigenous communities in Victoria.

Section 6: Lack of consultation

Section 6 addresses the failure of the Victorian Government to conduct any consultation in Indigenous communities in relation to unpaid wages. This failure is contrary to Recommendation 2 of the Unfinished Business Report, and to decisions made by MCATSIA (to which the Victorian Minister for Aboriginal Affairs, Mr Richard Wynne, was a party).

Section 7: Restricted archival review

Section 7 addresses the restricted nature of the archival review in the Investigation. Government bodies and affiliates failed to comply with a statutory obligation to keep adequate records, resulting in a further lack of historical information.

On both grounds, this Paper submits that it is circuitous and unfair to point to the lack of available information as the basis for the decision not to proceed with the proposed Stage Three of the Investigation, or as a basis for not establishing a compensation scheme in Victoria.

Furthermore, it is clear that more information about Government policy on unpaid wages may be contained in a number of significant sources that have not been examined in the Investigation. Restricting the scope of the documents examined is likely to produce an incomplete and inaccurate picture of the historical situation.

Section 8: Oral Evidence

Section 8 comments on the exclusion of oral evidence from the research process. This exclusion is significant, given the importance of oral history in Indigenous cultures. Furthermore, using oral history as a direct source of potentially relevant first-hand primary evidence could fill the significant gaps in the written records used in the Reports owing to '*poor, inadequate and often non-existent recordkeeping practices*'.⁷ Oral records might also indicate where written records, if any, might be found.

Section 9: Restricted scope of the Investigation – persons and types of payment covered

Section 9 examines the restricted scope of the subject matter covered by the Investigation, in terms of the persons and types of payments covered.

⁷ Stage Two Report, p 3.

Of particular concern is the exclusion from the scope of the research of wages paid to apprentices under the apprenticeship of all 'half-caste' Indigenous children living on reserves from the age of 11 or 12. Pursuant to legislation, the Victorian Government, through the Board, systematically removed all 'half-caste' children from the reserves, placed them in apprenticeships, and withheld half of each child's earnings.

Further, the exclusion from the scope of the Investigation of such relevant topics as underpayment of wages on reserves and the work-for-rations system is unjustified.

This Paper that that these issues be included in the Investigation as they are some of the most significant and relevant issues for inquiry.

Section 10: Time period covered

Section 10 addresses the fact that the Investigation only considered the period 1918 onwards, on the stated basis that *'any potential repatriation scheme would most likely be limited to living claimants'*.

The exclusion of pre-1918 records is unjustified. There is evidence available in relation to that period, including from Victorian Parliamentary inquiries in relation to Indigenous communities in Victoria, conducted in 1877 and 1881-2 respectively.

Further, the suggestion that claims by descendants would be excluded, is contrary to Recommendation 5(c) of the Unfinished Business Report, which refers to the potential establishment in Victoria of a compensation scheme using the NSW scheme as a model (the NSW scheme being a scheme which permits claims by descendants).

Each of these issues is discussed in detail below in light of other available sources of research.⁸

Section 11: Status and Integrity of the Investigation

Section 11 examines and comments on the limited information given in the Stage One and Two Reports and in public statements by Aboriginal Affairs Victoria (AAV) about the conduct of the Investigation. It is noted that the Victorian Government has not, at this stage, made publicly available the terms of reference for the Investigation.

Section 12: Government response and statements regarding unpaid wages

Section 12 of this Paper addresses the Victorian Government's (lack of) response to the Investigation. It is noted that the Victorian Government has not, at this stage responded publicly to the Stage One and Two Reports, or provided any clarity as to its policy position on unpaid wages.

Section 13: The legal landscape

Section 13 briefly overviews the legal landscape in relation to unpaid wages.

This Paper recommends that current efforts focus on lobbying for policy reform, and pressing for the establishment of a compensation scheme, rather than on commencing Court proceedings to recover unpaid wages. This is because the available archival evidence is incomplete, and because the costs of commencing proceedings would likely be prohibitive given the likely amounts claimed.

⁸ This document refers in particular to evidence included in Unfinished Business Report, and to evidence gathered during the course of research funded by the Australian Institute for Aboriginal and Torres Strait Islander Studies and set out in Andrew Gunstone and Sadie Heckenberg, *The Government Owes a Lot of Money to Our People: A History of Stolen Wages in Victoria*, Australian Scholarly Publishing Pty Ltd, 2009.

4. Summary of Government reports and investigation

4.1 Unfinished Business Report – Terms of Reference

In 2006, the Senate Committee on Legal and Constitutional Affairs released its report on the issue of Indigenous wages in Australia, *Unfinished Business: Indigenous Stolen Wages (Unfinished Business Report)*.

The terms of reference of the Unfinished Business Report were as follows (emphasis ours):

1.11 *The terms of reference for this inquiry relate to 'Indigenous workers whose paid labour was controlled by Government'. Throughout the 19th and 20th centuries, governments put in place extensive controls over the employment, working conditions and wages of Indigenous workers. These controls permitted, both explicitly and implicitly, the **non-payment of wages** to some Indigenous workers, as well as the **underpayment of wages**, and the **diversion of wages** into trust and savings accounts.*

1.12 *Due to the wide-ranging implications of governmental control of wages, the committee has taken an expansive view of the terms of reference as it considers that where controls permitted the non-payment of wages, this was, in turn, a form of control of workers' opportunities and their ability to undertake paid employment.*

The Victorian Government did not participate in the preparation of the Unfinished Business Report. The Unfinished Business Report stated:

The committee did not receive submissions from the Western Australian, South Australian, Tasmanian or Victorian Governments.⁹ The committee believes that state governments would have been able to provide valuable assistance to the inquiry and is disappointed that these governments did not participate.¹⁰

4.2 The Queensland and NSW repayment schemes

The Unfinished Business Report examined in detail the practices in relation to unpaid wages, and the repayment schemes established, in both Queensland and NSW.

In Queensland the Underpayment of Award Wages Process (UAWP) made lump sum reparations for the **underpayment of award wages** to Indigenous workers who had been employed by the government on Aboriginal reserves for the period 31 October 1975 to 29 October 1986.

In 2002, the Queensland Government also introduced the Indigenous Wages and Savings Reparations Offer for the reparation of a lump sum to Indigenous workers who had their **wages and savings controlled under protection Acts**.

The NSW Government also introduced the Aboriginal Trust Fund Repayment Scheme (NSW ATFRS) to address the repayment of monies **diverted into trust funds** by the NSW Government.

9 The committee received correspondence from the Victorian Premier ... that those states would not be participating in the inquiry: correspondence from the Hon. Steve Bracks MP, Victorian Premier to the Committee Secretary, 23 August 2006.

10 Unfinished Business Report section 1.8.

The NSW ATFRS is an evidence-based scheme where claims are to be paid where there is reliable evidence of monies being diverted into trust funds and no reliable evidence that the money was paid out.

The Unfinished Business Report noted that:

7.92 Evidence received during the inquiry indicates that, overall, the NSW ATFR Scheme has been better received than the Queensland Government's reparations offer.

The key features of the NSW ATFRS which made it 'better received' by applicants than the Queensland UAWP and subsequent Queensland Indigenous Wages and Savings Reparations Offer, include that under the NSW ATFRS:

- ▶ claims may be made by individuals or where the direct claimant is deceased, their descendents may make a claim;¹¹
- ▶ claimants are not required to sign an indemnity; and
- ▶ oral evidence may be accepted where gaps in written records exist.¹²

As discussed below, the Unfinished Business Report refers to the NSW Scheme as a potential model for a Victorian compensation scheme. PILCH submits that any compensation scheme in Victoria should include the key features of the NSW scheme as referred to above, but should also have regard to any differences in the actual practices which occurred in Victoria, compared with those which occurred in NSW.

4.3 Unfinished Business Report – Recommendations

Recommendation 2 of the Unfinished Business Report stated as follows:

The committee recommends that the Ministerial Council on Aboriginal and Torres Strait Islander Affairs agree on joint funding arrangements for ... an education and awareness campaign in Indigenous communities in relation to stolen wages issues.¹³

The Unfinished Business Report noted that little if any research had been conducted on the Indigenous Stolen Wages issue in Victoria. In that light, Recommendation 5 of the Unfinished Business Report recommended that the Victorian Government:

- (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 [i.e. similar to those which occurred in NSW] operated in relation to the withholding, underpayment or non payment of Indigenous wages and welfare entitlements in these states, then establish compensation schemes using the New South Wales scheme as a model.¹⁴*

11 Guidelines for the Administration of NSW ATFRS, 6.1.3.

12 Guidelines for the Administration of NSW ATFRS, 1.9.

13 Unfinished Business Report, Recommendation 2.

14 Unfinished Business Report, pp 77-78 and Recommendation 5.

4.4 Victoria's response – the Stage One and Stage Two Reports

(a) Recommendation 2 of the Unfinished Business Report

In relation to Recommendation 2 of the Unfinished Business Report, the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA) (which included the Victorian Minister for Aboriginal Affairs) agreed in June 2007 that any education and awareness campaign of the type referred to in Recommendation 2, would *'need to occur at the jurisdictional level and as such are outside the MCATSIA remit'*.

Notwithstanding that agreement, no such education or awareness campaign has been established in Victoria.

(b) Recommendation 5 Unfinished Business Report

In relation to Recommendation 5 of the Unfinished Business Report, in August 2007 the Victorian Government, through the Public Record Office Victoria (PROV) and Aboriginal Affairs Victoria (AAV), engaged a private consultant to conduct preliminary research into selected Victorian Government archives on the issue of unpaid wages in Victoria (the **Investigation**).

The terms of reference for the Investigation were not published. The private consultant engaged by the Victorian Government was *'History Matters – consulting historians'* (**History Matters**). History Matters does not appear to have any website or publicly available contact details.

The results of the Investigation conducted by History Matters were set out in two reports, both of which were published in September 2009 (**the Stage One and Stage Two Reports**).¹⁵

The Stage One Report describes the three proposed stages of research as follows (quotation marks from the original):

Stage One of the Indigenous Stolen Wages Preliminary Investigation aims to "determine whether:

- *it was legally possible for the Colonial/State Government to garnish or withhold wages of Aborigines in Victoria; and*
- *this was government policy at the time".*

Stage One also required that an assessment be made for a potential second stage, to investigate the nature and impact of the implementations of any government policies affecting Aboriginal wages in Victoria. A further potential third stage to be assessed during their research for Stage Two would identify any individual case studies revealing evidence of wages withheld by the government under such policies.

The Stage One Report concludes, in Section 5, with the following 'Recommendations':

A review of the legislative framework governing the lives of Aboriginal people in the period 1869 to 1974 has revealed that there were a number of ways in which the working lives, wages and earnings of Aboriginal people could be placed under the control of the Board for the Protection of Aborigines and its successors [the Board] through the various Aborigines Acts from time to time.

¹⁵ History Matters, 'Indigenous Stolen Wages Preliminary Investigation: Final report to Aboriginal Affairs Victoria & Public Record Office Victoria', 'Stage One: Establishing the Legal Framework' (Stage One Report) and 'Stage Two: Determining Implementation' (Stage Two Report), September 2009.

It is recommended that Stage Two of the Indigenous Stolen Wages Preliminary Investigation proceed to enable research to determine whether these policies affecting Aboriginal work and wages were implemented, and the nature of this implementation. The objective will be to try to ascertain whether wages and earnings were likely to have been systematically withheld from Aboriginal people by the Colonial / State Victorian governments in line with the established legislative framework, as it was interpreted by the Board.

The scope for Stage Two of the Preliminary Investigation outlined in the Request for Quotation' issued by the Victorian Government in August 2007 (RFQ) allows for twenty days to undertake research and prepare a report addressing the objectives. It is recommended that the current scope for Stage 2 be expanded to allow for the research of records identified as relevant to the stolen wages issue in Victoria. A period of 70-80 days is suggested as a more realistic timeframe for this preliminary research.

The Stage Two Report concludes, in Section 5, with the following 'Recommendations':

The Indigenous Stolen Wages Preliminary Investigation project brief required that a recommendation be made regarding a potential third stage of research, highlighting individual case studies.

During the Stage Two research the Stolen Wages [Project] Control Board (the Control Board) decided not to proceed with a further research stage, on the basis of the nature of the available records in custody and in light of the findings of stages one and two.

As set out below, there were significant restraints imposed upon History Matters in relation to the scope of the Investigation. These constraints in turn restricted the range of the findings made in the Stage One and Stage Two Reports.

The restricted nature of the findings appears to have been used in turn as a basis for the Victorian Government to decide not to proceed with further research. It may also have been used as a basis for the Victorian Government to not consider whether to establish a compensation scheme in Victoria.

Further, research is required to determine whether the control of Indigenous labour in Victoria was characterised by wages being diverted into trust funds (as in NSW) or underpayment of award wages (as in Queensland) or non payment of wages and social security benefits (as in both Queensland and NSW).

4.5 Limitations upon Victoria's response

Some significant limitations were imposed upon History Matters in the scope and extent of research conducted during the Investigation, as set out in detail in this Paper.

It is apparent from the Stage One and Two Reports that these limitations were imposed by:

- ▶ the Request for Quotation; and
- ▶ subsequent directions imposed upon History Matters by the Control Board, which board is expressed to comprise a number of officers of AAV and PROV.

However, neither the RFQ nor the terms of reference for the Investigation conducted by History Matters have been made public. Nor has there been any publication of the directions and constraints imposed upon History Matters by the Control Board, other than where those directions and constraints are expressly referred to in the Stage One and Two Reports.

It is submitted that the Victorian Government address constraints in the Investigation by way of further research, so that a proper conclusion can be reached as to whether the withholding, underpayment or non payment of Indigenous wages and welfare entitlements did occur in Victoria.

4.6 The need for urgency

Further action must be taken urgently. In that regard, it was noted back in 2006 in the Unfinished Business Report that:

*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 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.*¹⁶

¹⁶ Unfinished Business Report section 8.18.

5. Lack of education and awareness of unpaid wages issue

Recommendation 2 of the Unfinished Business Report states as follows:

The committee recommends that the Ministerial Council on Aboriginal and Torres Strait Islander Affairs agree on joint funding arrangements for ... an education and awareness campaign in Indigenous communities in relation to stolen wages issues.¹⁷

The MCATSIA is a forum through which Commonwealth and State and Territory Ministers with responsibility for Aboriginal and Torres Strait Islander affairs meet to discuss issues of mutual interest and to consider reports on relevant Commonwealth, State, Territory and local government activities.¹⁸ The Victorian representative on MCATSIA is Minister for Aboriginal Affairs, Richard Wynne.

MCATSIA is supported by the Standing Committee for Aboriginal and Torres Strait Islander Affairs (SCATSIA), a standing committee of senior officials from the Commonwealth, State and Territory departments with responsibility for Aboriginal and Torres Strait Islander affairs. The Victorian representative on SCATSIA is Executive Director of Aboriginal Affairs Victoria Mr Ian Hamm.

According to the Commonwealth Government's response to the Unfinished Business Report (received by the Senate Committee on 6 May 2010),¹⁹ at the MCATSIA meeting on 22 June 2007, the members of MCATSIA agreed:

That education programs [on stolen wages] ... need to occur at the jurisdictional level and as such are outside the MCATSIA remit.²⁰

Notwithstanding Recommendation 2 of the Unfinished Business Report and the 22 June 2007 agreement, no education or awareness campaign in relation to the unpaid wages issue has yet occurred in Victoria. Neither Recommendation 2 of the Unfinished Business Report nor the MCATSIA agreement are referred to at all within the Stage One or Stage Two Reports.

In light of Recommendation 2 of the Unfinished Business Report and the MCATSIA agreement of 22 June 2007, it is submitted that the Victorian Government fund education or awareness programs about unpaid wages in Indigenous communities in Victoria.

Submission 1 – Education and awareness

Consistent with Recommendation 2 of the Unfinished Business Report and with the MCATSIA agreement of June 2007, the Victorian Government should conduct an education and awareness campaign in Indigenous communities in relation to stolen wages issues.

17 Unfinished Business Report, Recommendation 2.

18 See http://www.mcatsia.gov.au/1/32/12/about_mcatsia.pm.

19 See http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/government_response.pdf (Commonwealth Government Response).

20 Commonwealth Government Response, Response to Recommendation 2.

6. Lack of consultation

In Recommendation 5 of the Unfinished Business Report, the Senate Committee urged the Victorian Government to:

- (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 states, then establish compensation schemes using the New South Wales scheme as a model.*²¹

The Stage One Report notes that the Investigation was initiated in response to Recommendation 5(b) of the Unfinished Business Report.²²

The Stage One Reports refers briefly to Recommendation 5(a) of the Unfinished Business Report – namely, the recommendation to '*urgently consult with Indigenous people in relation to the stolen wages issue*'. However, it says nothing as to whether the Victorian Government intended to take any steps to implement that Recommendation. Structured consultations with Victorian Indigenous communities in relation to unpaid wages did not occur as part of the methodology of the Investigation.²³

(Significantly, neither the Stage One nor the Stage Two Reports makes any reference at all to Recommendation 5(c) of the Unfinished Business Report, relating to the establishment of a compensation scheme in Victoria.)

Given the clear terms of Recommendation 5(a) of the Unfinished Business Report, and the widely acknowledged importance of consultation with Indigenous communities on issues, policies and measures that affect their lives,²⁴ the failure to consult is a significant omission.

The separate independent research pilot study conducted by Andrew Gunstone of Monash University involved a series of interviews within three Indigenous communities in Victoria at Healesville, Lake Tyers and Warrnambool.²⁵ In the course of these consultations, information was recorded which established the existence of practices withholding wages (see section 8.4 of this Paper). Gunstone and Heckenberg concluded that:

*a wider consultation process, possibly funded by the Victorian Government, would be of considerable assistance in further investigating the history and impact of Stolen Wages policies throughout Indigenous communities in Victoria.*²⁶

21 Unfinished Business Report, Recommendation 5 (emphasis added).

22 Stage One Report, p 2.

23 Andrew Gunstone and Sadie Heckenberg, *The Government Owes a Lot of Money to Our People: A History of Stolen Wages in Victoria*, Australian Scholarly Publishing Pty Ltd, 2009, p xvii.

24 See for example UN Doc A/RES/49/214 (1994), Resolution of the United Nations General Assembly on the International Decade of the World's Indigenous People; UN Doc A/RES/59/174 (2004), Resolution of the United Nations General Assembly on the Second International Decade of the World's Indigenous People, both of which emphasise the necessity of consultation and collaboration with Indigenous people in planning and implementing activities and programs.

25 Gunstone and Heckenberg, p xviii and Ch 1.

26 Gunstone and Heckenberg, p 2.

Submission 2 – Consultation

Consistent with Recommendation 5(a) of the Unfinished Business Report, the Victorian Government should urgently consult with Indigenous communities in relation to the issue of unpaid wages in Victoria.

7. Restricted archival review during the Investigation

It is clear from both the Stage One and Stage Two Reports that only limited archival records were reviewed in compiling the Reports. This section examines:

- ▶ the obligations on the Board and the Victorian Government to keep records;
- ▶ how the Board and the Victorian Government fell short of meeting those obligations; and
- ▶ the extent of potential record sources that were excluded from the research.

7.1 Deficiencies in the archival records

The Stage Two Report acknowledges serious deficiencies in the financial records maintained by the Board during the relevant period. This seriously impacted the extent to which any findings could be made in the Stage Two Report. The Stage Two Report stated (at page 3) that:

The research has highlighted a number of issues that make it difficult to accurately and comprehensively identify the actions of the Board in relation to its financial policy and administration. Not all records, including financial records, that were required to be kept by the Board or the station managers or other staff are in the custody of the NAA [National Archive of Australia] or the PROV. Existing Board records show evidence of poor, inadequate and often non-existent record keeping practices. A lack of indexes and archival control records make assessing the records difficult. Apparent discrepancies, inconsistencies and omissions within and between records pose potential difficulties for researching individual histories. Most of the financial record series are incomplete, lacking in detail, and can be complex to understand. There is little detail prior to the mid-1930s and there is virtually no record of the financial operation of the Ministry of Aboriginal Affairs between 1968 and 1975...

A number of broader factors meant that the requirements of the Aborigines Acts were not fully implemented. The general inactivity and unaccountability of the Board for much of the period prior to 1957 is reflected by a lack of formal guiding policy decisions and associated administrative recordkeeping.

The Stage Two Report is limited in scope to the experiences of Indigenous people living at Lake Tyers station in Gippsland. However, the Stage Two Report states (at page 15):

There is little information in custody reflecting the transactions that took place at Lake Tyers.

At page 13, the Stage Two Report states:

A number of supporting records of the Board for the Protection of Aborigines and the Aborigines Welfare Board were sampled in order to provide some context for the information gathered through financial records.

There are a number of methodological issues associated with the use of these records. It is often impossible to follow a trail of correspondence or decision-making processes to their conclusion. A lack of indexes or control records for much of the time period under examination makes it difficult to access to records. There are also inconsistencies and omissions in the Board's own recordkeeping practices. This is largely due to the fact that the Board was virtually inactive for significant periods during the twentieth century, relying on the Board Secretary (who did not undertake the role full-time) to carry out the administration of the Aborigines Act at a department level.

At page 15, the Stage Two Report states:

The records emanating from the Board that have been transferred provide evidence of poor, inadequate and at times non-existent recordkeeping practices during the period of the Investigation. The records are often incomplete and in some cases information simply does not exist. Given the apparent inactivity of the Board, and the limited time and funding dedicated to the administration of Aboriginal policy, for much of the period prior to the creation of the Aborigines Welfare Board in 1957 it is also likely that records were not created or maintained in the first place....

The Board's records do not present a full or comprehensive account of its financial dealings or its dealings with individuals for the period after 1918. Some of the financial records are very difficult to read and interpret. Apparent discrepancies, inconsistencies and omissions in the Board's financial records also reveal a lack of detail about individual transactions. Trust fund records maintained at Treasury show information only at a very high level. It is possible that these records would require evaluation by an expert in financial recordkeeping.²⁷

At page 16, the Stage Two Report states:

These gaps in the available record raise issues of interpretation and limit a full understanding of the Board's administration. The nature and extent of the records in custody therefore reflect only part of the story of the administration of Aboriginal affairs in Victorian and the experiences of those people under the care and control of the Board.

These extensive statements regarding the inadequacies and inconsistencies in the records reviewed during the Investigation make clear that it would be unfair for the Victorian Government to rely on the limited findings of the Stage Two Report as a basis for deciding either to not conduct further research, or not to establish a compensation scheme.

These statements also provide a further basis for the Investigation (and any compensation scheme which may be established) to have regard to oral evidence as well as written records.

It appears that, despite making the observation that trust fund records would require an evaluation by an expert in financial recordkeeping, the Investigation did not involve engaging an appropriately qualified researcher. Accordingly, Dr Susan Greer²⁸ and Dr Ros Kidd have given their preliminary opinions on the records used. The discussion below is based in part on the comments of Dr Greer and Dr Kidd.

7.2 Obligation to keep records

The lack of historical information regarding remuneration of Indigenous Victorians is largely due to the failure of Victorian Government bodies to keep adequate records.

Pursuant to Victorian legislation, the Board and its successors were under various obligations to keep records throughout the period 1871-1967. As briefly noted in the Stage One Report,²⁹ the Board was variously required to:

- ▶ keep books of account, vouchers, reports, documents, plans and charts;³⁰

²⁷ Stage Two Report, p 15.

²⁸ PhD (Macquarie University); BEc (Hons) (Macquarie University); BBus (Kuring-gai CAE); CA Designation. Dr Greer's principal area of research and writing is concerned with unveiling the roles of accounting in the conduct of relations between governments and Australian Aboriginal and Torres Strait Islander peoples. She is also engaged in researching the role of critical and interpretive perspectives on accounting.

²⁹ Stage One Report, p 37.

- ▶ certify accounts;³¹
- ▶ submit to at least annual inspection of books and accounts by the State Auditor;³²
- ▶ prepare business papers for each meeting;³³
- ▶ record and confirm minutes;³⁴
- ▶ conduct correspondence through the Board Secretary;³⁵
- ▶ submit to the Governor a quarterly report of ration and stock quantities and all moneys expended, including on salary and wages;³⁶
- ▶ submit to the Governor a yearly statement showing in detail the quantities of distributions made and the amount of actual expenditure in salaries, wages and other expenses for the period;³⁷ and
- ▶ provide reports to the Victorian Parliament.³⁸

The following statutory recordkeeping obligations were placed on station managers:

- ▶ to report monthly to the Board as to the general condition of the stations, the number of Aboriginal people there, the number of children attending school, the nature and extent of work done, the number of births and deaths, and the general health of the Aboriginal people;
- ▶ to keep a diary of all occurrences at the station and submit to the Board when required;
- ▶ to be accountable for all rations, clothing and medicines and their distribution;
- ▶ to keep accounts of all moneys and supplies received and disbursed of and provide the Board with a monthly summary;
- ▶ to forward all moneys received from the sale of produce to the Board each month accompanied by an itemised statement.³⁹

The following statutory accounting obligations were placed on local guardians and committees:

- ▶ to account to the Board in every case for monies received on behalf of an Aboriginal person;⁴⁰ and
- ▶ to furnish the Board a monthly statement of moneys received and disbursed, including detailed financial updates.⁴¹

30 See Aborigines Act 1915 Regulations made under the Aborigines Act 1915 (Vic), reg 20; Aborigines Act 1931 Regulations made under the Aborigines Act 1931 (Vic), reg 20.

31 See Aborigines Protection Regulations 1871 made under the Aborigines Protection Act 1869 (Vic), reg 19.

32 Audit Act 1890 (Vic), s 40.

33 See Aborigines Act 1915 Regulations made under the Aborigines Act 1915 (Vic), reg 20; Aborigines Act 1931 Regulations made under the Aborigines Act 1931 (Vic), reg 20.

34 See Aborigines Protection Regulations 1871 made under the Aborigines Protection Act 1869 (Vic), reg 18; Aborigines Act 1915 Regulations made under the Aborigines Act 1915 (Vic), reg 20; Aborigines Act 1931 Regulations made under the Aborigines Act 1931 (Vic), reg 20.

35 See Aborigines Protection Regulations 1871 made under the Aborigines Protection Act 1869 (Vic), reg 19.

36 See Aborigines Protection Regulations 1871 made under the Aborigines Protection Act 1869 (Vic), reg 10.

37 See Aborigines Protection Regulations 1871 made under the Aborigines Protection Act 1869 (Vic), reg 10.

38 Aborigines Act 1957 (Vic), s 9.

39 See Aborigines Act 1915 Regulations made under the Aborigines Act 1915 (Vic), reg 25; Aborigines Act 1931 Regulations made under the Aborigines Act 1931 (Vic), reg 25; Aborigines Welfare Regulations 1958 made under Aborigines Act 1957 (Vic), regs 5 and 7.

40 Aborigines Act 1915 Regulations made under the Aborigines Act 1915 (Vic), reg 7.

7.3 Failure to keep records

Notwithstanding the legal requirements set out above, recordkeeping was often inconsistent or non-existent.⁴² Financial records lack the detail required, are incomplete or have been lost or destroyed.⁴³

The Stage Two Report acknowledges the '*general inactivity and unaccountability of the Board*'.⁴⁴ Between 1912 and 1957, the Board issued only three Annual Reports to Victorian Parliament.⁴⁵ Even when annual reports were released by the Board from 1957-1967, financial statements were not included.⁴⁶

Similarly, the Report states that '*no evidence of independent audits of the station accounts was located for the period 1918-1962*'.⁴⁷ The sole record of the auditing of station accounts (conducted by the State Audit Office at Lake Tyers in 1962) refers to the mismanagement of station funds, with canteen money being used to pay wages and deficiencies in pension funds as a result of '*inadequate bookkeeping*'.⁴⁸

The limited extent of the records currently available suggests a dereliction of duty on the part of the Board and on the part of station managers.

The lack of record keeping on the part of the Board is reflective of a broader failing of recordkeeping. For instance, there is evidence that the Victorian Police Force kept few records of its Indigenous employees⁴⁹ and Indigenous people were excluded from the register of births, deaths and marriages and from census records.⁵⁰

Inadequate recordkeeping has led to an incomplete collection of information to form the basis of any Government analysis. Given that it was the statutory obligation of Government bodies and affiliates to keep adequate records, it is circuitous, and unfair, to point to the lack of available information as the basis for the decision not to proceed with Stage Three of the Investigation, or as the basis for any decision not to establish a compensation scheme.

7.4 Records excluded from the research

As discussed above, the records available for analysis were incomplete. To compound matters, the following records were excluded from the Investigation:

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- 41 Aborigines Act 1915 Regulations made under the Aborigines Act 1915 (Vic), reg 11; Aborigines Act 1931 Regulations made under the Aborigines Act 1931 (Vic), reg 11.
- 42 See Stage Two Report, pp 5, 11, 13; Gunstone and Heckenberg, p 88.
- 43 See Stage Two Report, pp 5, 20; Gunstone and Heckenberg, pp 86-87: one report on finances at Lake Condah reserve stated that no bank books had been produced and it appeared 'that the Cash Books had been recently written up'. There was also evidence of a lack of auditing at some reserves, books that could not be reconciled with cash on hand, inaccurate stock books, and an intertwining of financial affairs between the reserve managers and the Board.
- 44 See Stage Two Report, p 5.
- 45 Gunstone and Heckenberg, p 94.
- 46 Gunstone and Heckenberg, p 103.
- 47 Stage Two Report, p 22.
- 48 See Stage Two Report, p 22.
- 49 Gunstone and Heckenberg, p 71.
- 50 Gunstone and Heckenberg, p 27.

(a) 'Selected' records

According to the Stage Two Report, much of the research has been based on 'selected' records created by the Board and 'selected' general correspondence.⁵¹ No information is provided about how, or why, these records have been 'selected' and what, if anything, has been excluded. No directions or communications from either the Victorian Government or the Control Board to History Matters, have been made public.

For example, it is not stated whether the records were 'selected' randomly, or on some other basis.

(b) Correspondence

The main correspondence series of the Board held at PROV was not included.⁵² This exclusion is problematic, given the volume of relevant material which may be contained in these records. It is submitted that correspondence files may be a particularly useful source of information relation to individuals and would provide a useful reference point for research of the type contemplated for Stage Three.

(c) Time books (1933-1970) and wage books (1948-1970)⁵³

The Stage Two Report states that entries in the National Archive of Australia (NAA) B2024 Volume 1 for the period 1933-1949 contain the most detailed information for (male) workers, recording hours worked each day, total hours worked for the month, rates per hour, and total amount paid. However, the Stage Two Report does not provide any specific information or analysis in relation to how the rates paid per hour compared to award rates.

(d) Personal records relating to Aboriginal people

The Report states that a number of records at NAA and PROV were not consulted as they are exempt from public access under paragraph 33(1)(g) of the *Commonwealth Archives Act 1983* and Section 9 of the *Public Records Act 1973* (Vic) respectively⁵⁴. No elaboration is provided. It is assumed that the files in question were declared unavailable to the public due to their containing information of a personal or private nature.

No mention is made as to whether permission to inspect the files was applied for by the Project Control Board under section 9(2) of the *Public Records Act* which may permit inspection by specific persons under certain restrictions. An exemption from these privacy laws should be applied for as the private records may contain relevant information.

(e) Missing files

The Report mentions a significant number of instances in which particular records are missing from the records at NAA and PROV (e.g. the Collectors Cash Books held at NAA B2058 in which there are a number of missing entries). However the Report does not record whether any attempt has been made to locate these files.

51 Stage Two Report, p 2.

52 Stage Two Report, p 14.

53 Stage Two Report, pp 11, 26, 29.

54 Stage Two Report, p 10.

(f) Files not considered due to lack of indexing

There are various sources of information that were not consulted due to 'a lack of indexes' that 'makes it difficult to access the records'.⁵⁵ In particular, the main correspondence series of the Board held at PROV, VPRS 1694 Correspondence Files 1867-1946, was not included in the Stage Two research largely due to 'lack of archival controls or a usable index to the 21 boxes of material, combined with time constraints'.⁵⁶

It is noteworthy that in the context of the NSW ATFRS, the NSW Department of Premier and Cabinet, the NSW Department of Aboriginal Affairs and NSW State Records co-operated, and resources were invested, in indexing 134 newly discovered boxes of the NSW Chief Secretary's correspondence. A similar investment in Victoria would enable a large amount of further records to be reviewed and considered.

(g) Information relating to individuals

The Report did not consult a vast number of files and records that related to individuals as 'the focus of this research has not been on examining the experiences of individuals'.⁵⁷ However, the experiences of individuals and the associated documents should be considered highly relevant to the Investigation and should be researched, particularly given the inadequacies and inconsistencies in the records that were reviewed.

There is a wealth of organisations with experience, expertise and resources regarding personal history research of this nature.⁵⁸

(h) Private records

Privately held records were not sought out for the Stage Two Report, despite the fact that, 'a number of issues arose because the public records available for researching the possible incidence of withheld wages were incomplete'.⁵⁹ Further, it is stated in the Report that it was 'obvious' that 'some pertinent papers', particularly those emanating from the Indigenous reserves, 'may be held privately'.⁶⁰ Attempts should be made to locate these records.

(i) Records not held at NAA or PROV

The only records consulted for the Report were those held at NAA or PROV. There is no explanation given for such a restrictive research.

Where relevant, research should extend to other sources, such as the State Library of Victoria. The State Library of Victoria has custody of over a century's worth of annual reports of the various Aboriginal Protection

55 Stage Two Report, page 13.

56 Stage Two Report, page 14

57 Stage Two Report, page 14.

58 Link Up Victoria provides a range of services to assist people who want to find their Koorie family and learn about their Aboriginal ancestry. Finding Your Story is a valuable reference tool for Victorian Koorie people seeking information on their separation from family and community. It is also a helpful guide for organisations that assist the Stolen Generations retrace family and community connections through records made by government and non-government agencies. A Bringing them Home (BTH) Name Index has been developed by National Archives of Australia (NAA), which also holds records created by government departments about Victorian Aboriginal people. PROV has established a Koorie Index of Names (KIN) database project to make it easier to access records about Koorie people, families and communities in its collection. You can contact PROV's Koorie Records Unit, to find out more about accessing both the BTH and KIN indexes, or for assistance and advice on accessing Aboriginal records at PROV.

59 Stage Two Report, page 15.

60 Stage Two Report, page 16.

Boards and the Ministry of Aboriginal Affairs, spanning at least from 1861 until 1974. The State Library also has all papers put before the Victorian Parliament, which would include these and other such reports.

It is clear that further information about Government policy on unpaid wages may be contained in a number of significant sources that have not been examined in the research underpinning the Stage Two Report. Dr Kidd, who herself has spent a number of years researching government archives in relation to unpaid wages, has stated that restricting the scope of the documents examined is likely to produce an incomplete and inaccurate picture of the historical situation. This impacts upon the credibility of any conclusions drawn in the Reports.

Submission 3 – Archival review

Consistent with Recommendation 5(b) of the Unfinished Business Report, and given the limited nature of the archival review conducted during the Investigation, the Victorian Government should invest resources in researching the available records, including:

- (a) researching archival records outside the NAA and the PROV;
- (b) indexing documents;
- (c) reconciling available account records;
- (d) obtaining permission to inspect records subject to privacy legislation;
- (e) conducting extensive name searches; and
- (f) locating missing records.

Submission 4 – Failure to maintain proper records

PILCH recommends that, to the extent that the above research confirms that past Victorian Government departments and their direct reports have failed to comply with statutory recordkeeping requirements in relation to unpaid wages, the Victorian Government should consider how best to provide a remedy to Indigenous Victorians for those failures, for example, by processing individual claims on an appropriate evidentiary basis, or otherwise allocating and distributing recompense.

8. The importance of oral evidence

In engaging in consultation with Indigenous communities, it is important that the Government have regard to the cultural significance and factual importance of oral evidence.

The Stage One and Stage Two Reports excluded a consideration of oral evidence, apparently at the direction of the Victorian Government through the RFQ.

In that regard, the Stage One Report stated (at page 11) that:

The research has also been defined by the RFQ to include only those records created and / or owned by the government of Victoria, that are publicly available and held within the custody of PROV or the National Archives of Australia (NAA) at the time of research.

The Stage Two Report stated (at page 2) that:

Stage Two of the Preliminary Investigation encompassed research of selected records created by the Board for the Protection of Aborigines (1918-57), Aborigines Welfare Board (1957-68) and Ministry of Aboriginal Affairs (1968-74).

The research conducted for the Stage Two Report excluded, among other things, 'information held within the Victorian Aboriginal community'.⁶¹ The Stage Two Report focused exclusively on the records of the Board, giving preference to accounting records and board papers. Like the Stage One Report, it did not have regard to oral evidence.

The importance of oral evidence is particularly pronounced, given the lack of available archival records detailed in Section 7 of this Paper.

8.1 The cultural significance of oral history

It is important to have regard to the cultural significance of the oral tradition within Indigenous society. Oral story-telling is the primary means by which Indigenous history is passed on. In Indigenous cultures such knowledge is highly valued, and members of the Indigenous community are acutely aware of 'the complex responsibilities that come with receiving oral knowledge'.⁶²

Moreover, the omission of oral histories from the Investigation represents a missed opportunity to 'record the perspectives of disadvantaged people who traditionally have been either ignored or misrepresented in conventional historical records'.⁶³

Gunstone and Heckenberg note the importance of oral evidence in understanding the experiences of the Board's wages policies from an Indigenous standpoint, particularly given the 'almost total silence of Indigenous voices in government archives'.⁶⁴

⁶¹ Stage Two Report, p 2.

⁶² Taylor, Penny, *Telling it like it is: A guide to making Aboriginal and Torres Strait Islander History*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2002, p 75.

⁶³ Robertson, Beth, *Oral History Handbook*, Fourth Edition, Oral History Association of Australia (South Australia Branch) Inc, Adelaide, 2000, p 3.

⁶⁴ Gunstone and Heckenberg, pp xx-xxi.

8.2 The factual importance of oral evidence

The omission of oral evidence from the Investigation is to disregard a direct source of potentially relevant first-hand primary evidence. Dr Ros Kidd⁶⁵ has commented that Indigenous communities are the most significant repositories of relevant historical knowledge. According to Dr Kidd, lack of consultation with these communities in relation to unpaid wages results in flawed research.

Further, there are dangers in relying solely on written evidence. All historical sources, be they photographs, maps or accounting records contain bias and errors which require interpretation and analysis.⁶⁶

Taylor explicitly addresses the subject of Board written records, arguing that while such records may contain useful material 'we must remember, ... that in their reports [the authors of such records] always tried to show how well they were running things to make themselves look good'.⁶⁷ Dr Kidd has stated that she has regularly encountered evidence of inaccurate written records in her research.

The Unfinished Business Report addressed the issue of oral evidence, and suggested that State compensation schemes should allow claims made on the basis of oral evidence:

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.

8.3 The NSW Aboriginal Trust Fund Repayment Scheme

In addition to the support provided by the Unfinished Business Report, there is a 'precedent' for the Victorian Government to have regard to oral evidence in relation to the unpaid wages issue.

In that regard, the Guidelines underpinning the NSW ATFRS have recently been revised to allow greater emphasis on oral testimony.

The original 2006 NSW ATFRS Guidelines outlined at 11.1 certain general principles relevant to the determination of applications including, amongst others:

- ▶ any deficiencies in the official written record relating to the application; and
- ▶ the importance of oral evidence in the absence of written records and in the cultural traditions of Aboriginal people.

However, in practice the NSW ATFRS was initially reluctant to give weight to oral evidence in the absence of specific written records evidencing a Trust Fund held by the Board.

For example, two claimants grew up in the same area and both had documents in their records that proved they were under the care of the Board and were sent out into domestic service. Both clients made statements that they had never been paid for the work that they did. One of the clients had correspondence in her records that showed she made inquiries with the Board in the 1950s in relation to her Trust Fund. There was no documentary evidence of the final balance of her Trust Fund but it was possible to calculate what she should have been paid by reference to Regulations that set out wage rates for wards. The Panel

⁶⁵ Dr Ros Kidd is an historian, consultant and author of extensive publications on the issue of unpaid wages in Queensland.

⁶⁶ Robertson, p 4.

⁶⁷ Taylor, p 34.

made an award of over \$20,000. The other client did not have any documentary evidence that she had a Trust Fund and her claim was initially denied.

In another case a claimant had documentary evidence of a Trust Fund showing a final balance of \$12.53 in 1972. The NSW ATFRS denied the claim on the basis that the records showed the money had been paid out to the claimant by cheque. The client made a statement that she had moved around a lot during that period of her life and that she never received the cheque. The Panel accepted the claimant's oral evidence to supplement the documentary evidence of a Trust Fund.

The revised NSW ATFRS Guidelines released in 2009 include the same general principles relevant to the determination of applications. Significantly, a new provision 1.9 has been added expressly allowing for non-documentary evidence including statutory declarations and oral evidence to be considered by the NSW ATFRS Panel in the assessment of applications. This change attempts to remedy some of the difficulties claimants experienced due to poor record keeping practices by the Board, the existence of records which lacked sufficient information, or in many cases non-existent records.

This amendment has allowed the NSW ATFRS Panel to reconsider previously unsuccessful claims in light of compelling oral evidence from the claimant as well as the collective body of oral evidence that has emerged during the course of the operation of the NSW ATFRS. This collective body of evidence has been supplemented by academics such as Susan Greer (University of Sydney) and Professor Peter Read (ANU) who have been called to address the NSW ATFRS Panel on issues such as the limitation of documentary evidence and breaches of official policy.

8.4 The Victorian context

Elders interviewed by Gunstone and Heckenberg during the course of their consultations at Healesville, Lake Tyers and Warrnambool discussed working conditions and wages on the reserves. Several Elders noted that the Indigenous workers did not receive proper wages for their work.

Oral evidence relating to unpaid wages in Victoria: A snapshot⁶⁸

Some Elders of the Lake Tyers, Healesville and Warrnambool communities interviewed by Gunstone and Heckenberg discussed in detail the practice of Indigenous people working in exchange for rations rather than wages.

'If they lived on the mission they worked on the mission and the payment would be rations.'

'All the workers, the men that worked on the reserves, even the men that joined the police forces, in those days if they worked with the police, they didn't get a wage the same as a policeman, they would get rations for their family and that is what happened it all came back to that... you know instead of the money.'

'My mother was brought up on Coranderrk station ... [She] worked in the Manager's house as a maid. Many times I would recall her saying "It was a large two-storey house and if the manager's wife found dust anywhere, she would make us clean the whole house again" – she did not get paid.'

68 For the source of these quotes, see Gunstone and Heckenberg, pp 6, 10, 11, 13, 15, 16.

'I remember my father used to get paid about ... three to five pounds ... The women of the household and they use to work I think it was just for maybe rations you know.'

Elders also discussed the inequities in pay received on the reserves when compared amongst reserve workers and to wages paid off the reserves:

'The girls, we all started [domestic work for the station managers] at the age eleven and our pay was every month, we used to get what we call... bobs, two shillings and I think the men were getting five bob.'

One Elder related how she later received 10 shillings per week in pay working in a factory in Melbourne, which was five times more than the 2 shillings per week she received on the reserve. Another Elder stated that her grandmother and the other women on the reserve were encouraged by the station management to weave baskets, probably to put on display for visitors. The baskets would take a week each to make and the women were not paid for them.⁶⁹

These examples give a snapshot of the breadth and depth of historical knowledge available within the Indigenous community in relation to wages and entitlements controlled by Government entities. The time available for recording this era of Victorian history is limited.

8.5 Conclusion on oral evidence

It is submitted that the Investigation include oral evidence, rather than relying solely on written archival material which, according to the Stage Two Report itself, is derived from '*poor, inadequate and often non-existent recordkeeping practices*'.⁷⁰

The results of Gunstone and Heckenberg's research, and the NSW experience, indicate that oral evidence represents a potentially vast source of information about unpaid wages in Victoria.

Submission 5 – Oral evidence

As part of the process of consulting with Indigenous communities, the Victorian Government should fund a research project recording the oral evidence of Indigenous Victorians in relation to unpaid wages.

⁶⁹ Gunstone and Heckenberg, Healesville Elder 1, pp 13, 16.

⁷⁰ Stage Two Report, p 3.

9. Restricted scope of the Investigation – persons and types of payment covered

There are a number of significant omissions and exclusions within the subject matter covered by the Investigation, including:

- ▶ persons covered; and
- ▶ the type of payments covered.

This Paper submits that the tight restriction of the subject matter of the Investigation has served to exclude from the Reports some of the most significant, relevant and obvious issues for inquiry. These are addressed individually below.

9.1 Persons covered

(a) Children

The Investigation excludes from its scope the apprenticeship of children through state agencies other than the Board, for example through the Departments of Neglected Children and Reformatory Schools.⁷¹ The Stage Two Report states:

It is beyond the scope of this investigation to examine the role of the Department for Neglected Children and Reformatory Schools (Children's Welfare Department from 1924) in relation to the apprenticeship of Aboriginal Youths. However, it is evident that these departments, also located administratively within the Chief Secretary's Department, were closely involved with the Board in this regard.

This exclusion is problematic given the well documented historical context of the 'Stolen Generations' which saw the widespread systematic removal of half caste indigenous children from their families and reserves. Victorian authorities executed an assimilationist policy where the answer to the so-called 'Aboriginal problem' was to let the old 'full bloods' die out, and immerse so-called 'half castes' into the general community.⁷²

According to the *Aborigines Protection Act 1886 (Vic)*, those 'half castes' who were under the age of 35 as at 1887 were deemed not to be 'Aboriginal' and therefore ineligible to reside on Aboriginal reserves.⁷³ Such persons were removed into state care and state run institutions, including the Departments of Neglected Children and Reformatory Schools. A significant number of such indigenous persons served apprenticeships. This is potentially one of the most relevant areas of research in relation to the withholding of unpaid wages.

(i) The powers of the Board

The findings of the Stage One Report make it clear that the Board had extensive legislative powers to oversee and withhold the wages of 'half-caste' children pursuant to apprenticeships or service arrangements.

⁷¹ Stage One Report, p 2; Stage Two Report, pp 17, 47.

⁷² Rachel Perkins and Marcia Langton (eds), *First Australians* (2008), p 163.

⁷³ *Aborigines Protection Act 1886* as amended by the *Aborigines Act 1890 (Vic)* section 5(ii).

Under these arrangements, one half of the child's wage was paid to the Board, to be placed in a savings bank and paid out at the end of the apprenticeship.⁷⁴

(ii) The powers of the Departments of Neglected Children and Reformatory Schools

From 1886, the Board also had legal power to transfer 'half-caste' Aboriginal children to the Departments of Neglected Children or Reformatory Schools, where their wages were also withheld pursuant to legislation.⁷⁵ In 1899, the Governor was given power to transfer any Aboriginal child to either of the Departments. The Stage Two Report states that *'from September 1900 the Board began transferring all half-caste children on stations to industrial schools at the age of 12 years... before being apprenticed or sent into domestic service'*.⁷⁶

As Gunstone and Heckenberg note, the *Neglected and Criminal Children's Act 1864* provided that a child who was *'wandering about'* or *'sleeping in the open air'* could be deemed a *'neglected child'* and sentenced to a term at an industrial school. This Act also provided for the Superintendent of such schools to control and withhold money belonging to *'any inmate'*. Gunstone and Heckenberg outline the extensive powers given to child welfare bodies:

*In 1874, the Neglected and Criminal Children's Amendment Act 1874 (Vic) allowed for children deemed to be 'neglected' to be detained until sixteen years of age..., children so detained to be 'boarded out'...or apprenticed..., the recovery of any wages owed to children by any person appointed by the Chief Secretary...and the deduction from a child's wages of any expenses caused by the child's poor behaviour.*⁷⁷

(iii) The discriminatory effect of the legislation

Although the child welfare legislation applied uniformly to all Victorian children, Aboriginal children were far more likely to be taken into state care. In reality, the chronic underfunding of the Board gave it little option but to institute policies to transfer Aboriginal people under its care to the charge of other departments, keeping non 'full bloods' from returning to the missions.⁷⁸ This meant that children found themselves in state custody by virtue of their age and the fact they were 'half-caste'.

Measures such as those referred to above had a significant and lasting impact on Indigenous children in Victoria. In 1956-1957 alone, approximately 150 Victorian Indigenous children, or more than 10 per cent of all Indigenous children in Victoria, were living in state children's institutions.⁷⁹ The deprivation and abuse

74 The Regulations relating to Half-Castes 1890 reg 17 and the Aborigines Act Regulations 1931 reg 45 provided that one half of the wages of every half-caste in service or apprenticed should be paid to the Board which would place it in a savings bank to the child's credit to be paid out at the end of the apprenticeship.

75 The Aborigines Protection Act 1886 s 8 and its regulations provided that at the age of 13 years 'half-caste' boys were to be apprenticed or sent to work on farms and girls were to work as servants, while orphaned 'half-caste' children were to be transferred to the care of the Department for Neglected Children or an institution for neglected children. Under the Aborigines Act 1915 Regulations reg 12, the Governor could order for the better care and custody of any half-caste child (whether orphaned or not) that such child be transferred to the Department of Neglected Children or the Department of Reformatory Schools. The Act was amended in 1899 to refer to 'any aboriginal [sic] child'. See also ss 37, 38 and 85 of the Neglected Children's Act 1887 (Vic) and equivalent sections in the Neglected Children's Act 1890 (Vic) and Children's Welfare Act 1928 (Vic), discussed in Gunstone and Heckenberg, pp 83-91.

76 Stage Two Report, p 47.

77 Gunstone and Heckenberg at 77.

78 See Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, April 1997 ('Bringing them home' Report), at Ch 4 'Merging and dispersing 1886-1957' – 'The Aborigines' Protection Board was chronically short of funds. In the early 1880s it proposed that it devote its budget and attention to "full bloods"'.⁷⁹

79 Diane Barwick on 'Role of Police', quoted by Victorian Government final submission in the 'Bringing them home' Report, p 52.

suffered by these children is well-documented elsewhere, not least in the Commonwealth Government's 'Bringing them home' Report of 1997.⁸⁰ Furthermore as noted in the Stage Two Report, the Child Welfare Departments were closely involved with the Board, and all were located within the Chief Secretary's Department.⁸¹

It is clear that the Victorian Government administered the labour of Indigenous children in non-Aboriginal homes and state institutions, irrespective of the fact that the labour may not have been carried out directly under the remit of the *Aborigines Acts*.⁸²

(iv) Conclusion

A cursory examination outside the narrow scope of the Investigation reveals that the impact of unpaid wages on Aboriginal children was not confined to the actions of the Board performed under the auspices of the *Aborigines Acts*.

Any investigation into the impact of unpaid wages in Victoria must consider state-sanctioned practices across various departments.

By excluding children from the purview of the Stage One and Two Reports, the Investigation excludes a large number of potentially affected people, particularly those from the Stolen Generations. This exclusion risks missing the true impact of unpaid wages in Victoria.

(b) Persons living elsewhere than Lake Tyers

The Reports are limited in scope to the experiences of Indigenous people living at Lake Tyers station in Gippsland. The reason given for this limitation is that the research was intended to focus on those people living under the direct control of the Board.⁸³ The Stage Two Report notes that, after 1924, the Lake Tyers station was the only government-staffed Aboriginal reserve in existence.

Restricting the Investigation in this way disregards the experiences of a range of Indigenous people who, notwithstanding that they lived elsewhere than Lake Tyers, were at risk of having wages withheld or unpaid by Victorian Government authorities (for example, Indigenous people living at Coranderrk, which was staffed by the Victorian Government until 1924).

Although the Stage Two Report refers to a general lack of available information to assess the incidence of unpaid wages, the Report itself acknowledges that there is some evidence available regarding locations other than Lake Tyers, and that there are '*likely to be additional records in custody with the potential to shed further light on this issue*'⁸⁴ that do not relate to Lake Tyers.

For example, the discussion of the potential underpayment of Winnie Austin and Annie Harrison,⁸⁵ residents of Lake Condah, and references to items relating to Coranderrk.⁸⁶ Further, there is evidence, which does not appear to have been considered by the Reports, that the financial administration at all reserves (not only Lake Tyers) was often inadequate.⁸⁷

80 'Bringing them home' Report; see Ch 4 in relation to Victoria.

81 Stage Two Report, p 47.

82 Wampan Wages, A Snapshot of Stolen Wages in Victoria 1839-1957.

83 Stage Two Report, p 2.

84 Stage Two Report, pages 15-16.

85 Stage Two Report, p 45.

86 Stage Two Report, p 14.

87 Gunstone and Heckenberg, pp 86-87.

9.2 Type of payments covered

(a) Underpayment of work on Indigenous reserves

The Reports exclude from the scope of the research the underpayment of work on Indigenous reserves.⁸⁸ This exclusion is not justified in the Reports.

While specifically excluding underpayment of wages from the scope of research, the Stage Two Report nevertheless highlights numerous examples of this practice occurring at reserves in Victoria, including:

- ▶ the work-for-rations system, which allowed work to be performed for nominal or no remuneration at Lake Tyers despite the introduction of industrial awards and determinations under the *Aborigines Act 1957* and the *1958 Regulations*,⁸⁹
- ▶ the practice of categorising the nature work performed, for example as '*reproductive*', '*domestic*' or '*training*' as a means of determining what wage payments were made, if at all,⁹⁰
- ▶ workers at Lake Tyers were paid for specific tasks rather than at hourly rates, despite the introduction of a formal wages scheme in 1918,⁹¹
- ▶ while some women received wages, '*others appeared to have worked for little or no remuneration*';⁹²
- ▶ '*[p]ayment of wages was broadly linked to the available profits of the station at any given time, regardless of overall Produce Fund balances, and could justify reduced or low wages*';⁹³ and
- ▶ unpaid '*domestic*' work was commonly required to be performed in addition to paid work.⁹⁴

In addition to the evidence of underpaid wages, the Stage Two Report also indicates that it was '*routine occurrence*' for wages payable to Aboriginal workers on reserves to be paid back into the Treasury Trust Fund.⁹⁵ The Report notes that there is evidence in '*a few cases*' that the money was repaid to the workers. However in other cases the money was withheld for punitive or disciplinary reasons (for example the '*practice of returning unclaimed wages to Treasury provides evidence of withholding wages as punishment*' and the '*most common form of punishment for breaches under the 1958 Regulations was the issue of fines or a reduction or withholding of pay*')⁹⁶ and in others the outcome is uncertain.⁹⁷ The Report also cites examples of individual instances where money is recorded as not having been paid to workers.⁹⁸

Other historical sources refer to clearly identifiable practices of underpayment or non-payment of wages on Victorian reserves. At Coranderrk reserve in the 1870s, the Indigenous population were engaged in farming for a profit:

[Station manager] Green's employment of the Kulin's established skills allowed the farm to develop with speed and success, and it paid a dividend every year, but the Protection Board intervened in

88 Stage Two Report, p 2.

89 Stage One Report, p 31; Stage Two Report, pp 4, 32.

90 Stage Two Report, pp 4, 32.

91 Stage Two Report, p 24.

92 Stage Two Report, p 29.

93 Stage Two Report, p 32.

94 Stage Two Report, p 35.

95 Stage Two Report, p 35.

96 See Stage Two Report, pp 35, 36, 37.

97 Stage Two Report, p 35.

98 Stage Two Report, p 37.

*search of even greater profits and insisted that Coranderrk concentrate on the production of the profitable crop of hops.*⁹⁹

The profits from the hops production were partially used to pay white contractors to work the plantation.¹⁰⁰ Robert Brough Smythe, then Chief Secretary of the Board, is quoted as writing in the early 1870s:

*The Board is under no obligation to pay wages to the Aborigines ... they must be attentive and civil to all persons otherwise they will be sent away ... all persons sheltering or feeding the protestors will be removed as well.*¹⁰¹

In 1881, a Board was appointed by the Victorian Legislative Assembly to 'enquire into, and report upon, the present condition and management of the Coranderrk Aboriginal Station'.¹⁰² From 1881-1882, 52 of the 53 adult residents of Coranderrk made their views known to the Coranderrk Inquiry through written petitions and statements or by appearing as witnesses.¹⁰³ Many specifically referred to lack of pay and amounts paid, as well as insufficient rations on the reserve.

For example, Eda Brangy, an Aboriginal woman living at Coranderrk, appeared as a witness at the Coranderrk Inquiry on 17 November 1881 and testified as follows:

*I am now about to bring my complaints before you ... about the washing I used to do for Mrs. Strickland and receiving no wages for it: I once asked Mrs. Strickland why did not she pay me for washing for her. So she said that she was not going to pay us orphans. Bella Lee and Mary Ann are doing Mrs. Strickland's washing, and they don't receive any wage*¹⁰⁴

Richard Broome, a history professor at La Trobe University, writes about the evidence presented by Indigenous reserve residents to the Coranderrk Inquiry.¹⁰⁵ Broome writes that the Indigenous residents insisted on being paid for their work in the hops plantation, which was at a rate discounted below the rate of those outside, but were not paid for other work.

Broome explains that residents were paid for their work on the plantation every two months but Harris, the farm manager, admitted 'sometimes it runs over a month'. Some witnesses had not been paid for three months. Many of the men testified that the wages were insufficient to purchase meat and necessities for their families. Martin Smith, married without children, claimed 'it will last up till Friday', after which 'we have to go and borrow bread from our neighbours'. Robert Wandin stated 'I have been in debt ever since we started to pay for our meat'. Some witnesses claimed they often felt weak from lack of food. The then manager of the Coranderrk reserve, Reverend Frederick Strickland, had been told by the residents about the insufficient wages, as had General Superintendent Page, with no positive results.

99 Rachel Perkins and Marcia Langton (eds), *First Australians* (2008), p 149.

100 Rachel Perkins and Marcia Langton (eds), *First Australians* (2008), p 150.

101 Robert Brough Smythe, Chief Secretary of the Board, quoted in Diane Barwick, *Rebellion at Coranderrk* (1998), p 96.

102 Report of the Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Aboriginal Station, Together with the Minutes of Evidence, Victorian Parliamentary Papers, 1882, no. 5, pp. 1-141.

103 See generally Richard Broome, 'There were vegetables every year Mr Green was here': Right behaviour and the struggle for autonomy at the Coranderrk Aboriginal Reserve', *History Australia*, Vol 3, No 2, Monash University Express (2006), pp 43.1-43.16.

104 Victorian Legislative Assembly, *Votes and Proceedings, 1882-83*, vol. 2, 'Coranderrk Aboriginal Station: Report of the Board appointed to enquire into, and report upon, the present condition and management of the Coranderrk Aboriginal Station, together with the minutes of evidence', Extract Four, available at <http://museumvictoria.com.au/encounters/coranderrk/protest/extract4.htm>.

105 For the source of this information, see Richard Broome, 'There were vegetables every year Mr Green was here': Right behaviour and the struggle for autonomy at the Coranderrk Aboriginal Reserve', *History Australia*, Vol 3, No 2, Monash University Express (2006), pp 43.8-43.9.

Broome concludes that '*the basic ration was clearly not sufficient for heavier or prolonged farm work on perhaps the other four of the six-day working week*'. The 'Bringing them home' Report also refers to a practice on Victorian reserves of denying rations to families refusing to consent to the removal of their children.¹⁰⁶

The practices of underpayment and non-payment of wages on reserves warrant further investigation.

Once again, there is a 'precedent' for the Victorian Government to consider the underpayment of work on Aboriginal reserves. The Queensland Government in 1999 established the Underpayment of Award Wages Process (UAWP) offer reparation to Aboriginal Australians who were paid below award wages on Government settlements.

The UAWP was introduced in direct response to the 1996 decision of the Human Rights and Equal Opportunity Commission in the *Palm Island Wages Case* where it was found that the Queensland Government had contravened the *Racial Discrimination Act 1975* (Cth) by deliberately underpaying wages to seven indigenous settlement workers between 1975 and 1986. Each of the seven plaintiffs was awarded \$7,000 compensation.¹⁰⁷

Under the UAWP the Queensland Government agreed to make a payout to thousands of Indigenous people who had been employed by previous governments on Aboriginal reserves and paid wages at under-award rates between 1975 and 1986. Over \$40 million was paid out under the UAWP to 5729 successful claimants.¹⁰⁸

The UAWP scheme was criticised due to the inadequate and arbitrary \$7,000 offered, the exclusion of descendent claims and the requirement that claimants sign a deed waiving any right to further compensation.

Notwithstanding the criticisms regarding the specific operation of the UAWP it provides a useful precedent for successful claims based on payment of under-award wages to Indigenous people living on reserves.

The available evidence and the practice of other States demonstrate that it is inappropriate to exclude underpayment of award wages from the scope of the Investigation.

(b) Requirement for workers to pay maintenance contributions

Indigenous men working outside Lake Tyers were required to '*contribute a proportion of their earnings to the Board*' for the '*maintenance*' of their dependents remaining on the reserve.¹⁰⁹ Regulations existing until 1957 allowed the Board to deduct these amounts from the wages of Aborigines working in the community under work certificates. Evidence from Board records suggest that the majority of men in such work between 1918 and the late 1960s were required to make such payments.¹¹⁰ From 1958 these payments were collected by the manager of Lake Tyers.

106 'Bringing them home' Report, Ch 4.

107 *Bligh & Ors v State of Queensland* [1996] HREOCA 28 (the *Palm Island Wages Case*). The evidence suggested that the individual complainants' loss of income was between \$8573.66 and \$20 982.97, however the lesser payment was awarded due to difficulties in accurately assessing the loss, including lack of records and poor recollection of details.

108 Jonathon Hunyor (Acting Director of Legal Services, Human Rights and Equal Opportunity Commission), speech given at the Human Rights Law Bulletin Seminar, 9 March 2007; http://www.hreoc.gov.au/legal/seminars/speeches/stolen_wages_hunyor_mar07.html

109 See Stage Two Report, p 4.

110 Stage Two Report, p 40.

The Stage Two Report gives examples of the amounts charged as maintenance payments from 1890 up until at least 1960.¹¹¹ From March 1962 onwards, the rate charged as family maintenance was £4 per week.¹¹²

Instead of being held in individual trust funds for distribution to any dependents on the reserve (as required by the 1931 *Regulations*), maintenance contributions were merged into the Produce Fund and the Aborigines Welfare Fund.¹¹³ Financial records of maintenance payments are limited and payments made were '*rarely itemised against individuals*'.¹¹⁴ No records indicating distribution of these payments exist¹¹⁵ and, despite being collected to benefit workers' families, the Board appears to have instead used the funds as revenue to be put towards government expenditure at the station.¹¹⁶

This is an area in which evidence exists indicating a practice of withholding wages from Indigenous Victorians. The failings of the Government (and the '*poor, inadequate and at time non-existent recordkeeping practices*'¹¹⁷ of the Board) should not prejudice the ability of such persons to recover monies collected from them.

A similar levy of 1 shilling per pay was approved in 1963 by the Aborigines Welfare Board and was required from all Indigenous people earning wages at Lake Tyers to be used to pay for any repairs at the reserve.¹¹⁸ This was not considered in the Reports and may warrant further investigation.

(c) Social security payments

The Reports exclude any investigation into the administration of social security payments to Indigenous Victorians on the basis that administration of social security payments such as family endowment was not within the scope of the *Aborigines Acts*.

It has been widely acknowledged by academics such as Dr Susan Greer that '*accounting technologies were enlisted in the implementation of policies that denied Aboriginal people access to their own money "for no reason other than their Aboriginality"*'.¹¹⁹

It was not uncommon for Commonwealth and state legislation to contain provisions permitting state authorities and institutions to intercept or divert federal pensions and benefits.¹²⁰ The residents of Lake Tyers had their pensions paid directly to the Board and then forwarded to the Manager of Lake Tyers reserve, who deducted two thirds for the 'maintenance' of the reserve.¹²¹ Maternity allowances were paid indirectly to the

111 See Stage Two Report, p 40.

112 Gunstone and Heckenberg, p 105; Stage Two Report, p 40.

113 Stage Two Report, p 41.

114 Stage Two Report, pp 4, 41.

115 Stage Two Report, p 5.

116 Stage Two Report, p 41.

117 Stage Two Report, p 15

118 Gunstone and Heckenberg, p 105.

119 Dr Susan Greer, "In the interests of the children": accounting in the control of Aboriginal family endowment payments', *Accounting History* 2009, p.166 at p.167. See also Gunstone and Heckenberg 22-68 and Dr Ros Kidd, *Trustees on Trial: Recovering the Stolen Wages*, 2006, p 94-96.

120 For example: s44A Invalid and Old Age Pensions Act 1942 (Cth), s47 Social Services Consolidation Act 1947 (Cth), s43 Social Services Act 1959 (Cth), s9A Maternity Allowance Act 1912 (Cth), s91 Social Services Consolidation Act 1947 (as amended from time to time), s22(1) Child Endowment Act 1941 (Cth), s1A Child Endowment Act 1942 (Cth), s95(4) Social Services Consolidation Act 1947, s 39 Widows Pensions Act 1942 (Cth). For detailed commentary see, Gunstone and Heckenberg 22-68. See also Dr Ros Kidd, *Trustees on Trial: Recovering the Stolen Wages*, 2006 p 94-96.

121 Gunstone and Heckenberg, p 35.

Aborigines Welfare Fund and, as with pensions, two thirds was deducted for the 'maintenance' of the reserve.¹²² Whilst in some other states child endowment was generally paid directly, for mothers living at Lake Tyers payments were made direct to the Board and forwarded to the Manager. The Manager had the power to refuse to purchase any goods that he deemed inappropriate.¹²³ By the early to mid 1960s, child endowment was paid directly to Indigenous mothers at Lake Tyers; however, they were required to pay the Manager for their 'support'.¹²⁴

It is well documented that in the late 1920s the NSW Commissioner of Family Endowment granted a power of warrantee to the NSW Aboriginal Protection Board to administer all claims for family endowment by Aboriginal women.¹²⁵

In the early 1940s the Commonwealth similarly agreed to divert endowment payments away from Indigenous parents to the NSW Aboriginal Protection Board on the basis that a voucher or order for goods would be issued to Indigenous people for use at local stores.¹²⁶ Commonwealth authorities wrote letters to the governments of other states encouraging them to adopt similar methods.¹²⁷

A report of the NSW Aboriginal Protection Board dated 1940 outlined a large accumulation of child endowment monies in individual trust accounts held by the NSW Aboriginal Protection Board as at 1938.¹²⁸ Descendant claimants before the NSW ATFRS have been successful in recovering these amounts in circumstances where there is no evidence that their parents ever received vouchers in lieu of payment.

Submission 6 – Scope of the Investigation

Consistent with Recommendations 5(a) and 5(b) of the Unfinished Business Report, the Victorian Government should fund further consultation and review of archival material, in relation to the following matters (being matters which the Stage One and Two Reports state had been excluded from the Investigation):

- (a) the withholding of wages from Indigenous children apprenticed through Victorian State Government departments other than the Board;
- (b) the withholding of wages from Indigenous persons other than those living at Lake Tyers;
- (c) underpayment for work on reserves, including withholding of wages for punitive reasons;
- (d) the withholding of maintenance payments made by Indigenous workers back to the reserves, and whether those payments were distributed;
- (e) the withholding or diversion social security payments.

122 Gunstone and Heckenberg, p 42.

123 Gunstone and Heckenberg, p 48.

124 Gunstone and Heckenberg, p 50-51.

125 Section 35(1) Family Endowment Act 1927 (NSW). Dr Susan Greer, "In the interests of the children": accounting in the control of Aboriginal family endowment payments', *Accounting History* 2009, p.166 at p.174.

126 Deborah Healey & Sean Brennan, Indigenous Law Centre, University of New South Wales, Submission to the Commonwealth Senate Inquiry into Stolen Wages (2006).

127 Deborah Healey & Sean Brennan, Indigenous Law Centre, University of New South Wales, Submission to the Commonwealth Senate Inquiry into Stolen Wages (2006), p 7.

128 Aborigines Protection Report and Recommendation of the Public Service Board of NSW, 4 April 1940 Appendix C: Trust Accounts – Endowees Balances as at 31 July 1938.

10. Time period covered

10.1 Exclusion of the period prior to 1869 (Stages One and Two Reports)

The Investigation focuses on the period after the enactment of the *Aborigines Act* in 1869. The Stage One Report alludes to the period prior to this, however the Report only considers the period post-1869 as relevant to determining whether the Government could garnish or withhold unpaid wages.

10.2 Exclusion of the period prior to 1918 (Stage Two Report)

According to the Stage Two Report, the Control Board 'further defined' the Stage Two research to cover the period between 1918 and 1974 (when responsibility for Indigenous affairs was transferred to the Commonwealth).¹²⁹ The only explanation provided for the exclusion of research pre-1918 is that

*this timeframe was identified as appropriate as any potential repatriation scheme would most likely be limited to living claimants.*¹³⁰

The assumption that '*any potential repatriation scheme*' would exclude descendant claims lacks justification. The assumption is premature, and presupposes what a compensation scheme in Victoria might look like before the Investigation phase has been fully undertaken, and before informed conclusions may be drawn.

The NSW AFTRS provides a model for the inclusion of descendant claims for repayment.¹³¹ There is no reason, at this preliminary stage, to exclude the possibility of descendant claims in Victoria, particularly given that Recommendation 5(c) of the Unfinished Business Report refers to the potential establishment of a compensation scheme using as a model, the NSW scheme; and given that the NSW scheme does permit descendant claims for repayment.

It is also noted that restricting the time covered to the period post-1918 has the effect of excluding the evidence of unpaid wages emanating from two highly relevant pre-1918 Victorian Parliamentary inquiries in relation to Indigenous communities in Victoria.

In that regard, the 'Royal Commission on the Aborigines' of 1877 was designed to '*inquire into the present conditions of the Aborigines of this Colony and to advise as to the best means of caring for, and dealing with them in the future*'.¹³²

The subsequent Coranderrk Inquiry of 1881-1882 was designed to '*enquire into, and report upon, the present condition and management of the Coranderrk Aboriginal Station*'.¹³³

Both inquiries examined the development and management of the reserves, treatment of residents, payment of wages, and the work-for-rations system. In 1882 in particular, 52 of the 53 adult residents of Coranderrk made their views known to the Coranderrk Inquiry through written petitions and statements or by appearing

¹²⁹ Stage Two Report, p 9.

¹³⁰ Stage Two Report, p 9.

¹³¹ See Guidelines for the Administration of the NSW AFTRS, 6.1.3.

¹³² 'Royal Commission on the Aborigines': Report of the Commissioners Appointed to Inquire into the Present Condition of the Aborigines of this Colony, and to Advise as to the Best Means of Caring for, and Dealing with them in the Future: together with Minutes of Evidence and Appendices, 1877, Victorian Parliamentary Papers, no. 76, pp. 1-129.

¹³³ Report of the Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Aboriginal Station, Together with the Minutes of Evidence, Victorian Parliamentary Papers, 1882, no. 5, pp. 1-141.

as witnesses.¹³⁴ The minutes of evidence and reports relating to these inquiries are available in the Victorian Parliamentary Papers.

Proper examination of the records and reports in relation to these inquiries could potentially be a rich source of information in relation to wage practices and the work-for-rations system on the reserves. The papers from the 1882 Coranderrk Inquiry provide records of the voices of Indigenous people living on the reserves at the time.

This material should be included given that the Investigation purports to determine

*whether any Colonial/State government policy to garnish or withhold wages of Aborigines in Victoria was implemented, and how this policy was implemented.*¹³⁵

In the absence of a rational basis for excluding pre-1918 records, the exclusion of these records renders the research incomplete. As the Stage One Report found that the statutory capacity to withhold wages existed from 1869 at the latest, the period 1869-1918 should be fully investigated.

Submission 7 – Pre-1918 records

Consistent with Recommendations 5(a) and 5(b) of the Unfinished Business Report, the Victorian Government should fund further consultation and review of archival material, involving an investigation of all evidence of wages being withheld by the Victorian Government from at least 1869 onwards (ie rather than limiting the review to the period from 1918 onwards).

¹³⁴ See generally Richard Broome, "There were vegetables every year Mr Green was here": Right behaviour and the struggle for autonomy at the Coranderrk Aboriginal Reserve', *History Australia*, Vol 3, No 2, Monash University Epress (2006), pp 43.1-43.16.

¹³⁵ Stage Two Report, p 2.

11. Status and integrity of the Investigation

This Section examines the status of the Investigation. In particular, it considers:

- ▶ the existence and status of foundation documents for the Investigation, including terms of reference in the Government's initial 'Request for Quotation', and the question of access to such documents;
- ▶ the powers and activities of persons or bodies with oversight of the research process, including AAV, PROV, the Control Board, and consulting historians; and
- ▶ the status of the Stage One and Stage Two Reports and the recommendations therein.

11.1 Information in the Reports

The Stage One and Stage Two Reports contain limited information about the research and referral process in relation to the Investigation, which is set out below. The Stage One and Stage Two Reports do not contain explicit information about the status of the Investigation and recommendations.

(a) Authorship

The author of the Reports is '*History Matters - consulting historians*' which is credited at the bottom of the cover page of each Report, but not explicitly mentioned in the body of the Report.

History Matters is a business name registered in NSW and Victoria. History Matters does not appear to have a website or any publicly available contact details.

(b) Stage One Report¹³⁶

The Investigation was initiated in response to Recommendation 5(b) of the Unfinished Business Report.

According to the Stage Two Report, in August 2007 the Victorian Government, through PROV and AAV, issued a RFQ for a Preliminary Investigation to be conducted into the unpaid wages issue in Victoria. According to that Report, the RFQ identified three potential stages for the Preliminary Investigation.

The RFQ has not been published. No copy of the RFQ is provided with the Report, nor are contents of the RFQ referenced in a footnote.

The Victorian Government's policy on procurement does not require publication of RFQs for services priced below \$150,000, but requires that three quotations are sought for services priced between \$25,000 and \$150,000. There has been no disclosure of the amount paid to History Matters to conduct the Investigation.¹³⁷

According to the Stage One Report, the scope of the research was '*defined*' in the RFQ as follows:

- ▶ to be confined to the operation of specific legislation in relation to the earnings and wages of Aboriginal people under the control of the Board;
- ▶ to cover only records at PROV and the NAA;
- ▶ to exclude: the period prior to 1869, private contracts, other State and Commonwealth legislation, and the operation of the Department of Neglected Children and Reformatory Schools;

¹³⁶ For the source of this information, see Stage One Report, pp 10-11, 43.

¹³⁷ See [http://www.vgpb.vic.gov.au/CA2575BA0001417C/pages/procurement-practitioners-stage-2---bid-process-and-contract-award-step-4---preparation-of-bid-documents-\(rfqs---rfts\)-obtaining-quotes-for-purchases-up-to-150000*-policy](http://www.vgpb.vic.gov.au/CA2575BA0001417C/pages/procurement-practitioners-stage-2---bid-process-and-contract-award-step-4---preparation-of-bid-documents-(rfqs---rfts)-obtaining-quotes-for-purchases-up-to-150000*-policy).

- ▶ to include written records only and no oral testimony.

Research for Stage One of the Preliminary Investigation was carried out between October and December 2007.

(c) Stage Two Report¹³⁸

According to the Stage Two Report, the Investigation was overseen by the Control Board. The Control Board was stated to include officers of AAV and PROV, namely:

- ▶ Darren Smith, Manager Social Policy & Strategic Projects, AAV;
- ▶ Angela Jurjevic, then Executive Director, AAV;
- ▶ Justine Heazlewood, Director and Keeper of Public Records, PROV; and
- ▶ Simon Flagg, Acting Manager Koorie Records Unit, PROV.
- ▶ The Control Board imposed various constraints and limitations upon History Matters in relation to the scope of the Investigation. In that regard, according to the Stage Two Report, under direction from the Control Board, the scope of Stage Two was '*further defined*' throughout the research process as follows:
 - ▶ to examine only the period from 1918 to the transfer of the responsibility for Aboriginal affairs to the Commonwealth in 1974. This timeframe was '*identified as appropriate as any potential repatriation scheme would most likely be limited to living claimants*';
 - ▶ to include only those Aboriginal people living directly under the control of the Board on Aboriginal reserves;
 - ▶ to exclude social security payments, lump sum benefits and '*other earnings*', as these areas were not covered by the Aborigines Acts.

Stages One and Two of the Investigation were undertaken at the Victorian Archives Centre between October 2007 and late 2008. The research was facilitated by a number of key staff at PROV.

(d) Recommendations

The Stage One Report concluded that the Victorian *Aborigines Acts* passed between 1869 and 1974 could potentially allow for the Board for the Protection of Aborigines and its successors to control the working lives, wages and earnings of Aboriginal people in Victoria.

The Stage One Report then recommended as follows:

It is recommended that Stage Two of the Indigenous Stolen Wages Preliminary Investigation proceed to enable research to determine whether these policies affecting Aboriginal work and wages were implemented, and the nature of this implementation. The objective will be to try to ascertain whether wages and earnings were likely to have been systematically withheld from Aboriginal people by the Colonial / State Victorian governments in line with the established legislative framework, as it was interpreted by the Board.

The Stage Two Report concludes, in Section 5, with the following 'Recommendations':

The Indigenous Stolen Wages Preliminary Investigation project brief required that a recommendation be made regarding a potential third stage of research, highlighting individual case studies.

138 For the source of this information, see Stage Two Report, pp 2, 8, 10-11, 50.

During the Stage Two research the Stolen Wages Control Board decided not to proceed with a further research stage, on the basis of the nature of the available records in custody and in light of the findings of stages one and two.

It is therefore clear that the Control Board, comprising officers of Victorian Government departments, informed History Matters during Stage Two that it would not be required to proceed with the third stage of research.

History Matters did not state its own recommendation as to whether the third stage was required – presumably it was asked not to do so, given the apparent direction from the Control Board.

As stated within the Stage Two Report, Victorian Government departments and their direct reports failed, on a widespread basis, to properly observe statutory record-keeping obligations. This has had the result that the archive records are incomplete.

However, it is circuitous and unfair to rely on the fact that the records are incomplete, as a basis for refusing to proceed with the further consultation and research recommended by the Unfinished Business Report, and / or as a basis for not establishing a compensation scheme.

(e) Conclusions

From the information given, the apparently significant role of the Control Board in directing the scope and progress of the research is lacking in transparency and accountability. It is appropriate that Indigenous people in Victoria should have access to the RFQ, which sets out the terms on which their possible entitlements were investigated.

In regards to the timeframe given for the research and report-writing, Dr Ros Kidd, an historian, consultant and author of extensive publications on the issue of unpaid wages in Queensland, has stated that 20 days, and even 80 days, is a totally inadequate timeframe in which to conduct the depth of research required to perform a proper assessment of the issues relating to unpaid wages.

The status of the 'recommendations' in the Reports, particularly the Stage Two Report, is unclear. If these are recommendations made by History Matters (the 'consulting historians' who appear to have authored the Reports), the public would expect in the usual course to see a Government response to them.

Alternatively, if the decision not to proceed with a further research stage is a decision of the Victorian Government itself made through the Control Board, the Government should be accountable to Indigenous Victorians for that decision, and should specify whether that decision constitutes or informs an official policy position.

Submission 8 – Investigation terms of reference

The Victorian Government should make the terms of reference for the (History Matters) Investigation available to the public.

12. Government response and statements regarding unpaid wages

12.1 Government response

As of July 2010, the Victorian Government has not issued a response to the 'Recommendations' in the Stage One and Two Reports.

It may be that the Government has formed the view that, in light of the direction given by the Control Board to History Matters not to proceed with a third stage of research, the stolen wages issue will not be further investigated, and therefore no Government response is required.

12.2 Ministerial response

There are no publicly available statements by the Victorian Minister for Aboriginal Affairs, Mr Wynne, regarding unpaid wages, either in the form of media releases or commentary on the AAV website.

In Hansard, there is one discussion relating to unpaid wages in the transcript of the Victorian Parliament Public Accounts and Estimates Committee on 18 May 2009. On that occasion, Greens MP Sue Pennicuik questioned Mr Wynne and Executive Director of AAV Ian Hamm about the status of the unpaid wages Investigation. The interchange is extracted here in full.

Ms PENNICUIK — It has been more than two years since the inquiry into the stolen wages in Victoria began, and we have heard and seen pretty well nothing since then. Can you inform us of the progress of that and what the department is doing; and will there be any resources and funding set aside to speed up the inquiry and to interview Aboriginal people who are getting older and whose opportunities for recompense and remuneration are obviously dwindling?

Mr WYNNE — That is a terrific question, because it goes to work that Stolen Generations Victoria has done. Public Records Office Victoria has done some fantastic work in this area. I can report that the government is responding to the Senate inquiry on stolen wages — we indicated we would.

A researcher was appointed through the public records office in mid-2007 to examine Victoria's and the commonwealth's archival material which we hold. The Aboriginal affairs department is currently reviewing the final draft report on the research project to provide a dialogue back to the public records office.

I can indicate to you, though, that the findings of the draft report indicate that on the basis of available financial records, there is no evidence of systemic withholding of earnings and wages of Aboriginal people in Victoria. Although, as you know very well from the Senate inquiry's report, there is quite a body of evidence in other states.

Ms PENNICUIK — Minister, when are you expecting that report to emerge?

Mr HAMM — We are working with PROV now to finalise the report. We should have it finished in — I will be conservative and say the next couple of months; two to three months we should have that finished.

Ms PENNICUIK — Early next financial year?

Mr WYNNE — *We want to get it done as soon as possible.*¹³⁹

It is unclear what Mr Wynne meant in referring to the work of Stolen Generations Victoria in relation to unpaid wages. Stolen Generations Victoria has not done any work in relation to unpaid wages in Victoria.¹⁴⁰

The implication of Mr Wynne's statement as to the conclusions of the Investigation, which were not published until September 2009, is that the Government did not release the Stage One research until nearly two years after it was carried out, and waited at least five months between becoming aware of the final results and releasing them to the public. This is somewhat incongruous given the strictly limited timeframe apparently given in the RFQ in which to conduct the research and deliver a report.

The delay in publication is even more concerning given that Indigenous Victorians affected by past Government policies are ageing, and the window of opportunity to gather evidence is narrowing daily.

On 8 December 2009, Mr Wynne tabled the Indigenous Affairs Report for 2008-2009 (**State Report 08-09**)¹⁴¹ in State Parliament, stating that it showed that *'Victoria's Aboriginal children and their families have more support than ever before in making their journey towards a better future'*.¹⁴² At the same time, Mr Wynne commented that Victoria was the only State in Australia that reported its progress in the Indigenous community to Parliament and that the State Report 08-09 identifies where the Brumby Government, in partnership with indigenous communities, has made progress, as well as areas where it will take longer to achieve results.¹⁴³

In light of these comments, it is curious that the State Report 08-09 contains no reference whatsoever to the issue of unpaid wages, to the Stage One and Two Reports, or to the Government's decision not to proceed with Stage Three of its Investigation, particularly given that the State Report 08-09 was released 2-3 months after the release of the Stage One and Two Reports.

The position adopted in the Stage One and Two Reports is inconsistent with other public statements made by Mr Wynne and his Federal colleagues in the Indigenous affairs context. Drawing public attention to such inconsistencies could be an effective lobbying tool for achieving reconsideration of the Government's current position.

Submission 9 – Government response to Stage One and Two Reports

The Victorian Government should respond publicly to the recommendations in the Stage One and Stage Two Reports, and publish its formal policy position on the issue of unpaid wages in Victoria.

139 Public Accounts and Estimates Committee, Inquiry into Budget Estimates 2009-10, Melbourne, 18 May 2009, Transcript pp 3-4.

140 See <http://www.stolengenerationsvictoria.org.au/>.

141 Victorian Government Indigenous Affairs Report 08-09, available at [http://www.aboriginalaffairs.vic.gov.au/web7/rwpgslib.nsf/GraphicFiles/DPCD_WOG+Report08-09/\\$file/DPCD_WOG+Report08-09.pdf](http://www.aboriginalaffairs.vic.gov.au/web7/rwpgslib.nsf/GraphicFiles/DPCD_WOG+Report08-09/$file/DPCD_WOG+Report08-09.pdf).

142 See 'Celebrating every step towards closing the gap', Minister for Aboriginal Affairs, 8 December 2009, available at <http://www.premier.vic.gov.au/component/content/article/9016.html>.

143 See 'Celebrating every step towards closing the gap', Minister for Aboriginal Affairs, 8 December 2009, available at <http://www.premier.vic.gov.au/component/content/article/9016.html>.

13. The legal landscape

Section 7 of this Paper sets out in some detail the historical failures by Victorian Government departments to observe statutory obligations to keep accounts and records in respect of the wages and entitlements of Indigenous people.

This has had the result that the available archival records are difficult to understand and interpret. As a practical matter, this makes it difficult to comment on whether there is any viable basis for any Indigenous person or persons to commence Court proceedings to recover any unpaid wages. The costs and difficulty of commencing such proceedings would likely be prohibitive given the likely amounts in dispute.

In a submission to the Commonwealth Senate Committee inquiry in 2006, Robert Haebich, who acted for the litigants in the *Palm Island Wages Case* suggested a more pragmatic and cooperative approach to unpaid wages claims than commencing Court proceedings:

[J]ustice 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.¹⁴⁴

For the reasons articulated above, this Paper proposes that a strategy focused on litigation would be unlikely to succeed and would not be in the best interests of potential Indigenous claimants.

Instead, it is submitted that the Submissions referred to above be made, ie to the effect that the Victorian Government should progress the education, consultation and research referred to in the Recommendations in the Unfinished Business Report, and should then consider whether to establish a compensation scheme.

Any compensation scheme that is established is more likely to produce better practical outcomes for Indigenous persons, than would the commencement of Court proceedings.

There may be merit, as part of the lobbying process, in making an application under the *Freedom of Information Act 1982* (Vic) in order to access materials relating to the Investigation, such as the initial RFQ.

13.1 Experience in other jurisdictions

In the interests of completeness, we note that the experience in other jurisdictions regarding unpaid wages-type claims shows that it has been possible for Indigenous claimants to pursue the repayment of wages through formal legal channels.

In other jurisdictions, where policy-based repayment schemes have not been established, claimants have pursued various forms of legal action as an alternative means of achieving repayment of wages such as:

Breach of duty of government trustee to account;¹⁴⁵

Breach of fiduciary duty in relation to mismanagement of trust funds;¹⁴⁶

¹⁴⁴ Robert Haebich, Submission to Senate Legal and Constitutional Committee Inquiry into Stolen Wages, 29 September 2006, available at http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/submissions/sub77.pdf, p 3.

¹⁴⁵ See discussion of the duty of a Crown trustee to account pursuant to US and Canadian jurisprudence and in relation to stolen wages in Australia in Stephen Gray, 'Holding the Government to Account: The "Stolen Wages" Issue, Fiduciary Duty and Trust Law', Melbourne University Law Review, Vol 32 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1498907, pp 118-129; see also discussion in Dr Ros Kidd, Trustees on Trial: Recovering the Stolen Wages, 2006, pp 31-39, 126-130, 158-178.

Industrial relations action relating to underpayment of award wages.¹⁴⁷

Proposed Submission 10 – Policy rather than litigation approach

It is recommended that current lobbying efforts in Victoria focus on policy, in a way that is solution-oriented, future-focused, and based on cooperative approaches and outcomes.

Proposed Submission 11 – Government response to further research & consultation

If the further research and consultation referred to in Submissions 1 to 9 reveal that the withholding, underpayment or non payment of Indigenous wages and welfare entitlements did occur in Victoria, then the Victorian Government should, consistent with Recommendation 5(c) of the Unfinished Business Report, proceed to establish a compensation scheme.

The final design of the scheme should have regard to any differences in the actual practices which occurred in Victoria, compared with the practices which occurred in NSW.

146 See discussion of whether governments owed a fiduciary duty flowing from the legislative obligation to prevent exploitation and underpayment of Indigenous workers in Stephen Gray, 'Holding the Government to Account: The "Stolen Wages" Issue, Fiduciary Duty and Trust Law', Melbourne University Law Review, Vol 32 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1498907, pp 130-139; see also discussion of Australian and overseas jurisprudence on fiduciary duties in relation to Indigenous peoples in Dr Ros Kidd, Trustees on Trial: Recovering the Stolen Wages, 2006, pp 32-58, 72-75, 90-105, 126-131, 162-169; see also *Trevorrow v State of South Australia (No. 5) (2007) SASC 285*.

147 See section 4.3(a) of this Paper; see also discussion of underpayment of wages in Dr Ros Kidd, Trustees on Trial: Recovering the Stolen Wages, 2006, pp 20-21, 70-76, 96-99; see also *Baird v State of Queensland [2005] FCA 495*; *Bligh and Ors v State of Queensland [1996] HREOCA 28*.

14. APPENDIX 1

14.1 Submissions

In summary, PILCH makes the following submissions. PILCH also makes the Submissions available to other interested or affected parties in relation to unpaid wages, including the Wampan Wages: Victorian Stolen Wages Working Group.

Proposed Submission 1 – Education and awareness

Consistent with Recommendation 2 of the Unfinished Business Report and with the MCATSIA agreement of June 2007, the Victorian Government should conduct an education and awareness campaign in Indigenous communities in relation to stolen wages issues.

Proposed Submission 2 – Consultation

Consistent with Recommendation 5(a) of the Unfinished Business Report, the Victorian Government should urgently consult with Indigenous communities in relation to the issue of unpaid wages in Victoria.

Proposed Submission 3 – Archival review

Consistent with Recommendation 5(b) of the Unfinished Business Report, and given the limited nature of the archival review conducted during the Investigation, the Victorian Government should invest resources in researching the available records, including:

- (a) researching archival records outside the NAA and the PROV;
- (b) indexing documents;
- (c) reconciling available account records;
- (d) obtaining permission to inspect records subject to privacy legislation;
- (e) conducting extensive name searches; and
- (f) locating missing records.

Proposed Submission 4 – Failure to maintain proper records

PILCH recommends that, to the extent that the above research confirms that past Victorian Government departments and their direct reports have failed to comply with statutory recordkeeping requirements in relation to unpaid wages, the Victorian Government should consider how best to provide a remedy to Indigenous Victorians for those failures, for example, by processing individual claims on an appropriate evidentiary basis, or otherwise allocating and distributing recompense.

Proposed Submission 5 – Oral evidence

As part of the process of consulting with Indigenous communities, the Victorian Government should fund a research project recording the oral evidence of Indigenous Victorians in relation to unpaid wages.

Proposed Submission 6 – Scope of the Investigation

Consistent with Recommendations 5(a) and 5(b) of the Unfinished Business Report, the Victorian Government should fund further consultation and review of archival material, in relation to the following matters (being matters which the Stage One and Two Reports state had been excluded from the Investigation):

- (a) the withholding of wages from Indigenous children apprenticed through Victorian State Government departments other than the Board;
- (b) the withholding of wages from Indigenous persons other than those living at Lake Tyers;
- (c) underpayment for work on reserves, including withholding of wages for punitive reasons;
- (d) the withholding of maintenance payments made by Indigenous workers back to the reserves, and whether those payments were distributed;
- (e) the withholding or diversion social security payments.

Proposed Submission 7 – Pre-1918 records

Consistent with Recommendations 5(a) and 5(b) of the Unfinished Business Report, the Victorian Government should fund further consultation and review of archival material, involving an investigation of all evidence of wages being withheld by the Victorian Government from at least 1869 onwards (ie rather than limiting the review to the period from 1918 onwards).

Proposed Submission 8 – Investigation terms of reference

The Victorian Government should make the terms of reference for the (History Matters) Investigation available to the public.

Proposed Submission 9 – Government response to Stage One and Two Reports

The Victorian Government should respond publicly to the recommendations in the Stage One and Stage Two Reports, and publish its formal policy position on the issue of unpaid wages in Victoria.

Proposed Submission 10 – Policy rather than litigation approach

It is recommended that current lobbying efforts in Victoria focus on policy, in a way that is solution-oriented, future-focused, and based on cooperative approaches and outcomes.

Proposed Submission 11 – Government response to further research & consultation

If the further research and consultation referred to in Submissions 1 to 9 reveal that the withholding, underpayment or non payment of Indigenous wages and welfare entitlements did occur in Victoria, then the Victorian Government should, consistent with Recommendation 5(c) of the Unfinished Business Report, proceed to establish a compensation scheme.

The final design of the scheme should have regard to any differences in the actual practices which occurred in Victoria, compared with the practices which occurred in NSW.

15. APPENDIX 2

15.1 List of Abbreviations

AAV refers to Aboriginal Affairs Victoria;

the Board refers to, collectively and separately, as applicable, to the Victorian Board for the Protection of Aborigines (1918-57), the Victorian Aborigines Welfare Board (1957-68) and the Victorian Ministry of Aboriginal Affairs (1968-74);

Control Board refers to the 'Stolen Wages Control Board';

Government refers to the Victorian Government, unless the context indicates otherwise;

History Matters refers to 'History Matters – consulting historians';

Indigenous persons refers to Aboriginal and Torres Strait Islander persons;

Investigation refers to the preliminary research undertaken by History Matters into selected Victorian Government archives on the issue of unpaid wages in Victoria;

MCATSIA refers to the Ministerial Council on Aboriginal and Torres Strait Islander Affairs;

NAA refers to the National Archives of Australia **NSW ATFRS** refers to the New South Wales Aboriginal Trust Fund Repayment Scheme;

PROV refers to the Public Record Office Victoria;

RFQ refers to the 'Request for Quotation' issued by the Victorian Government in August 2007, being a foundation document to the Investigation;

SCATSIA refers to the Standing Committee for Aboriginal and Torres Strait Islander Affairs;

The Stage One and Stage Two Reports refers to the reports prepared by History Matters upon the Investigation conducted by it, both of which were published in September 2009;

State Report 08-09 refers to the Indigenous Affairs Report for 2008-2009;

UAWP refers to the Underpayment of Award Wages Process;

unpaid wages refers to the wages and other economic entitlements of Indigenous persons that were withheld, unpaid or underpaid pursuant to policies of Australian governments;

UWP refers to the Underpayment of Wages Process; and

Wampan Wages refers to the Wampan Wages: Victorian Stolen Wages Working Group.