

## 1

*The Deal*

Late in the afternoon of Thursday, 9 May 2002, a group of senior Aboriginal figures waited uneasily in the anteroom of the office of the Premier of Queensland. Among those present were Ruth Hegarty, Cheryl Buchanan, Alf Lacey, Bertie Button and John Leslie.<sup>1</sup> As representatives of major Aboriginal organisations in Queensland, they had been assembled under the auspices of Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS) to find resolution to longstanding grievances about the wages and savings lost while under management of state governments during the twentieth century.

The group was quietly confident. It was a year since QAILSS had submitted a proposal for reparations of \$180 million payable over three years, calculated at \$15 000 each for approximately 12 000 possible claimants. In the interim there had been a state election and a major forum of elders in Rockhampton, sponsored by the government to allow the Aboriginal community to air its concerns. There had been no specific response to their proposal until this summons to the Premier's office. At a meeting the previous day the group had decided they would walk out en masse if the proposal was rejected. They figured they had everything to gain and nothing to lose.

Leader of the negotiating team, 'Sugar' Ray Robinson,<sup>2</sup> had not attended the previous day's briefing; nor had National Aboriginal and Islander Legal Services Secretariat's (NAILSS) in-house counsel, former Supreme Court judge Angelo Vasta. When the group entered the Premier's

office, Robinson and Vasta were already there. Minister for Aboriginal and Torres Strait Islander Policy Development Judy Spence arrived just before Beattie.

Ruth Hegarty recalled that the Premier had a sheaf of yellow papers in his hand that he immediately tossed on the table, saying ‘This is our offer, take it or leave it’. But the offer was for only \$55.6 million — a ‘full and final’ payment of \$2000 for each surviving worker under the age of fifty years, and \$4000 for older survivors. No-one spoke; no-one walked out. Robinson asked for \$200 000 from the reparations so the team could consult with potential claimants throughout Queensland to gauge their opinion of the offer. Without hesitation, Beattie said ‘You’ve got it’. Both parties agreed to maintain media silence until there was a formal response from the Aboriginal community. The group left the room. Their proposal never got a mention.

Ruth Hegarty and Alf Lacey were distressed and disgusted. But the rest of the group were upbeat. Someone took a photo of the ‘historic occasion’ and suggested a celebratory dinner. Hegarty and Lacey declined. It was their view that the \$200 000 should not be paid to QAILSS except with endorsement from the wider community because this money was part of the reparations. But when Ruth Hegarty rang QAILSS the next day to voice her concerns, she was told the transfer had already been finalised, as had a full itinerary for ‘consultation’ teams<sup>3</sup> to visit dozens of Aboriginal communities around the state.



A week later, on 16 May, members of Peter Beattie’s Cabinet learned of the reparations offer at the same time as the general public — over their morning coffee. Somewhere during the weekend the whispers had started, so the government leaked its position to Brisbane’s *Courier-Mail*. The paper ran the story across most of its front page, and radio stations led with the news. Ministers were called to a rushed Cabinet briefing to endorse the offer<sup>4</sup> before Beattie addressed Parliament just after 9.30am.

His parliamentary terminology echoed his words in the morning papers, where he was quoted as saying that many Aboriginal people had been treated worse than animals. Describing his proposal as historic, he said it aimed to ease the lasting pain caused by past government policies, to rectify the wrong in a fair and balanced way. It was based not upon any admission of legal liability but in the spirit of reconciliation. Claimants would have

to indemnify the government against any legal action but they would get a written apology and a protocol acknowledging traditional owners at the commencement of all official government business. Minister Judy Spence agreed. The government's offer recognised past injustices inflicted by controlled wages and savings, a 'very emotional' issue for Aboriginal people. This was a way of settling the matter without litigation, to 'allow us all to move forward.'

The Premier revealed there were 4000 potential litigants waiting in the wings and the government had already spent over \$1.5 million preparing for legal challenges. He admitted it was 'impossible to say for certain how much each worker is owed' without researching each case. He conceded many would be disappointed with the amount and remarked 'historian Dr Ros Kidd has said they should qualify for as much as \$500 million'.<sup>5</sup> He said the settlement would save Queensland taxpayers millions of dollars. The offer was made, he said, 'so we can move on'. It was a win for taxpayers, for Indigenous people, and for reconciliation and decency.

Ray Robinson was equally effusive. It was a very generous offer, he said, and they wouldn't do better elsewhere. It was a step towards reconciliation between black and white Australians; a win-win for Indigenous communities and a win-win for the state government. He said his negotiating team 'had to make a decision and one which is feasible . . . it was a hard decision, but I think it is the best result' and he was '90 per cent sure' the deal would be accepted by the community.<sup>6</sup> He offered his teams' services as negotiators in other states facing the vexed issue of missing wages and savings. 'These types of things', he said with regard to the compensation, 'have got to be done all around Australia'. (Victorian Premier Steve Bracks said he would seek advice on whether his state might replicate the Queensland process.<sup>7</sup> In New South Wales, Community Services Minister Carmel Tebbutt commissioned a report into the stolen payments, conceding the government didn't know the amount of Aboriginal people's earnings that 'just went into general revenue'.<sup>8</sup>)

Reactions among the Aboriginal community were mixed. Gloria Beckett, who was sent out as a domestic worker from the age of 15 and worked for five years on rural properties without wages, said the payment was 'too little, too late'.<sup>9</sup> Florence Luff was not even 14 when she was sent out to work as a housemaid and nanny, the government 'banking' half her weekly wage of 15 shillings (about \$45 today). She continued

working full-time with her husband, paid mostly in clothing and food, always fearful that without any money they would be locked up as vagrants. She never saw a bank passbook, had no idea how much she earned or where the money went. If she and her husband had been paid their wages, she said, perhaps they might have been able to buy a little house. She planned to use the \$4000 to put a headstone on her husband's grave.<sup>10</sup> Fred Edwards worked for 25 years as a stockman on stations around the Gulf of Carpentaria, mostly unpaid except for 'tucker'. He remembered the humiliation of being refused permission to withdraw even small amounts from his compulsory savings. He estimated he was owed around \$400 000 and without it he would have to 'go on slaving'. He was unsure if he could afford to refuse the \$4000. Percy Bedourie was contracted out to work when he was 12 and paid mainly in rations, tobacco and an occasional pair of boots. He never saw his pay which went direct to the protector. The \$4000 offer equated to \$181 per year for each of the 22 years he worked under the system. He said that if he didn't accept it he'd get nothing.<sup>11</sup>

From Yarrabah, where Alf Lacey chaired a meeting of elders and their families, community members described the payment variously as 'pocket money for 40 years of slavery' and 'insulting'. The elders were very angry, Lacey said. 'They said dying or not, they would not accept or sign off on the pittance being offered.' There was support for those who felt they could not forgo the payment, but overall the view was that 'our old people are made of strong stuff and will want to see justice done'.<sup>12</sup>

Most Australians had no idea the governments of various states and territories had controlled the earnings and entitlements of Aboriginal workers for much of the twentieth century. While Aboriginals had been fighting for these 'stolen wages' for two decades, the media reports were probably the first most Queenslanders knew of comprehensive government controls of Aboriginal trust funds and private savings. This was certainly the first official statement about government indebtedness — whether \$55 million or \$500 million.

In all the upbeat publicity surrounding this considerable expenditure of taxpayers' funds, there was no attempt by the government to provide any explanatory background, financial profile, legal clarification, or summarised report. Not to the public, nor to the Aboriginal victims of the system.



As the Queensland branch of NAILSS, QAILSS' involvement in what became known as 'Stolen Wages' followed a 1997 meeting of ATSIIC Commissioners in Queensland and chairs of Aboriginal and Torres Strait communities. They set up a state advisory committee to pursue wages and savings that were lost or stolen under government management. QAILSS secured initial funding of \$400 000 from ATSIIC to put together a class action under direction of NAILSS' solicitor Brian Begg, focusing initially on the Welfare Fund.

For over a year QAILSS' staff visited towns with large Aboriginal populations and Aboriginal communities, explaining the project and gathering signatures of people registering to be part of the class action. By 1999 the project had swallowed \$800 000 of ATSIIC funds, much of it spent in identifying and copying departmental and audit reports for the period since 1914. Legal opinion obtained from eminent constitutional lawyer Sir Maurice Byers suggested all Queensland 'protection' legislation was in breach of the Imperial *Abolition of Slavery Act* of 1833. Queensland legislation since 1884 had sought to impose absolute control on Indigenous lives, labour and finances. If it were shown that this regime imposed a form of slavery on those persons then those laws would breach the anti-slavery Act and would thereby be invalid. Any money taken from Indigenous people under invalid legislation would be illegally gained and have to be repaid.<sup>13</sup>

It was after Angelo Vasta took control of the project early in 2000 that the focus broadened to track the missing wages and savings of workers and their descendants. By June the team had put together a draft summary of its position on the Welfare Fund and also on associated trust funds created from the earnings and entitlements of Aboriginal people that had been controlled by previous state governments. This position paper canvassed the legal options for action — unlawful enslavement, breach of fiduciary duty, human rights violations — and included a scale for individual reparations. This classification started at \$25 000 for people who worked five years or fewer, increasing in blocks of \$5000 for every additional five-year work period, rising to \$45 000 for people who worked twenty years or more — a very conservative payout, given the average annual wage in Queensland at the time was \$30 000, as QAILSS pointed out.

Alerted to the increasing dimensions of the QAILSS investigation, the Beattie Cabinet made a decision in July to start formal negotiations on the Welfare Fund and associated accounts. The Treasurer was asked to join Beattie and Spence as formal negotiators for the government. As Judy Spence later remarked, they knew ATSIC 'had invested a considerable amount of money' on the investigation 'and they were the group who were saying to the State Government we are getting ready to take you to court'.<sup>14</sup> So the government approached QAILSS (as lawyers for the class action) and ATSIC (as elected Aboriginal representatives) seeking an early resolution through negotiated outcome 'rather than go[ing] down the litigation path'.

Around this time, it seems, a government offer of \$45 million as full settlement was rejected by QAILSS.<sup>15</sup> By the time formal talks started in early September, QAILSS had over 1900 names on its database and 1000 signed-up claimants. The final position paper was forwarded to the government a few weeks later as a basis for future discussion. The government did not respond. Negotiations broke down late in 2000 'for various reasons' according to Spence. During this hiatus QAILSS commissioned estimations from me of specific evidence of misuse of trust holdings and the total sum known to have been at substantial risk. I told them of my conviction there was overwhelming evidence of breach of trust.

After conferring with ATSIAB, whose role was to advise the government on Indigenous issues, Spence resolved to fund a meeting of elders at Rockhampton the following March 'to make sure that this got back on the agenda' and to determine 'who we were negotiating with', since QAILSS had no formal authority to speak for the thousands of Aboriginal Queenslanders who had suffered financially during decades of financial 'management'. In the week prior to the state election, called for 17 February, Beattie initiated an urgent meeting with the QAILSS negotiators.

QAILSS took the option to 'talk about some figures' and lodged a revised proposal: reparations of \$180 million payable over three years plus the transfer of all state-controlled Aboriginal housing to Aboriginal regional bodies. QAILSS also stressed the under-award payments (of \$7000) should not be seen as a precedent given the greater magnitude of

the wages and savings issue. Beattie said negotiations would resume after the Rockhampton forum in March.

The forum provided the first official opportunity ever for people to air their grievances and the minister was bombarded with angry questions. Was that all there was left, asked one person, only the \$7.9 million in the Welfare Fund? Where did the money go — the interest generated from invested private savings, the levies on wages, the child endowment and inheritances? What had happened, demanded another person, to money taken ‘from my father’s pay as a soldier’ in World War II? ‘You haven’t just, or the Government haven’t just ripped us off of Savings Accounts, they have ripped us off of many accounts.’

There was much anger about the under-award compensation — payable to people who had worked as little as one week in the claim period. One man spoke of his father who had worked for 25 years at Cherbourg as a policeman and an overseer. ‘For many, many years’, he said, he had tried in vain to finalise his father’s estate. Because his father had died in 1979, he could not claim the \$7000 under-award payment for his mother. ‘This is discriminating against the dead, not just the living. The dead who cannot speak for themselves’, he protested. It was a Cabinet decision, responded Spence, anyone who had died before 31 May 1999 (when the decision was made) could not be compensated. ‘We don’t have the resources in Government to calculate the entitlement’, she added. There were further hostile interjections. What about compensation for the girls contracted to work on cattle stations and sexually abused and their babies taken from them? ‘I have been affected by this cruelty by the Government . . . it still impacts on me now as an old woman . . . have your Government thought about the compensation for that?’ Spence said compensation was ‘coming out of the taxpayers today . . . That money has got to come off hospitals or education or something else. It’s as plain as that.’ There were further angry outbursts and many people walked out.

After completion of the forum report, QAILSS contacted the government to re-establish consultation but as late as October 2001 was still to receive any documentation from the government outlining its position.<sup>16</sup> It was the following May when the government offer — of less than one-third the proposed reparations — was accepted so readily by the negotiating team.



Financed with \$200 000 from the reparations package QAILSS sent its consulting teams around Queensland with printed information and advice approved by the Department for Aboriginal and Torres Strait Islander Policy Development (DATSIP),<sup>17</sup> and a deadline of 9 August to obtain community response. The 'Advice to Claimants' form stated people rejecting the offer could take court action 'if they have enough evidence to prove a case against the government'. But it warned cases would depend on ATSIC getting a special grant to fund them, could be 'extremely expensive', and costs in a failed case could be awarded against the claimant. Cases might take 12 years like the *Mabo* land rights case had 'and the government has money to oppose the case, and to delay it'. Even if a person had documentary evidence, the form continued, it would be difficult to win because 'the government has said that it has legal advice that it would win any such action'. This was the final offer and would not be increased or repeated, warned the Advice.<sup>18</sup>

The Advice for those accepting the offer was that the payment was conditional on the person accepting the offer signing a form giving up his or her rights to sue the government 'about anything to do with being "under the Acts"'. There was the promise of a public apology 'for the wrongs that occurred' and a protocol to acknowledge traditional owners at the beginning of all parliamentary business. People were urged to sign a 'Letter of acceptance/rejection' acknowledging that the QAILSS consultation team had explained what was being offered.

A campaign against the offer and the consultation process quickly got off the ground. A large Aboriginal community meeting in Brisbane in early June unanimously rejected the offer,<sup>19</sup> and formed a coalition of Indigenous organisations<sup>20</sup> to fight the rushed process, the lack of proper consultation, the paltry amount, and the merging of the Welfare Fund with the reparations issue. There was a street march in Brisbane and a petition to Parliament urging the government reconsider the amount and the process. An urgent concern was to correct misinformation and misunderstandings among potential claimants and the general public.

There was considerable unease with QAILSS' role. It had signed up around 2000 potential claimants and calculated 'reasonable compensation' ranging from \$25 000 to \$45 000 per person depending on number of working years. While few people on the communities knew of this



background, fewer still could understand why the \$2000 and \$4000 payments could be considered a ‘generous’ settlement for decades of missing money. Challenged on this omission, QAILSS began to include its own initial calculations with the government-approved documentation.

There was considerable pressure on people to accept the offer. In media releases and press interviews the government stressed that people should accept by the 9 August deadline. If it was rejected, said Beattie, ‘no-one would receive any money and the dispute would be tied up in the courts for years’.<sup>21</sup> Many people complained they found the QAILSS teams intimidating at the consultation meetings; some people were reluctant to speak out against the process and the terms of the offer in the presence of authority figures from QAILSS, including legal counsel Angelo Vasta. The Coalition produced a leaflet ‘Are You Signing’, to let people know there was no compulsion to sign anything before the 9 August deadline, which had been set only to gauge general community response. Ultimately, only one week before the deadline, the government issued a media release acknowledging the ‘Letter of acceptance/rejection’ had no legal value being ‘only as a form of survey’ by QAILSS.<sup>22</sup> Many who signed at community meetings later sought to withdraw their acceptances and fight for a better outcome.

As I was aware that few people in either the Aboriginal or the wider community knew the context of the offer, I produced two fact sheets for distribution through Australians for Native Title and Reconciliation (ANTaR) of which I have long been a member. The first concentrated on the finances — a historical background to the regime, the missing wages for pastoral and community work forces, the money generated by the government on seized private savings, and the state government’s knowledge of frauds and improper dealings on trust funds. The second compared substandard conditions on reserves and in contracted employment with illegally underpaid wages and the mass of private money withheld from account holders in investment portfolios.<sup>23</sup>

A major concern of the coalition and other campaigners was the inequity of people signing to accept or reject the offer without evidence of their personal financial histories, evidence most of them had never seen and that remained under government control. On the day the offer closed, Beattie promised his government would provide ‘independent legal advice to eligible individuals to ensure they make an informed decision’.<sup>24</sup>

The coalition also highlighted inconsistencies in the government's statements. The government's insistence that it was under no pressure to make the offer contrasted with the Premier's statement to Parliament that the offer was in part a response to the 4000 potential litigants 'waiting in the wings' in QAILSS' class action.<sup>25</sup> Assertions that 'the Queensland Government is likely to be successful if these matters went to court. The facts are in the last few decades when Aboriginals have had the opportunity to take the Queensland Government to court over this issue they haven't done so',<sup>26</sup> were also open to challenge. A case against the government relating to missing wages and savings had been settled out of court by the government in 1999, and it had been Minister Judy Spence who publicly congratulating the plaintiff Lesley Williams for her role 'at the forefront of the fight' to find out what happened to money earned by Aboriginal workers 'but never paid'.<sup>27</sup> The government refusal to reconsider the amount of the reparations, on the grounds it was all taxpayers could afford, sat badly with the Premier's statement in Parliament that the government had no idea how much of their own money people might be owed.

In their official report on the consultation,<sup>28</sup> QAILSS noted 'most of the individuals and communities' reacted to the offered payment 'with concerns ranging from dismay through to outright anger', with 'similar feelings . . . voiced at every location'. The report cited a range of responses. The amount was described as a 'lousy pittance' for a lifetime's financial deprivation, especially in comparison with the \$7000 compensation for short-paid wages due to those with as little as one week's work history. 'I lost my teenage years and worked like a dog . . . this is a rip off, you go back and tell them what I said,' said a Yarrabah resident. From Wujal Wujal the offer was described variously as blackmail, criminal, discriminating and sickening. From Yarrabah came the protest: 'Some politicians get more than that in a week! This is my entire life!' <sup>29</sup>

Many highlighted their laborious lives. 'Does the government know how hard we worked?' asked one person. 'Everyone worked hard and our mothers, they never got child endowment though they were entitled to it.' 'It is hard to know that you worked so hard for all those years for nothing, and this is nothing. I will take it but it is nothing.' 'They are forcing us to accept this, they have not come clean, they are guilty', said a lady from Doomadgee. 'We are very angry. I'm an old woman, I can see what is going on!'

This wasn't reconciliation, said another speaker at Doomadgee. 'We deserve this! We are owed this! It is our right! They should look at this, they are robbing us again, we never had justice, we never got anything . . . There is no option here, no choice. How long until they are answerable to us?'

People berated the generational impact: 'Government took all our money! All of it! . . . all our parents working and now nothing for them or their children or grandchildren', said a Pormpurraw resident. QAILSS reported the exclusion of claimants who were deceased before the date of the offer caused 'many persons and communities' to request it be formally noted 'they were seriously alarmed and even disgusted that the monies to which their parents and grandparents would have been entitled will now still be withheld by the Queensland government without explanation'.

QAILSS conceded that, despite the expensive publicity campaign, 'a large number' of eligible claimants 'did not attend consultation meetings'. Of the 16 400 anticipated potential claimants<sup>30</sup> only 3347 people (fewer than 21 per cent) responded positively to the offer.<sup>31</sup> This was, according to the report, almost 96 per cent of those who completed the accept-or-reject form. Yet it was this latter figure that the government publicised. 'Mr Beattie said the report indicated 96% of potentially eligible people would accept the offer', stated the government's media release of 9 August.

Within a month, a full executive council meeting of the Aboriginal Co-ordinating Council (ACC)<sup>32</sup> rejected outright both the offer and the consultation process. Meanwhile the campaign by the Indigenous coalition and their supporters against the offer and its terms continued to pressure the government on both the small payment and the mandatory indemnity. Potential claimants were well aware that \$2000 or \$4000 was pitiful compensation for decades of missing financial entitlements, yet many — particularly the ill and the elderly — saw the amount as money they couldn't afford to refuse. But to access this bonanza they had to sign away their right to future legal actions. If the government was persuaded to waive the indemnity, then the offer could be seen as a down payment: claimants would receive a little immediate relief but retain the option of pursuing greater entitlements through the courts.

The aspect of the indemnity causing most concern was the fact that few claimants had ever seen any financial documents, which remained under government control. They would effectively be signing away their

legal rights in total ignorance of what might be due to them. Agreement in such circumstances could hardly constitute legal ‘consent’ to the terms of the offer. There was the added concern that most people assumed the indemnity related only to financial matters, whereas wording of the indemnity was designed to cover every aspect of all legislation, precluding actions for physical and sexual assaults, and for negligent duty of care.<sup>33</sup>

While the government conceded ‘no amount of money would ever compensate . . . for the wrongs that have been inflicted on Aboriginal Queenslanders’,<sup>34</sup> it would not budge on the offer. The government promise that claimants would have independent legal advice before signing the formal Deed of Agreement (DoA) to accept the offer was also problematic. Asked for clarification, senior DATSIP officers said there was still no intention to provide all eligible claimants with their financial records before they made a decision and the legal advisers would not caution them to do so, as the advisers were only appointed to present the government case.<sup>35</sup>

The government’s tender documents relating to the appointment of independent legal practitioners raised further concerns. The ‘evaluation criteria’ sought applicants who ‘demonstrated willingness to work cooperatively with departmental staff’. Lawyers were required to ensure individual claimants understood their rights, understood the contents of the DoA to claim their reparations, and completed the agreement correctly.<sup>36</sup> But there was no instruction to ensure signatories were aware of either their personal financial history or the mass of incriminating evidence already compiled on the mismanagement of past governments. The signed DoA not only now represented the state’s apology but — incredibly — it was said to confirm those who signed it agreed the apology and payment ‘are made in the spirit of reconciliation’, and that the signatory had indeed received independent legal advice.

HREOC social justice commissioner Dr William Jonas described the offer as insultingly low and the consultation process as farcical.<sup>37</sup> Eminent justice Marcus Einfeld QC, former Federal Court judge and foundation president of the HREOC in Australia, said the offer was ‘replete with ambiguity and mean-spiritedness’, a process which effectively blackmailed people to accept or face a situation where they might lose or die before seeing the money owed to them. ‘How can the value of a working lifetime

be deemed to be worth only a few thousand dollars?’ he asked. People who had been ‘surreptitiously dispossessed of their earnings and savings’ were subject ‘yet again to an insidious injustice.’ In the absence of full personal financial details, he said, lawyers could not possibly be providing independent legal advice. No-one would think of asking a white person to sign away his or her rights in such circumstances, he said, ‘And no white person would contemplate doing so.’<sup>38</sup>

Terry O’Gorman, president of the Australian Council for Civil Liberties, said it was ‘a nonsense’ to say ‘an Aboriginal person is getting “independent” advice when the lawyer has to be “approved by the department”’. Given that everyone — including the Premier and the DATSIP minister — acknowledged the payout was much lower than likely entitlements, he suggested claimants might sue the lawyers after the event for settling on significantly disadvantageous terms. To avoid such litigation, he said, the government-appointed lawyers should suggest claimants seek independent legal advice as to whether their own advice was in the claimant’s best interest. He described the government’s offer as ‘a sick joke’.<sup>39</sup>

Against persistent allegations of missing wages and savings, the government said there was no money left in the wages and savings account and disbursement of final balances in the early 1970s could be clearly traced through audited accounts. Minister Judy Spence denounced the ‘misunderstanding and misinformation that’s being put into the communities about what happened to the money.’<sup>40</sup> Yet the Stolen Wages campaign is not about the acquitting of final balances. It is about the multiple incidents of negligence and fraud over the decades — much of it documented in audit reports — *before* account residues were paid out from the 1970s onward. Indeed it was a report commissioned by the Goss Labor government in 1991 — into the Welfare Fund and the Aboriginal Accounts<sup>41</sup> — which officially revealed the widespread corruption, misappropriation and mismanagement.<sup>42</sup>

The 1991 report’s observation, that file holdings were in a poor state with many documents missing, has been repeated by government on several occasions to counter demands for full accountability. When Lesley Williams commenced her search in government files she was told by the minister it was ‘most unlikely that I would be able to find out just what

might have happened' to her missing wages, given the 'very poor' state of the records.<sup>43</sup> Yet she found sufficient evidence to bring the government to settle the case.

Indeed the poor state of the records identified in 1991 no longer holds true. Since that date a wealth of evidence has been compiled on government trusteeship of Aboriginal savings and entitlements during the 20th century: my own 15-year intensive research project, the information collected by the QAILSS Welfare Fund research team over five years, and of course the massive database collated — for its own defence, according to the Premier — by the government's special investigative unit (originally the Welfare Fund branch, later Work and Savings History Unit).

The nub of accountability is the strength of the evidence provided for scrutiny. The government did not produce to the 1996 HREOC Inquiry into under-award wages documents detailing its knowledge from 1979 of a liability 'to pay the award rate of wages irrespective of how or where that liability is enforced',<sup>44</sup> notwithstanding it had copies of my thesis locating this correspondence. Copies of these documents were lodged with my evidence. The government did finally pay the recommended \$7000 as compensation for discrimination to each of the six workers, but it held records showing these workers were owed between \$8500 and \$21 000. In 1999 when the government launched the \$25 million scheme to pay the \$7000 compensation for all employees underpaid between 1975–86, records show it had already settled 22 actions — one for \$4000 (around one-quarter of the debt showed on department records), and 21 for \$7000 (where department estimates of underpayment ranged between \$13 000–\$27 000).

The government ultimately paid almost \$40 million in compensation on under-award wages but the full amount withheld from workers during the decade to 1986 was over \$180 million, calculating work-force numbers against wages paid. All those who accepted the \$7000 for under-award wages, like those who accepted the offers of \$2000 or \$4000, indemnified the government against future legal actions. It is a moot point whether any were aware of the true amount owing to them.

Fewer than half the estimated eligible claimants have accepted the two payouts: around 5700 people for under-award wages compensation and a similar number for the Stolen Wages offer.<sup>45</sup> A growing number of people, informed largely by the Stolen Wages Working Group<sup>46</sup>

information campaign, are contemplating recourse to the courts<sup>47</sup> to secure accountability and justice for both under-award and stolen wages, not just for themselves but for the lost wages and entitlements of deceased parents and grandparents. In 2004 the government settled an action by two workers who each claimed around \$100 000<sup>48</sup> as compensation for under-award wages.

Since at least the mid-1980s successive solicitors-general and Crown solicitors have offered differing opinions as to whether government might be held accountable for its management of Aboriginal people's trust money. In 1996 counsels D J McGill and Debra Mullins advised that a strong case could be made for legal accountability for the thousands of savings accounts run by previous governments, and misuse of Welfare Fund money for other than general welfare projects could be grounds for action and a direction to repay lost funds. They warned that trust law on the potential liability of governments was developing rapidly.

McGill and Mullins particularly directed government attention to the United States, where a recent decision held that the federal government had a legal obligation to account for all Indian property held in trust since compulsory financial management commenced in 1887. The amount at stake in this case, according to a United States government assessment, might be \$US40 billion (\$A50.7 billion).<sup>49</sup>