



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**  
**COMMITTEES**

**Legal and Constitutional Affairs Committee**

**Report**

**SPEECH**

**Thursday, 7 December 2006**

BY AUTHORITY OF THE SENATE

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## SPEECH

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<b>Questioner</b>	<b>Responder</b>
<b>Speaker</b> Brandis, Sen George	<b>Question No.</b>

**Senator BRANDIS** (Queensland) (11.12 am)—The Senate committee's report addresses a scandalous injustice. It appears that for several decades, until as late, in some cases, as the early 1970s, wages payable to Aboriginal workers were withheld from them by the government departments administering Aboriginal affairs and paid into various trust funds. Those monies have never been paid to those entitled to them or to their lawful successors. The situation varies from state to state. One of the serious problems encountered by the inquiry was that of missing records, so that it is very difficult to establish just who is entitled and the quantum of their entitlements. But the members of the committee were left in no doubt that the failure by successive state governments, and perhaps territory governments, to honour the lawful entitlements of Aboriginal people was widespread, indeed customary.

Let me illustrate the question by reference to my own state of Queensland, where the position has been clarified by the pioneering work of Dr Rosalind Kidd, who exposed the issue in her important book *Trustees on Trial: Recovering the Stolen Wages*, which was published earlier this year. Dr Kidd appeared at the Brisbane hearings of the committee on 25 October, as did, among others, Mr Patrick Hay of the Queensland Bar, who provided the committee with a detailed submission written by himself and Ms Jean Dalton SC which traced the legislative history of the matter in Queensland since the Aboriginals Protection Act of 1897. There is no time this morning to examine the legal complexities of this matter. Suffice it to say that Dr Kidd, Ms Dalton SC and Mr Hay presented a cogent argument that there has been a breach of trust and/or a breach of fiduciary duty by the state of Queensland to potentially thousands of Aboriginal families over many decades.

According to Dr Kidd, in 1996 Ms Debra Mullins SC, now Justice Mullins of the Supreme Court, and Mr John McGill, now Judge McGill, gave legal advice to the Queensland government in similar terms. On the basis of the work of those whom I have mentioned, there seems to be at least a *prima facie* case of serial withholding from Aboriginal people of moneys held on their behalf by the state of Queensland, for which the state has to this day failed to account to them.

This has been described by some speakers as a moral issue. Yet it seems to me that the claims of the Aboriginal people concerned and their descendants do not rest on the uncertain and contestable ground of moral right; they rest on the much firmer footing of legal right. To me, this is not a question of Aboriginal welfare or of Aboriginal people asking for a fair go. It is a question of property rights. At its simplest, these people are saying to the government: 'You held our money in trust funds. You have never paid it to us, the beneficiaries. Hand it over.'

The Queensland government has met this response with an insultingly low offer capped at \$5,000 per claimant. As the Assistant Director-General of the Department of Communities, Mr Michael Hogan, was honest enough to concede, this was not regarded by the government as compensation but as reparations. How unjust is that! The Queensland government has withheld money to which thousands of people appear to be lawfully entitled and, aware that people in their position are unlikely to be able to litigate their claims, has refused to make restitution to them, renounced any obligation to compensate them and sought to buy them off with a token payment—a gesture which bears no economic relationship to the quantum of the entitlement. A great injustice has been exposed in this report. It is high time that the governments responsible met fully their obligations to these people.

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)**—Senator Siewert, you are seeking the call, but I should tell you that you have just under three minutes. You might seek leave to continue your remarks.