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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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Registrar

A handwritten signature in blue ink that reads 'Warwick Soden'.

### Important Information

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## FOURTH AMENDED STATEMENT OF CLAIM

(Amended on 27 May 2019 pursuant to the order of Murphy J dated 23 May 2019)

No. 714 of 2016

Federal Court of Australia  
District Registry: Queensland  
Division: General

### HANS PEARSON

Applicant

### STATE OF QUEENSLAND

Respondent

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**A. Introduction**

1. The Applicant commences these proceedings as a representative party pursuant to:
  - (a) Part IVA of the *Federal Court of Australia Act 1976 (FCA)*; or, alternatively
  - (b) rule 9.21 of the *Federal Court Rules 2011*.
  
2. A Group Member to whom these proceedings relate is a person who:
  - (a) during all or part of the period from 12 October 1939 to 4 December 1972 (**Claim Period**) was, or was deemed to be, an “aboriginal” as that term is used in *The Aboriginals Preservation and Protection Act of 1939 (Qld)* (as amended) (**1939 Act**); or
  - (aa) during all or part of the Claim Period was, or was deemed to be, an “islander” as that term is used in *The Torres Strait Islanders Act of 1939 (Qld)* (as amended) (**Islander Act**); and/or
  - (b) during all or part of the Claim Period was an “aborigine” or a “part-aborigine” who fell within the category of “assisted aborigines,” or an “Islander” who fell within the category of “assisted Islanders,” as those terms are used in *The Aborigines’ and Torres Strait Islanders’ Affairs Act of 1965 (Qld)* (as amended) (**1965 Act**); or
  - (c) [blank]
  - (d) during all or part of the Claim Period was subject to the 1939 Act and/or *The Aboriginals Regulations of 1945 (Qld)* (as amended) (**1945 regulations**) (collectively referred to in this pleading as the 1939 Act and regulations); or
  - (e) during all or part of the Claim Period was subject to the Islander Act and/or *The Islanders Regulations, 1946 (Qld)* (as amended) (**Islander regulations**) (collectively referred to in this pleading as the Islander Act and regulations); and/or

- (f) during all or part of the Claim Period was subject to the 1965 Act and *The Aborigines' and Torres Strait Islanders' Regulations of 1966* (as amended) (**1966 regulations**) (collectively referred to in this pleading as the 1965 Act and regulations);
- (g) during all or part of the Claim Period lived in Queensland in one or more of the following areas, that is to say:
- (i) an area which had been proclaimed as or was otherwise deemed to be a “District” for the purposes of the 1939 Act, the Islander Act or the 1965 Act (**Districts**);
  - (ii) on land granted in trust or reserved from sale or lease by the Governor in Council for the benefit of aborigines of Queensland and defined as (or deemed to be) a “reserve” for the purposes of the 1939 Act or the 1965 Act (**reserves**);
  - (iii) on any Torres Strait island (as defined in the Islander Act) or part of a Torres Strait island granted in trust or reserved from sale or lease by the Governor in Council for the benefits of islanders and defined as (or deemed to be) a “reserve” for the purposes of the Islander Act or regulations (**islander reserve**);
  - (iv) in a settlement built on a reserve or on a islander reserve; or
  - (v) in a mission operated by a religious institution on a reserve or islander reserve (which is referred to as a “mission reserve” in s.2 of the 1945 regulations);
- (h) was employed or was required to work during all or part of the Claim Period, such employment being controlled or which was required to be controlled by the 1939 Act and regulations or the Islander Act and regulations and/or the 1965 Act and regulations;

- (i) ~~during any period that the Group Member was in employment during the Claim Period, the whole or part of his or her wages was directed to be paid by their employer to the protector (including the protector of islanders) or superintendent of the District, reserve, islander reserve or mission in which they lived or at the direction of the protector or superintendent (or district officer or manager, as the case may be); [blank]~~
- (j) ~~has not been given the money or the whole of the money which was to be paid to or at the direction of a protector (including the protector of islanders) or superintendent (or district officer or manager, as the case may be) as their wages; [blank]~~
- (k) by reason of the matters pleaded herein is entitled to equitable relief and/or the payment of compensation and/or the relief set out in Section Z hereto.

(The persons who the Applicant represents in these proceedings will be referred to as **Group Members**. The Applicant and Group Members collectively will be referred to as **Claimants**).

- 3. If a person who would otherwise be a Group Member has died, then a reference to “Group Member” in this pleading includes the executor, administrator or beneficiary of that deceased person’s estate who has the capacity to claim on behalf of the deceased estate or (in the case of a beneficiary of the deceased person’s estate) a person who has a right, equitable or otherwise, in respect of the administration of, or property forming part of, the estate of the deceased person.
- 4. The claims herein arise out of the same, similar or related circumstances, or alternatively the Claimants have the same interest in the proceeding, in that:
  - (a) during the Claim Period, the Claimants:
    - (i) were Australian aborigines, or of indigenous Australian aboriginal descent, or were Torres Strait islanders or descendants of Torres Strait islanders;

- (ii) were or had been in paid employment and/or were required to perform compulsory labour pursuant to s. 28 of the 1945 Regulations;
  - (iii) for paid employment, had entered into an employment agreement pursuant to the provisions of the 1939 Act and regulations, the Islander Act and regulations or the 1965 Act and regulations or were required by those Acts and regulations to enter into an employment agreement;
  - (iv) had some or all of their wages paid to, or at the direction of, a protector (including the protector of islanders) or superintendent of a District, reserve or mission;
- (b) during the Claim Period, some or all of the money paid to a protector (including to the protector of islanders) or superintendent as wages for the Claimants was deposited into a bank account or bank accounts operated by the Director of Native Affairs (or his or her successor) where the money was pooled;
  - (c) the pooled money was invested;
  - (d) up until 28 April 1966 money was withdrawn from the bank account or bank accounts referred to in sub-paragraph (b) (or money was taken prior to being paid into those accounts) and paid into a fund called the Aborigines' Provident Fund (until 1943) and thereafter the Aboriginal Welfare Fund (including from the commencement of the 1945 regulations, as defined in paragraph 61 herein);
  - (e) no Claimant could on his or her own volition withdraw money from the accounts referred to in sub-paragraph (b);
  - (f) Claimants were not given any documents or provided with any information showing:

- (i) the amount paid to, or at the direction of, the protector (including the protector of islanders) or superintendent on account of a Claimant's wages;
- (ii) the amount deposited into the accounts referred to in sub-paragraph (b) or otherwise dealt with by the Director of Native Affairs or the protectors (including the protector of islanders) or superintendents on behalf of a Claimant;
- (iii) how money in the said accounts was invested or otherwise used;
- (iv) the amounts paid to the Welfare Fund (as defined in paragraph 61 herein) on behalf of a Claimant, or amounts paid to that fund prior to the commencement of the 1945 regulations;
- (v) any amount withdrawn from the said accounts and the reason for such withdrawal;
- (vi) the balance held in the said accounts on behalf of a Claimant;
- (g) the Claimants have not been paid all or part of the money paid to, or at the direction of, the protector or superintendent as wages earned by the Claimants;
- (h) the Claimants have not been paid all or part of the interest or other accretions from investments made from wages earned by the Claimants;
- (i) further or in the alternative, aboriginal Claimants were required to perform work pursuant to s. 28 of the 1945 Regulations and did not receive any or any proper remuneration for that work.

5. As at the date of the commencement of this proceeding, there are seven or more persons who are Group Members having claims against the Respondent.

**B. Respondent**

6. This action is commenced against the Respondent pursuant to s. 8(1) of the *Crown Proceedings Act 1980* (Qld).

**C. The Director of Native Affairs**

7. Pursuant to the 1939 Act the Director of Native Affairs was charged with the administration of the 1939 Act.

**Particulars**

- A. Section 6(1) of the 1939 Act.

8. Pursuant to the Islander Act the Director of Native Affairs was also charged with the administration of the Islander Act.

**Particulars**

- A. Section 4(1) of the Islander Act.

9. The 1965 Act repealed the 1939 Act and the Islander Act, and with respect to the position of the Director of Native Affairs, provided that:

- (a) the Governor in Council could from time to time appoint a person to be Director of Aboriginal and Island Affairs;
- (b) the person, who at the commencement of the 1965 Act, occupied the position of the Director of Native Affairs would, without further appointment, be the Director of Aboriginal and Island Affairs for the purpose of the 1965 Act.

**Particulars**

- A. For paragraph 9(a), s. 9 of the 1965 Act.
- B. For paragraph 9(b), s.10(2) of the 1965 Act.

10. *The Aborigines and Torres Strait Islanders' Affairs Act Amendment Act of 1967* (Qld) (**1967 Amendment Act**) amended the 1965 Act by providing that the Director

of Aboriginal and Island Affairs was to be constituted by a corporation sole under the name and style of “The Corporation of the Director of Aboriginal and Island Affairs”.

**Particulars**

- A. Section 3 of the 1967 Amendment Act.
11. The *Aborigines Act* 1971 (Qld) repealed the 1965 Act and the 1967 Amendment Act but preserved and continued the corporation sole under the name and style of “The Corporation of the Director of Aboriginal and Island Affairs”.

**Particulars**

- A. Sections 4 and 8 of the *Aborigines Act* 1971, and the Schedule thereto.
12. The *Aborigines Act and Other Amendments Act* 1975 (Qld) altered the name of the said corporation to be “The Corporation of the Director of Aboriginal and Islander Advancement”.

**Particulars**

- A. Section 6 of the *Aborigines and Other Acts Amendment Act* 1975.
13. The *Community Services (Aborigines) Act* 1984 (Qld) altered the name of the said corporation to “The Corporation of the Under Secretary for Community Services”.

**Particulars**

- A. Section 8(1) of the *Community Services (Aborigines) Act* 1984.
14. The *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act* 1984 (Qld) altered the name of the said corporation to the “Aboriginal and Islander Affairs Corporation”. In this pleading the Applicant refers collectively to the Director of Native Affairs, the Director of Aboriginal and Island Affairs and their corporate successors as pleaded herein as “the **Director**.”

**Particulars**

A. Section 5(1) of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

15. At all material times the Director and the protectors (including where relevant the protector of islanders) and superintendents for each of the Districts, reserves, islander reserves and missions:

(a) were servants or agents of the Respondent; and

(b) acted for and on behalf of the Respondent.

#### **Particulars**

A. The Director and protectors (including where relevant the protector of islanders) and superintendents for each of the Districts, reserves, islander reserves and missions were servants or agents of the Respondent and acted for and on behalf of the Respondent because:

(i) each of them held their respective appointment or position under or by virtue of or in furtherance of the 1939 Act, the 1965 Act or the Islander Act; and

(ii) they acted in accordance with their duties set out in paragraphs 7, 8, 30, 31, 32 and 36 of this pleading.

#### **D. Applicant**

16. The Applicant:

(a) was born on 17 April 1939;

(b) is an “Aboriginal” as that term is defined in the 1939 Act;

(c) was subject to the 1939 Act and the 1945 regulations;

(d) from 1954 (when he was first employed) until 1964, had his financial affairs compulsorily managed under the 1939 Act and regulations;

### **Particulars**

- A. Letter from Acting Superintendent Palm Island to Protector of  
Aboriginals Innisfail dated 22 May 1964.
  - B. The Applicant relies on the facts pleaded in paragraphs 229 to 232  
herein.
- 
- (e) from about 1950 was domiciled at Hopevale although his employment took  
him away from Hopevale;
  - (f) in December 1959 moved from Hopevale to Palm Island;
  - (g) was married on Palm Island on 29 September 1960 to Anna May Prior;
  - (h) from December 1959 until 1964 was domiciled at Palm Island although his  
employment took him away from Palm Island;
  - (i) with his wife had seven children being:
    - (i) Cindell Christine born 10 July 1961;
    - (ii) Hans Norman born 22 December 1962;
    - (iii) Karlean Lee born 27 December 1964;
    - (iv) Shaun Lorenzo born 29 February 1966;
    - (v) Lois Jane born 27 June 1968;
    - (vi) Todd Jason born 1 March 1970; and
    - (vii) Clinton Gerard born 13 March 1971;
  - (j) has a stepdaughter, Julie-Ann Theresa (born 1 July 1959);

(k) is a member of the Bargarmuga clan and the traditional owner of the land around Kolpower Station;

(l) received a rudimentary education to grade 3.

17. In about December 1961 the Applicant sought to be exempt from the provisions of the 1939 Act.

**Particulars**

A. The Applicant relies on the facts pleaded in paragraphs 229 and 230 of this pleading.

18. In 1962 the Applicant was granted an exemption and from 1964 was fully exempt from the operations of the 1939 Act and regulations and any subsequent similar legislation.

**Particulars**

A. Letter from superintendent Palm Island to the superintendent Hopevale Mission dated 18 January 1962.

B. The Applicant relies on the facts pleaded in paragraphs 229 to 232 herein.

**E. Legislation**

*Applicable dates*

19. By the 1939 Act the Queensland parliament enacted a law to preserve and protect aborigines in the State.

**Particulars**

A. S. 5(1) of the 1939 Act.

20. The 1939 Act was in force from 12 October 1939 until 28 April 1966 when it was repealed by the 1965 Act.

20A. The 1939 Act authorised the Governor in Council to make regulations, inter alia:

- (a) convenient for the administration of the 1939 Act, or that may be necessary or expedient to further and carry out the objects and purposes of the 1939 Act (s 12);
  - (b) “Providing for the preservation, detention, control and employment of aboriginals on reserves; discipline and good order upon and the inspection of reserves” (s 12(2));
  - (c) “Providing for the establishment of a welfare fund for the general benefit of aboriginals and the maintenance of such fund by the payment thereto of moneys earned by the sale of produce of reserves under the control of the State, proceeds of undertakings conducted on such reserves, contributions by aboriginals as may from time to time be prescribed, unclaimed moneys, and such other moneys as may from time to time be prescribed; the management, control, and disbursement of such fund” (s 12(9)); and
  - (d) “providing for the establishment of such trust funds as may be necessary for the control of the savings of aboriginals, estates of deceased and missing aboriginals and unclaimed moneys” (s 12(10)).
21. By the Islander Act the Queensland parliament enacted a law for the preservation and protection of Torres Strait islanders in the State.

### **Particulars**

- A. Sections 21, 22 and 23 of the Islander Act.
22. The Islander Act was in force from 12 October 1939 until 28 April 1966 when it was repealed by the 1965 Act.
- 22A. Section 6 of the Islander Act authorised the Governor in Council to make regulations, inter alia, providing for all or any purposes whether general or to meet particular cases, that may be convenient for the administration of the Islander Act or that may be necessary or expedient to further and carry out the objects and purposes of the Islander Act.

23. The 1945 regulations were:
- (a) [blank]
  - (b) proclaimed on 23 April 1945 and were in force until 28 April 1966.
24. The Islander regulations were:
- (a) [blank]
  - (b) proclaimed on 3 August 1946 and were in force until 28 April 1965.
25. The 1965 Act and regulations were in force from 28 April 1965 until 4 December 1972.

***Protectors and superintendents***

26. Pursuant to the 1939 Act a number of Districts were maintained within the State for the purpose of administering that Act.

**Particulars**

- A. By s.3 all Districts existing at the commencement of the 1939 Act remained in place.
  - B. By s.8 (1) the Governor in Council was given power to declare any portion or portions of the State to be a District for the purposes of the 1939 Act.
27. In addition to the Districts, the 1939 Act continued to recognise the grant of land in trust, or the reservation of land from sale or lease, for the purpose of a reserve.

**Particulars**

- A. 1939 Act s.4.
28. The government could establish a settlement on a reserve.

### **Particulars**

A. 1939 Act s. 9(4).

29. A reserve could be placed under the management and control of a religious organisation. Such a reserve was defined in the 1945 regulations as a “mission reserve”.

### **Particulars**

A. 1939 Act s. 9(3).

30. Pursuant to the 1939 Act:

- (a) a protector was appointed for each District;
- (b) the protector was responsible for the administration of the 1939 Act within the District;
- (c) a superintendent was appointed to each reserve who was responsible, as a protector of aborigines within the reserve, for the administration of the 1939 Act.

### **Particulars**

- A. The power to appoint a protector of a District is found in s.8 (2) of the 1939 Act.
- B. By s.3 of the 1939 Act all protectors, superintendents and other officers appointed under any Act repealed by the 1939 Act and still in office were deemed to have been appointed under and for the purposes of the 1939 Act.
- C. Additional persons appointed as protectors of Districts were required to be published in the Queensland Government Gazette during the currency of the 1939 Act.
- D. The power to appoint a superintendent of a reserve is found in s.9 (2).

31. The 1945 regulations provided that:

- (a) subject to the Director, every reserve was under the control of the protector in the District in which such reserve was situated, and every settlement and mission reserve was under the control of the superintendent appointed for that settlement or mission reserve;
- (b) every protector or superintendent to a reserve, settlement or mission reserve was responsible to the Director for the administration and control of such reserve, settlement or mission and for the welfare and discipline of aborigines who lived there;
- (c) every aborigine on a reserve, settlement or mission was required to obey all lawful orders of the protector or superintendent and other officers of such reserve, settlement or mission.

#### **Particulars**

- A. For paragraph 31(a), s. 17(1) of the 1945 regulations.
- B. For paragraph 31(b), s. 17(2) of the 1945 regulations.
- C. For paragraph 31(c), s.18 of the 1945 regulations.

32. The 1965 Act adopted the same administrative process as found in the 1939 Act (as set out in paragraph 27 above) save that:

- (a) the Districts (but not the reserves or settlements) were abolished and replaced by new Districts;
- (b) the office of “protector” was replaced with the office of “district officer,” “regional district officer” or “assistant district officer” and the office of “superintendent” was replaced with the office of “manager”;
- (c) the manager of a reserve placed under the management of a religious organisation was an assistant district officer in relation to that reserve.

(In this pleading the terms “**protector**” and “**superintendent**” have been used to describe the position of persons who acted in those offices (or similar offices) under both the 1939 Act, the Islander Act and after it commenced operation, the 1965 Act.)

### **Particulars**

- A. For paragraph 32(a), s. 4(2)(a)(i), (ii) and (iii) of the 1965 Act.
  - B. For paragraph 32(b), s. 4(2)(b)(i) and (ii) and s 5 of the 1965 Act.
  - C. For paragraph 32(c), s. 13(2) of the 1965 Act.
33. Hopevale was gazetted as a reserve on 13 September 1952 and was a “mission reserve” for the purposes of the 1939 Act and regulations and a “reserve” under the management of a religious organisation for the purposes of the 1965 Act and regulations as it was under the management and control of the Lutheran Church.
34. Palm Island was gazetted as a reserve in June 1914 and following the establishment of a settlement, was classified as a “settlement” on a reserve for the purposes of the 1939 Act and regulations and as a “community” for the purposes of the 1965 Act and regulations.

### **Particulars**

- A. Section 14 of the 1965 Act.
35. At all material times there was a superintendent at both Hopevale and Palm Island for the purposes of the 1939 Act and regulations and a “manager” for the purposes of the 1965 Act and regulations.
36. The Islander Act provided that:
- (a) the “protector” under that Act was the “Protector of Islanders” or the “Deputy Protector of Islanders”;
  - (b) the person for the time being holding the office of Protector of Aboriginals, Somerset District, was to be *ex officio* the Protector of Islanders for the purposes of the Islander Act;
  - (c) the Protector of Islanders was to have and exercise, subject to the Director, such powers and duties as were prescribed, and was responsible to the Director for the administration of the Islander Act.

### **Particulars**

A. Islander Act, ss.3 and 4(2).

37. Further, the Islander Act provided that all reserves under the *Aboriginals Protection and Restriction of the Sale of Opium Acts 1897 to 1934* existing upon any Torres Strait island at the commencement of the Islander Act were to be a “reserve” for the purposes of the Islander Act.

### **Particulars**

A. Section 2(4)(a) of the Islander Act.

### ***Defined terms***

38. The 1939 Act defined:

(a) “aboriginal” to mean:

- (i) any aboriginal native of the mainland of Australia or of any islands in the territorial jurisdiction of Australia;
- (ii) any person who has a preponderance of the blood of aboriginals;
- (iii) any “half-blood” as declared by a judge or police magistrate or two or more justices;
- (iv) any “half-blood” who lives as wife or husband with an aboriginal, or who habitually associates with aboriginals;
- (v) any resident of a “reserve” other than an official or person authorised by a “protector”;
- (vi) a child living on the “reserve” with a mother who is an aboriginal.

### **Particulars**

A. Sections 4 and 5(2) of the 1939 Act.

- (b) “half-blood” to mean a person:
  - (i) one of whose parents was an aboriginal and whose other parent had no strain of the blood of an aboriginal;
  - (ii) both of whose parents have a strain of aboriginal blood, and who himself has a strain of more than 25 per cent of aboriginal blood but who has not a preponderance of such blood.

### **Particulars**

- A. Section 4 of the 1939 Act.

## 39. The Islander Act defined:

- (a) “islander” to mean:
  - (i) a person who was one of the native race of the Torres Strait islands;
  - (ii) a descendant of the native race of the Torres Strait islands and who habitually associated with islanders as defined in paragraph (i); or
  - (iii) a person other than an islander as defined in (i) or (ii) who was living on a reserve with an islander as so defined as wife or husband or any such person other than an official or person authorised by the protector who habitually associates on a reserve with islanders as so defined;
- (b) “Torres Strait island” to mean an island north of eleven degrees south latitude which was part of the State of Queensland.

### **Particulars**

- A. Section 3 of the Islander Act.

## *Employment of Aborigines and Islanders*

40. The 1939 Act provided that:

- (a) employment of an aborigine was prohibited without the permission of a protector or superintendent;

**Particulars**

- A. Section 14(1) of the 1939 Act.

- (b) a person employing an aborigine must also enter into a written agreement with the employed aborigine for that employment, such agreement being in the prescribed form (**employment agreement**);

**Particulars**

- A. Section 14(3) of the 1939 Act.

- (c) the employment agreement must be signed in the presence of the protector or in the presence of a shipping master where an aborigine was to be employed on a vessel trading in Queensland waters;

**Particulars**

- A. Section 14(3) and s. 15(2) of the 1939 Act.

- (d) the employment agreement must be attested to by the protector before whom it was signed;

**Particulars**

- A. Section 14(3) of the 1939 Act.

- (e) an employment agreement could not remain in force for a period exceeding twelve months;

**Particulars**

- A. Section 14(4) of the 1939 Act.

- (f) the wages paid to an aborigine must not be less than those prescribed in the regulations;

**Particulars**

A. Section 14(5) of the 1939 Act.

- (g) the standard of food, accommodation and other necessities which are provided as part of any employment must not be lower than that prescribed in the regulations;

**Particulars**

A. Section 14(4) of the 1939 Act.

- (h) a protector or superintendent may direct an employer to pay the whole or a portion of the wages of an aborigine to himself or herself on behalf the aboriginal worker, and any employer who failed to observe such direction was deemed not to have paid such wages.

**Particulars**

A. Section 14(6) of the 1939 Act.

41. Section 21 of the Islander Act operated to apply, on a *mutatis mutandis* basis, certain provisions of the 1939 Act for the purposes of the Islander Act, including ss. 14 to 16 of the 1939 Act concerning the employment of aboriginals and the care of aboriginals' property so that for the purposes of applying those provisions of the 1939 Act:

- (a) "aboriginal" was to mean "islander";
- (b) "director" was to mean the Director except in s 14(5), s 16(2) and (3), s 17 and s 39 of the 1939, where "director" was to mean the Protector of Islanders;
- (c) "district" was to mean the islands north of eleven degrees south latitude which are part of the State of Queensland;
- (d) "protector" or "protector of aboriginals" was to mean the Protector of Islanders;
- (e) "reserve" was to mean an islander reserve; and

(f) “this Act” was to mean the Islander Act.;

Accordingly, unless otherwise indicated, references hereinafter in this pleading to the employment of aboriginals, aboriginal property and aboriginal wages are to be read as also including the employment of islanders, islanders’ property and islanders’ wages, with the altered meanings of the words and phrases set out in this paragraph.

42. The prescribed form of the employment agreement was set out in Form 7 of the Schedule to the 1945 regulations.
43. The prescribed minimum level of wages for an aborigine was set out in Form 8 of the Schedule to the 1945 regulations.
44. The prescribed minimum level of wages for an islander employed on a vessel was set out in the Islander regulations. The prescribed minimum level of wages for an aborigine employed on a vessel was set out in Form 9 of the 1945 regulations and from the 1951 iteration of the Islander regulations, in the Islander regulations.
45. The prescribed minimum level of wages was amended from time to time with such amendments being published in the Government Gazette.
46. Form 7 of the 1945 regulations required the following information to be included in the employment agreement:
  - (a) the identity and identity number of the aboriginal employee;
  - (b) the identity of the employer;
  - (c) the period of employment;
  - (d) the occupation of the aboriginal worker;

- (e) the amount of pocket money to be paid directly to the aboriginal worker each week;
- (f) the amount of the wage per week that was to be paid to the protector or superintendent;
- (g) the total amount to be paid to the protector or superintendent per week;
- (h) the gross wage to be paid to the aboriginal worker;
- (i) any direction by the protector or superintendent concerning the portion of wages payable to the protector or superintendent on behalf of an aboriginal worker.

46A. Form 7 of the 1945 regulations required an employment agreement to be signed by:

- (a) the employer (with such signature to be witnessed);
- (b) the employed aboriginal or islander worker (who also was required to affix a copy of his or her right thumb print);
- (c) the relevant protector or superintendent; and
- (d) a witness (who was required to be either a protector, a person authorised by a protector, a justice of the peace, a member of the police force or an officer of the public service) who attests to the fact that, in his or her presence, the employment agreement had been explained to the worker who appeared to understand it.

46B. Further, the 1945 regulations provided that every aboriginal or islander was required to perform such work on the reserve, settlement or mission as directed by the superintendent or protector, without remuneration, provided that the such work did not exceed 32 hours.

### **Particulars**

A. Section 28(1) 1945 regulations.

47. The same system regarding the employment of aborigines found in the 1939 Act and regulations and the employment of islanders found in the Islander Act and Islander regulations continued in the 1965 Act and regulations, save that the category of person who may be subject to control was narrowed to aborigines or islanders who were resident on a reserve or who had been declared to be an “assisted aborigine” or “assisted islander” respectively.

### **Particulars**

A. 1965 Act s. 60(11) and 1966 Regulations ss.71 to 74 and 96 and Forms 14 and 15.

### ***Pocket money***

48. If an employer was directed to pay the whole or a portion of an aboriginal’s wages to a protector or superintendent, an employment agreement could also direct an employer to pay part of an aboriginal’s wages directly to an aboriginal worker as “pocket money” (**pocket money**).

### **Particulars**

A. 1945 regulations, Part III, Division 1, Subdivision 7; 1945 Regulations Form 7; 1966 Regulations s. 97 and Form 14.

49. The 1945 and 1966 regulations required an employer to:
- (a) keep a pocket money book or other record in which the employer entered particulars of all wages and pocket money paid to an aboriginal worker;
  - (b) obtain a receipt, either by signature or right thumb print, from the aboriginal worker for any payment of pocket money;

- (c) make such payments in the presence of an independent witness who had signed his or her name as witness;
- (d) return pocket money books to the protector at the end of the employment period.

**Particulars**

- A. 1945 Regulations, Part III, Division 1, Subdivision 7; 1966 Regulations s. 96.

50. Under the 1945 Regulations:

- (a) the protector or superintendent or any other appointed officer could inspect the pocket money book at any time in order to determine whether such payments had been made;
- (b) any failure to pay wages and/or pocket money by an employer was a breach of the employment agreement and the employer could be sued for any moneys remaining due.

**Particulars**

- A. 1945 regulations, Part III, Division 1, Subdivision 7.

50A. An aboriginal worker had no standing to take legal action against an employer and accordingly any action against an employer under an employment agreement for a failure to pay wages and/or pocket money could only be commenced by the Director or a protector or superintendent for and on behalf of the aboriginal or islander worker.

**Particulars**

- A. 1939 Act s. 16(1)(b)

*Exemption from statutory control*

51. Pursuant to the 1939 Act the Director could exempt an aborigine from the provisions of the 1939 Act.

**Particulars**

- A. Section 5(3) of the 1939 Act.

52. Such an exemption:

- (a) had to be in writing and in the prescribed form;
- (b) could impose a condition that all money or property belonging to an aborigine and held in trust by a protector was to continue to be held in trust by the protector for such time as may be determined by the Director.

**Particulars**

- A. 1939 Act s. 5(3).

53. A similar system operated with regard to the 1965 Act save that an assisted aborigine or assisted islander could make a request to a district officer to cease to manage his or her property.

**Particulars**

- A. 1965 Act s. 24.

***Property***

54. By s.16 of the 1939 Act a protector or superintendent was required to protect and manage of the property of all aborigines in their District and with the approval of the Director could:

- (a) take possession of, retain, sell or dispose of any property of an aborigine whether real or personal;

- (b) in his own name sue for, recover or receive any money or other property due or belonging to an aborigine, or damages for any conversion of or injury to any such property;
  - (c) exercise in the name of any aborigine any power which the aborigine might exercise for his own benefit;
  - (d) in the name of and on behalf of any aborigine appoint any person to act as attorney or agent for any aborigine for any purpose connected with the property of the aborigine;
  - (e) require a statement from any person or person who have had contractual, financial, or property dealings with an aborigine within the previous twelve months.
55. By virtue of s. 21 of the Islander Act, s.16 of the 1939 Act applied for the purposes of the Islander Act.
56. A similar system operated under the 1965 Act with regard to the protection and maintenance of property of an assisted aborigine or assisted islander.

#### **Particulars**

- A. 1965 Act ss. 27 and 28.
57. Under the 1939 Act, Islander Act and the 1965 Acts a protector and superintendent was required to keep proper records and accounts of any money and other property of an aborigine or dealt with by him and, for such purposes, was deemed to be a public accountant within the meaning of *The Audit Act of 1874* (Qld) (as amended).

#### **Particulars**

- A. 1939 Act s.16; Islander Act s.21; 1965 Act s. 28.

#### ***Trust funds***

58. The 1945 regulations and the 1966 regulations the Director was required to:
- (a) establish a trust fund or funds with the Commonwealth Savings Bank into which would be paid all money being the wages, property or savings of aborigines or assisted aborigines or assisted islanders
  - (b) keep a complete record and account of all such moneys deposited to the credit of such fund or funds;
  - (c) ensure that a deposit made into the fund or funds was credited to the particular aborigines to whom it belonged;
  - (d) credit interest at the current rate fixed at any time by the Commonwealth Savings Bank to the individual accounts in such trust fund or funds.

**Particulars**

- A. 1945 regulations s. 12; 1966 regulations s. 5.

59. The Director could withdraw from the said trust fund or funds such sums as were required by an aborigine or assisted aborigine or assisted islander or were necessary for payment of his or her just debts, the payment of which has been duly authorised by the Director or protector.

**Particulars**

- A. 1945 regulations s.12; 1966 regulations s.5.

60. Authority to operate such trust fund or funds could be delegated by the Director to the protectors and superintendents for transactions on the individual accounts of an aborigine or assisted aborigine or assisted islander.

**Particulars**

- A. Section 12(4) of the 1945 regulations and s. 5(4) of the 1966 regulations.

- 60A. By s.13 of the 1945 regulations, no single withdrawal of cash could be made from the trust fund:

- (a) of an amount exceeding £10 without the prior approval of the Director;
- (b) of an amount exceeding £2 without the reason for any withdrawal being stated when reporting the transaction to Head Office.

60B. In June 1955 the amounts referred to in sub-paragraph 60A(a) and (b) above were increased to £20 and £10 respectively.

### *Welfare fund*

- 61. Pursuant to the 1945 regulations all aboriginals employed under the 1939 Act (save for those employed in the Somerset District) were required to contribute to a welfare fund from their gross earnings (**Welfare Fund**).
- 62. The amount to be paid by each employed aboriginal into the Welfare Fund was calculated on the following basis:
  - (a) if not residing on a settlement or mission, or whose employment was not controlled from a settlement or mission then:
    - (i) single men and women without dependents, widows and widowers without dependents, at the rate of 5% of their gross earnings;
    - (ii) married men and women, widows and widowers with dependants, single men and women with dependants, at the rate of 2.5% of their gross earnings;
  - (b) if residing on a settlement or mission, or whose employment is controlled from a settlement or mission then at the rate of 5% of the gross earning of aborigines who have no dependents and at the rate of 10% of the gross earnings of aborigines who have dependents on any settlement or mission, (together and individually, **Welfare Fund Deductions**).

### **Particulars**

A. 1945 regulations ss. 6(1) and (2).

63. Aborigines employed in the Somerset District were required to pay into the Welfare Fund at the flat rate of 5% of their gross earnings (also a **Welfare Fund Deduction**).
64. The Welfare Fund Deductions and moneys from other sources paid to the credit of the Welfare Fund were to be used for the general benefit of aborigines.

### **Particulars**

A. 1945 regulations s.11.

65. The Welfare Fund Deductions did not continue after 28 April 1966 and the commencement of the 1965 Act and regulations.
66. In addition to the Welfare Fund Deductions, money from the following sources was also paid into the Welfare Fund:
- (a) the difference between the amount of savings bank interest credited to the individual trust accounts of aborigines and the total amount of interest credited to the total amount of all the trust accounts either from investments in bonds, subscribed stock or otherwise (**Investment Deductions**);
  - (b) proceeds of store sales, training farms and/or other departmental undertakings conducted on settlement and/or reserves other than mission reserves;
  - (c) proceeds from the sale of produce, produced as a result of communal effort from the settlements and/or reserves other than mission reserves;
  - (d) fines, fees or other penalties collected from aboriginal residents of settlements or reserves other than mission reserves;
  - (e) unclaimed money of deceased and missing aborigines.

### **Particulars**

A. 1945 regulations s.9.

67. The 1945 regulations:

- (a) required (at section 31 thereof) that the food issued to aboriginals on reserves, settlements and mission be in accordance with ration scales authorised by the Director;
- (b) at Form 6 set out a scale of rations that were required to be provided to aboriginals who lived on a mission or settlement (referred to in that scale as “settlement inmates”), the rations so supplied included beef, oatmeal, flour, rice, sago, sugar, syrup, green peas, split peas, tea, cream of tartar, barley, salt, washing soda, tobacco, bar of soap, dripping and milk;
- (c) contemplated that “home-grown vegetables” would be issued to “settlement inmates” twice weekly;
- (d) at Form 5 set out a scale of rations that were to be provided “per head per week” for “Full Indigent Relief”;
- (e) by Form 6 required every indigent inmate to be provided with two complete sets of essential clothing to be issued at least at 6 monthly intervals.

### **Particulars**

A. 1945 regulations section 31; Forms No 5 and 6

67A. By the 1939 Act and regulations, an aborigine who had not been granted an exemption from statutory control was:

- (a) required to live on a mission, reserve or settlement unless permission had been given by a superintendent or protector for the aboriginal to live elsewhere, such permission normally being only given in connection with employment to a third party and may include the dependents of the employed

aboriginal who would move and remain living with him or her outside the mission, reserve or settlement;

- (b) under the control of the superintendent or protector with regarding his or her ability or capacity to:
  - (i) earn income;
  - (ii) own property;
  - (iii) move to an area outside the relevant mission reserve or settlement;
  - (iv) live at a place different to the relevant mission reserve or settlement;
  - (v) travel outside the relevant mission reserve or settlement;
  - (vi) marry;
  - (vii) engage in customary native practices;
  - (viii) hunt or otherwise engage in activities which permitted the gathering or collection of food;
- (c) reliant upon the Defendant (through the superintendent or protector) to supply the necessities of life including housing, food and medical service;
- (d) liable to be compelled by the protector or superintendent to perform compulsory labour on the reserve, settlement or mission reserve.

**F. Applicant's employment history**

68. Prior to being granted a certificate of exemption:

- (a) the Applicant had been employed from 1954;

- (b) it was unlawful for the Applicant to be employed:
- (i) without the permission of a protector or superintendent; and
  - (ii) without an employment agreement being entered into which complied with the statutory requirements set out in sub-paragraphs 40(b) to (d) herein and Form 7 of the 1945 regulations;
- (c) there was a superintendent appointed at both Hopevale and Palm Island who acted in the capacity of a protector for the purposes of the 1939 Act;
- (d) each incident of employment of the Applicant was made, or ought to have been made, with the permission of the superintendent at either Hopevale or Palm Island and with an employment agreement being put in place;

**Particulars**

- A. Section 14(1) and (3) of the 1939 Act.

69. Between 1954 and 1962 the Applicant had the following episodes of employment (collectively called herein **episodes of employment**).

**Particulars**

<b>Place of employment</b>	<b>Employer (where known)</b>	<b>Approximate year (and duration) of employment</b>
Starcke Station	Starcke Station	1954 (7 or 8 months)
Droving	Len Elmes (head drover)	1955 (9 or 10 weeks)
Starcke Station	Starcke Station	1955 (2 or 3 months)
Laura Station	Mossman Butchering Company	1956 or 1957 (in any event prior to March 1958, about 2 or 3 months)
Lakefield Station	Mossman Butchering Company	1956 or 1957 (following straight on from Laura Station) (about 6 or 7 months)

Kings Plains Station	Kings Plans Station	Unknown (about 3 or 4 weeks)
Starcke Station	Starcke Station	1957 or 1958 (about 3 or 4 months)
Laura Station and Lakefield Station	Mossman Butchering Company	Unknown (2 or 3 months in total)
Droving	Phil Parsons (head drover)	Unknown but this occurred on 2 or 3 occasions and lasted for about 5 or 6 weeks on each occasion)
Droving	Bill Wallace (head drover)	Unknown but this occurred on 2 or 3 occasion and lasted between 4.5 and 6 weeks on each occasion)
Dunraven Station	Vince Rose (owner)	1960 (5 or 6 weeks)
Rokeby Station	Lloyd House (owner)	About 1961 (about 6 months)
Kalinga Station	Bowie Gostelow (owner or manager)	1962 (about 6 or 7 months)

The Applicant is unable to give a more exact account of his employment history (referred to in the table above as the episodes of employment) or the amount of money which he was paid (or ought to have been paid) for any work undertaken by him during the time he was subject to the 1939 Act due to the fact that:

- (a) the Applicant's culture as an aborigine meant that, at the time of his relevant employment:
  - (i) he did not categorise events in terms of length of time (days, weeks or months);
  - (ii) he was unfamiliar with the use of money and failed to appreciate the connection between work and the payment of money as wages for work done;
  - (iii) he was unable to ask a white employer or a superintendent questions about his work as he felt that he could not do so and was just required to do the work that was offered without question.
- (b) there has been a considerable lapse of time since the relevant employment took place;
- (c) at the time each episode of employment took place the Respondent (through its servants or agents) did not provide the Applicant with any records relating to his employment including the relevant employment agreements or tell him the terms of his employment.

70. In each episode of employment, the Applicant worked as a stockman or drover.
71. Work as a stockman was hard and arduous and the Applicant's duties generally included:
- (a) working 6 days a week with a day off on Sunday (except when droving which required working 7 days a week);
  - (b) rising at 5am to muster the horses and get them ready to commence mustering cattle at 6am;
  - (c) mustering bullocks, branding calves, dipping cattle and generally getting stock ready to be driven to the Mareeba sale yards;
  - (d) working until dusk;
  - (e) being in the saddle for 10 to 12 hours per day.
72. Employment agreements of the type referred to in sub-paragraphs 40(b) to (d) and paragraphs 42 to 46A herein were not in place with regard to each and/or any of the Applicant's episodes of employment as:
- (a) he did not sign or apply his mark to any employment agreement with regard to any episode of employment;
  - (b) on no occasion was he ever provided with a copy of any employment agreement;
  - (c) at no time were the terms of any employment agreement ever explained to him by any superintendent or agent or employee of the Respondent with the result that at all times the Applicant was unaware of:
    - (i) the proper rate of pay that he was to receive;

- (ii) whether or not he was to be paid pocket money;
- (iii) the amount of any pocket money he was to be paid;
- (iv) the conditions relevant to his employment; and
- (v) where his wages were to be paid, how they were to be kept and by whom and how he was to gain access to his money.

73. During each episode of employment the employer provided the Applicant with food (including a cook to prepare the food), horses, a saddle and the other equipment necessary for him to perform his duties as a stockman or drover.

74. The Applicant was not at any time told by either the relevant superintendent or his employer of the level of wages (including the amount of pocket money) that he was to be paid during any of the episodes of employment undertaken by him.

75. The Applicant was not paid any money directly by any of his employers (in the form of pocket money or otherwise save for the incidents referred to in sub-paragraphs (d) and (e) below):

- (a) the Applicant saw no pocket money book that his employers may have been required to keep, nor did the Applicant ever sign or apply his mark to any document recording his receipt of pocket money at any time;
- (b) he believed that he was not paid pocket money because he did not smoke or drink or gamble and therefore he had no need for money;
- (c) on completion of each episode of employment the Applicant was not asked by the superintendent of Hopevale or Palm Island or by any other person in authority whether or not he had been paid pocket money and if so how much money he had received;
- (d) when he completed his period of employment at Laura Station in about 1956 he was given a cheque for £5 by his employer. He was not told why he was

given this and he thought that it may have been a bonus for good work done. He cashed the cheque at Laura and gave the money to his mother on his return to Hopevale;

- (e) when working on Kalinga Station he was permitted to go out crocodile hunting and he was paid by his employer for the skins of any crocodile that he killed.

76. Until the Applicant moved to Palm Island in 1959, the Applicant returned to his home at Hopevale after the completion of each episode of employment (save for his employment at Laura and Lakefield Stations in 1956/1957 which were contiguous).

77. When the Applicant returned home to Hopevale following an episode of employment, the Hopevale superintendent would require the Applicant to work within the Hopevale community as either a stockman, in the sawmill, or by assisting with the crops and vegetables that were grown there.

78. No employment agreement was signed by the superintendent at Hopevale regarding the work undertaken by the Applicant referred to in paragraph 77 herein.

79. The work which the superintendent required the Applicant to do at Hopevale was:

- (a) full-time work, 6 days a week;

- (b) was unpaid (the Applicant did not even receive pocket money).

~~(c) — undertaken by every able bodied aboriginal living at Hopevale with the result that there was no unemployment.~~

80. As a result of the matters pleaded in paragraphs 69 to 79, the Applicant worked full time from early 1954 until he left Hopevale in 1959 either for third parties (as set out

in paragraph 69 herein) or at Hopevale at the direction of the Hopevale superintendent.

[Paragraphs 81 to 158 omitted]

***Palm Island***

159. In the week prior to Christmas 1958 or 1959 the Applicant visited his uncle on Palm Island who was the sergeant of community police.
160. Palm Island is an aboriginal settlement located about 20 kilometres off the coast north of Townsville.
161. The Applicant's visit to Palm Island was undertaken with the permission of both the Hopevale superintendent and the Palm Island superintendent.

**Particulars**

- A. The Hopevale superintendent was Pastor Kernich and the Palm Island superintendent was Mr Bartlam.
162. When on Palm Island the Applicant met Anna May Prior whom he married on 29 September 1960.
163. Shortly after arriving at Palm Island in about January 1959 or 1960 the Applicant commenced working directly for the superintendent at Palm Island as a stockman tending cattle which were kept on the island and in the butcher's shop.

**Particulars**

- A. The Applicant was working directly for the superintendent because it was the superintendent who told the Applicant the work that he was to do.
- B. The Applicant's overseer whilst he worked as a stockman on Palm Island was Mr Taylor and the person who oversaw the Applicant's work in the butcher shop was Harry Johnson, the head butcher.

164. No employment agreement was signed or marked by the Applicant or by the superintendent at Palm Island regarding the work undertaken by the Applicant, although he worked full time.
165. The work undertaken by the Applicant at Palm Island was unpaid save that he was given £1 or £2 per fortnight as pocket money.

#### **Particulars**

- A. The Applicant did not receive any non-financial payment or reward for his work beyond that which was provided by the Respondent to all residents of Palm Island.
166. The Applicant worked directly for the superintendent at Palm Island from about early January 1959 or 1960 until sometime in 1961 in between droving trips undertaken by the Applicant and an episode of employment at Dunraven Station (referred to in paragraph 69 herein).

#### **Particulars**

- A. Whilst he worked as a stockman on Palm Island the Applicant's hours of work were generally 7am to 5pm five days a week.
- B. Whilst he worked as a butcher on Palm Island the Applicant's hours of work were generally from 7am to 12pm and again from 1pm until approximately 6pm or later depending upon how early the cleaning of the butcher shop was achieved.
- C. The work was continuous work and there were no periods of unpaid leave.
- 166A. The Applicant did not return to Hopevale or Palm Island during any of his episodes of employment until such periods of employment were completed.
167. At all times up until when the Applicant was granted an exemption from statutory control, he was under the control of the superintendent of Hopevale or Palm Island with regard to his ability or capacity to:

- (a) earn income;
- (b) own and administer property;
- (c) move to an area outside Hopevale or Palm Island;
- (d) live at a place different to Hopevale or Palm Island;
- (e) travel outside Hopevale or Palm Island;
- (f) engage in customary native practices including speaking language;
- (g) marry.

168. At all times when the Applicant was living at Hopevale or Palm Island he was reliant upon the Respondent (through the relevant superintendent) to supply him with the necessities of life including housing, food and medical services.

[Paragraphs 169 to 225A omitted]

#### **G. Move to Innisfail**

226. In late 1962 and after finishing work at Kalinga Station the Applicant moved with his wife and family from Palm Island to Innisfail.

227. When at Innisfail the Applicant worked for the Innisfail Butchering Company slaughtering cattle and also cutting cane.

228. No employment agreements under the 1939 Act and regulations or the 1965 Act and regulations were entered into regarding the Applicant's employment at Innisfail.

## **H. Exemption under the 1939 Act**

229. In or about December 1961 the Applicant sought an exemption from the operation of the 1939 Act and regulations.
230. The Applicant's exemption was granted on or about 18 January 1962 but he was not informed of this until on or about 26 February 1962, being a time after he had commenced working at Kalinga Station.

### **Particulars**

- A. Certificate of exemption number 2/62.
231. Notwithstanding the matter pleaded in paragraph 230, the Applicant's exemption did not in practice operate with respect to his employment at Kalinga Station referred to above as the Applicant's employment there was arranged prior to notification of his exemption.
232. Despite an exemption being granted, the wages earned by the Applicant at Kalinga Station were not paid to the applicant personally but were paid, or ought to have been paid, by his employer to the superintendent at Palm Island.

### **Particulars**

- A. The Applicant relies on the facts pleaded in paragraphs 272 to 275 herein.
- B. 1939 Act s. 5(3); 1965 Act s. 24.

## **I. Wages paid**

233. The total minimum amount of wages paid by the Applicant's employers to the superintendents of Hopevale and Palm Island (or the amount of wages that ought to have been paid) for work undertaken by him between 1954 and 1962 was, by reference to the 1945 regulations (as amended), in the vicinity of £1,563.

### **Particulars**

- AA. Table of estimated gross wages:

<b>Place of employment</b>	<b>Employer (where known)</b>	<b>Approximate year of employment</b>	<b>Estimated gross wage (1945 regulations, as amended)</b>
Starcke Station	Starcke Station	1954 (7 or 8 months)	£138/0/0
Droving	Len Elmes (head drover)	1955 (9 or 10 weeks)	£75/0/0
Starcke Station	Starcke Station	1955 (2 or 3 months)	£52/0/0
Laura Station	Mossman Butchering Company	1956 or 1957 (in any event prior to March 1958, about 2 or 3 months)	£65/0/0
Lakefield Station	Mossman Butchering Company	1956 or 1957 (following straight on from Laura Station) (about 6 or 7 months)	£152/6/0
Kings Plains Station	Kings Plans Station	Unknown (about 3 or 4 weeks)	£20/0/0
Starcke Station	Starcke Station	1957 or 1958 (about 3 or 4 months)	£85/0/0
Laura Station and Lakefield Station	Mossman Butchering Company	Unknown (2 or 3 months in total)	£65/0/0
Droving	Phil Parsons (head drover)	Unknown but this occurred on 2 or 3 occasions and lasted for about 5 or 6 weeks on each occasion)	£153/0/0
Droving	Bill Wallace (head drover)	Unknown but this occurred on 2 or 3 occasions and lasted between 4.5 and 6 weeks on each occasion)	£153/0/0
Dunraven Station	Vince Rose (owner)	1960 (5 or 6 weeks)	£30/0/0
Rokeby Station	Lloyd House (owner)	About 1961 (about 6 months)	£270/1/3
Kalinga Station	Bowie Gostelow (owner or manager)	1962 (about 6 or 7 months)	£305/0/0
<b>TOTAL</b>			<b>£1,563/7/3</b>

A. The dates in the third column of Particular AA to paragraph 233 of this pleading are continuous periods of paid employment. The Applicant is unable to provide a more exact calculation of total amount of wages that were paid

(or ought to have been paid) by the Applicant's employers to the superintendents of Hopevale and Palm Island for work undertaken by him between 1954 and 1962 but the table above is his best recollection of such amounts.

B. No unpaid leave was taken.

234. The present day value of the money paid by employers to the Hopevale and Palm Island superintendents on behalf of the Applicant for work undertaken by him is estimated to be about \$109,410 which is calculated as follows:

- £1,563, being the amount estimated to have been paid to the Applicant's employers as pleaded at paragraph 233 herein, multiplied by a factor of 2 = \$3,126 (this converts Australian pounds to dollars using the prevailing conversion rate in 1966)
- \$3,126 x 35 = \$109,410 (a multiplying factor of 35 is used to obtain the current value).

#### **Particulars**

A. The multiplying factor of 35 to obtain the current dollar value approximates to the conversion rate of 100 dollars owed in 1969 being worth \$3,521 in 2005, which was set out in the Guidelines for the Administration of the New South Wales Aboriginal Trust Fund Repayment Scheme. Further particulars will be provided following service of opinion evidence in chief.

#### **J. Withdrawal of money by the Applicant**

235. On occasions the Applicant would request the superintendent at Hopevale to withdraw some of the wages which had been paid to the superintendent.

#### **Particulars**

- A. The requests were made by the Applicant by way of verbal request to the superintendent.
- B. The request to the superintendent was made once, or at most twice, per year.

- C. The request was made to the person then occupying the position of superintendent, whether Pastor Wenke, Pastor Kernich or Pastor Preuzler or such other person who may have occupied that role.

236. [blank]

237. In relation to withdrawals requested from the Hopevale superintendent:

- (a) the Hopevale superintendent would generally not permit withdrawals of more than £5;
- (b) the Applicant sought to withdraw money about every 6 months;
- (c) the Applicant withdrew no more than £10 per year from the Hopevale superintendent.

238. When the Applicant was employed at both Rokeby Station and Laura Station he withdrew money from the local police station.

#### **Particulars**

- A. The withdrawals were made by the Applicant approaching the local sergeant of police.

239. The reason for the withdrawals whilst the Applicant was working at Rokeby Station and Laura Station was so that the Applicant could attend the races at Coen or Laura respectively.

240. On each occasion the Applicant withdrew no more than 10 pounds.

241. Other than the matters pleaded at paragraphs 235 to 240, the Applicant does not recall the total amount or circumstances of withdrawals made by him in relation to money held on his behalf between 1954 and 1964.

#### **K. Establishment of the Trust**

242. In 1933 the Director opened two bank accounts with the Commonwealth Savings Bank of Australia (**savings accounts**).
243. The purpose of the savings accounts was to create a fund into which aboriginal wages paid to a protector or superintendent by an aboriginal's employer could be deposited.

#### **Particulars**

- A. Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts" at page 7.
244. The savings accounts consisted of:
- (a) account number S031, which was used for payments of aborigines domiciled in Brisbane, Cherbourg, Palm Island and Woorabinda (the latter three being government established settlements). This account was in operation by at least 31 May 1933 when the individual accounts for those settlements were closed;
  - (b) account number S2127, which was used for payments from aborigines domiciled in all other areas of the State who were referred to as "country natives". This account was opened on 12 May 1933.
245. In about 1935 or 1936 the balances held on account of aboriginals domiciled in Brisbane were transferred from account number S031 to account S2127 with the effect that from that time account number S031 only held money paid as wages for aboriginals domiciled in the government established settlements of Cherbourg, Palm Island and Woorabinda.
- 245A. In about July 1941 account number S031 was incorporated into account S2127 with the effect that from that time account S2127 was the only available account into which the wages of aboriginals could be paid.

246. At a time unknown to the Applicant, account no S2127 was given a new account number being 09 0472 and renamed the Queensland Aboriginals Account (in this pleading accounts S2127 (including the subsequent renumbering of that account to 09 0472) and S031 are collectively referred to herein as “the **savings accounts**”).

247. [blank]

248. In order to identify the amount paid into the savings accounts on behalf on an individual, a separate ledger entry was created for each aboriginal or islander wage earner.

#### **Particulars**

- A. An example of the ledger entry system used in the savings accounts can be found in a document made by the Respondent called “Control of wages and savings – Information sheet” which is found at (<http://www.qld.gov.au/atsi/documents/having-your-say/stolen-wages-reparations-scheme/reparations-scheme-control-wages-savings-information-sheet.pdf>).
- B. In the case of the Applicant, copies of the Applicant’s ledger cards for the period 1954 to 1959 have been provided to the Respondent.

249. The bank accounts in respect of islanders were operated separately from the savings accounts, at least since 1912. These islander accounts were maintained at Thursday Island, with the Respondent’s control accounts being generated through a separate bank account conducted through the Commonwealth Savings Bank at Cairns (**islander accounts**).

#### **Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 3 and 28.
- B. Further particulars cannot be given until discovery has taken place.

249A. The savings accounts and the islander accounts:

- (a) operated in the same manner as each other;
- (b) were the subject of annual audits conducted by the Auditor-General;
- (c) were accounts into which the Respondent, its servants or agents, paid or caused to be paid aboriginal or islander wages in accordance with the 1939 Act, the Islander Act and the 1965 Act.

(The savings accounts and the islander accounts are collectively called “the **accounts**”).

250. Money paid to a protector or superintendent by an employer as wages earned by a Claimant was held on trust for the employed aborigine or islander by the Respondent through its servants or agents the Director and the protectors and superintendents to whom the money was paid (the **trust**).

251. [blank]

252. The creation of the trust is shown by:

- (a) section 12 of the 1945 regulations and regulation 5 of the 1966 regulations which required the Director to establish with the Commonwealth Savings Bank of Australia a trust fund or trust funds into which all moneys being wages, property or savings of aborigines were to be paid;
- (b) Section 21 of the Islander Act, which operated to apply to islanders the provisions of the 1939 Act (and in particular, ss 14 to 19 of the 1939 Act) concerning aboriginal employment and the payment of aboriginal wages to the protector;
- (c) section 12(3) of the 1945 regulations which referred to the Director as acting as trustee for any aborigine on whose behalf money is held;

- (d) section 5(3) of the 1966 regulations which referred to the Director acting “in his capacity as trustee” with regard to the withdrawal of funds;
- (e) section 73 of the 1966 regulations which gave a protector or superintendent power to require that the whole or part of an aboriginal’s or islander’s wages be paid to him or her “as trustee for and on behalf of such assisted person”;
- (f) the use of the phrase “held in trust’ in ss. 5(3) of the 1939 Act in the context of how money and property of an aborigine was to be held by the protector or superintendent and, following the granting of an exemption, how such money and property could continue to be held;
- (g) the use of the words “shall be deemed to be vested in the protector as trustee for the islander or islanders concerned” in s. 23 of the Islander Act concerning the vesting in the protector of islanders any vessel or other plant the property of any islander, used by the islander for the purpose of engaging in any industry;
- (h) section 12(10) of the 1939 Act which permitted regulations to establish trust funds as may be necessary to control the savings of aborigines;
- (i) section 60(16) of the 1965 Act which permitted the establishment of a trust fund or trust funds as may be necessary or desirable for the management and control of property of assisted aborigines or assisted islanders;
- (j) the description used in the 1939 Act and regulations that the money was held for “the protection and care” of aboriginal persons;
- (ja) the fact that the Respondent was obliged to undertake the protection and management of the property of all aboriginals in the district assigned to its agents pursuant to s 16(1) of the 1939 Act, which obligation was coupled with discretionary powers, including *inter alia* the power in s 16(1)(b) of the 1939 Act and liability referred to in s. 73(4) of the 1945 regulations;

- (k) the fact that the 1939 Act described property as being held by a protector or superintendent “for and on behalf of” an exempt aborigine;
- (l) the fact that wages earned by an aborigine or islander were paid directly by an employer to the protector or superintendent at the direction of both the employed aborigine or islander and the relevant protector or superintendent;
- (m) the fact that the Respondent through the Director and/or the protectors or superintendents knew or ought to have known that the money paid directly by an employer to the protector or superintendent were wages earned by an aborigine or islander for work undertaken, and were paid in that manner as a means of forced savings for the aborigine or islander;

#### **Particulars**

- A. The Applicant relies on the facts pleaded in paragraphs 58 to 60, 69 to 80 and 163 to 166A herein.
  - (n) the fact that the Applicant and each Group Member had a pre-existing interest in the property the subject of the trust as it consisted of money which had been earned by the aboriginal or islander worker for work and labour undertaken;
  - (o) the fact that the property the subject of the trust was not property to which the Respondent had any legal or other interest or right.
253. The subject matter of the trust is that portion of the wages earned by the Applicant or a Group Member during the Claim Period and which was paid or ought to have been paid by the employer to the protector or superintendent and deposited into the accounts.
254. The object of the trust was to preserve and protect employed aborigines or islanders by means of:

- (a) ensuring compliance with the statutory requirements with regard to employment and payment of wages of the 1939 Act or the 1965 Act;
- (b) keeping proper accounts with regard to employment, payment of wages, and the subject matter of the trust;
- (c) bringing into the trust the wages of aboriginals and islanders; and
- (d) forced savings of aboriginal and islander wages.

255. [blank]

**L. Trustee's Duties**

256. As trustee of the trust, the Respondent and its servants or agents the Director, the protectors and superintendents, had a duty to the Applicant and each of the Group Members to:

- (aa) ensure that:
  - (i) the employment of the Applicant and each of the Group Members did not take place without permission of the relevant superintendent or protector;
  - (ii) the employment of the Applicant and each of the Group Members did not take place unless the Applicant or Group Member had entered into an agreement which contained terms the same or similar to those referred to in sub-paragraphs 40(b) to (d) and paragraphs 42 to 46A and 47 herein;
  - (iii) any employment agreement was signed by the Applicant or Group Member and the relevant employer and protector or superintendent and witnessed in the manner prescribed in Form 7 of the 1945

Regulations, as referred to in sub-paragraphs 40(c) and (d) and paragraph 46A herein;

- (iv) appropriate recovery action was taken if an employer failed to pay wages or pocket money to the Applicant or Group Member in accordance with any employment agreement;
  - (v) all money owed by an employer to the Applicant or Group Member (being both wages and pocket money which was to be paid directly to the worker) had been both identified through an examination of the relevant employment agreement and pocket money book and paid by the employer either into the accounts or, in the case of pocket money, directly to the Applicant or Group Member and that receipt of such payment had been verified by either inspection of the pocket money book or by asking the relevant aboriginal worker whether the pocket money had been paid;
  - (vi) up until 10 June 1955, no single withdrawal of cash by the Applicant or Group Member, or at his or her request or direction, was made from the accounts of an amount exceeding 10 pounds without the prior approval of the Director, or of an amount exceeding 2 pounds without the reason for the withdrawal being stated;
  - (vii) from 11 June 1955, no single withdrawal of cash by the Applicant or Group Member, or at his or her request or direction, was made from the accounts of an amount exceeding 20 pounds without the prior approval of the Director, or of an amount exceeding 10 pounds without the reason for the withdrawal being stated;
- (ab) hold all money paid into the accounts and any accretions thereto in aggregate for the benefit of those Claimants who had contributed money into those accounts in proportion to their contribution;
- (a) keep and maintain proper records, including records concerning:

- (ia) copies of any employment agreements in the form of Form 7 authorised by the protector or superintendent and entered into by the Applicant or Group Member during the Claim Period;
- (i) the amount which an employer was required to pay to a protector or superintendent as wages for the Applicant or Group Member;
- (ii) the amount which an employer was required to pay to the Applicant or Group Member as “pocket money”;
- (iii) the amount received from an employer as wages for the Applicant or Group Member by a protector or superintendent;
- (iv) the identity of the Claimant on whose behalf such wages were paid by an employer to the protector or superintendent;
- (v) the amount received as “pocket money” by the Applicant or Group Member;
- (vi) the manner in which the money received from an employer was dealt with by the protector or superintendent;
- (vii) the amount paid into the accounts or any other account or investment in which the Applicant’s or Group Members’ wages were advanced;
- (viii) the identity of the aborigine or islander on whose behalf such money was paid into the accounts or any other account in which the Applicant’s or Group Members’ wages were advanced;
- (ix) the amount paid to the Welfare Fund by the protector or superintendent on behalf of the Applicant or Group Member;
- (x) any payments or other expenditure made by a protector or superintendent with the money received from the employer on behalf of the Applicant or Group Member;

- (xi) all payments from the accounts and any other accounts or investments in which the Applicant's or Group Members' wages were advanced;
  - (xii) the way in which money in the accounts or other accounts or investments in which the Applicant's or Group Members' wages was advanced, was managed, used and invested;
  - (xiii) the amount of interest or other accretions on the money held in the accounts or other accounts in which the Applicant's or Group Members' wages were advanced;
  - (xiv) any payout or purported payout from the accounts to the Applicant or Group Member including when such payout was made, the reason for the payout, the amount of the payout, and the calculation of the payout;
  - (xv) the type of work undertaken, the amount of time worked and the amount of any pocket money paid with regard to any work required by a superintendent or protector to be undertaken on a mission, settlement or reserve pursuant to s. 28 of the 1945 Regulations;
- (b) pay all money received from employers as wages for the Applicant or Group Member into the accounts;
  - (c) preserve the corpus of the accounts;
  - (d) act with reasonable care, diligence and prudence with regard to investing the money held in the accounts;
  - (e) render accounts to the Applicant or any Group Member whose wages formed part of the accounts, including with regard to:
    - (i) the amount of money paid by an employer to a protector or superintendent as wages for the Applicant or Group Member;

- (ii) the amount of money paid by an employer to the Applicant or employed Group Member as “pocket money”;
- (iii) the amount paid into the accounts or any other fund, institution, person or account in which an aborigine’s or islander’s wages were advanced;
- (iv) the amount paid to the Welfare Fund by the protector or superintendent;
- (v) where the money paid by an employer to a protector or superintendent was deposited;
- (vi) the amount held in the accounts for each individual Claimant whose wages was held on trust;
- (vii) the manner in which money held in the trust was invested;
- (viii) any expenses, deductions or payouts that had been made to the money held on trust;
- (ix) the amount of interest or other accretions earned by the money held on trust;
- (x) the amount of any payment from the accounts to the Applicant or Group Member;
- (xi) any amount that an employer failed to pay by way of wages;
- (xii) the actions the Respondent had taken to pursue an employer who had failed to pay wages owed to the Applicant or Group Member;
- (xiii) the actions the respondent had taken to enforce the terms of any employment agreement.

- (f) invest the money held on trust in a proper and safe manner;
- (g) invest the money held on trust only for the benefit of Claimants whose wages make up that fund (the **beneficiaries**);
- (h) not to assist or otherwise engage in conduct which would involve a breach of trust;
- (i) act in good faith with regard to the investment of the money held on trust;
- (j) act in good faith with regard to the accounting of money held on trust;
- (k) act in good faith with regard to the payment of money to beneficiaries from the accounts;
- (l) not unreasonably to withhold money held on trust from the beneficiaries;
- (m) not act in its own interests or place its own interests ahead of the beneficiaries' interests with regard to the investment and use of the money held on trust;
- (n) to exercise reasonable skill and diligence in the administration of the trust, including by having in place proper or adequate control systems against the fraudulent or unauthorised withdrawal of money from the accounts.

### **Particulars**

- A. The duties alleged to arise in this paragraph 256 are those duties that:
  - (i) inhere in a person occupying the position of trustee; and/or
  - (ii) arise expressly or as a necessary result of the proper construction of the 1939 Act and regulations, the Islander Act and regulations or the 1965 Act and regulations.
- B. The duties mentioned in subparagraph (a), (c), (e), (j), (k), (l), (m) and (n) herein are continuing duties.

- (o) provide to an aborigine living on a mission, settlement or reserve:
- (i) rations in the amount set out in either Form 5 or Form 6 of the 1945 regulations;
  - (ii) where indigent, two sets of essential clothing to be issued at least at 6 monthly intervals in accordance with Form 6 of the 1945 regulations;
  - (iii) the necessaries of life including housing, food and access to medical services.

**M. Fiduciary duty.**

257. Further or in the alternative, the Respondent either itself or through its servants or agents (being the Director, protectors and superintendents) owed a continuing fiduciary duty to the Applicant and those Group Members whose wages had been paid, or ought to have been paid, to a protector or superintendent or whose employment was controlled or ought to have been controlled under the 1939 Act and regulations, the 1965 Act and regulations or the Islander Act and regulations, to act in the best interests of the aboriginal or islander worker with regard to the treatment of the aboriginal or islander worker, the payment of all appropriate wages to him or her (including the payment of any pocket money) and the care and control of the money received from the aboriginal's or islander's employer (**fiduciary duty**).

258. The fiduciary duty arose from:

- (aa) the statutory provisions identified in paragraphs 19 to 66 of this pleading and by virtue of the fact that, under that legislation, each of the Respondent, the Director, the protectors and superintendents held or managed the Applicant and Group Members' wages and, as the case may be, also other property;
- (a) the relationship of trust and confidence which existed between the Applicant and Group Members, and the Respondent, the Director, the protectors and superintendents;

## Particulars

The relationship of trust and confidence arose from, inter alia, the following circumstances:

- A. The Applicant and Group Members relied upon the superintendents and protectors to obtain employment for them, draft the necessary employment agreements, negotiate appropriate terms on their behalf, and ensure that the terms of the employment agreements were correct, fair and reasonable and otherwise complied with the 1939 Act and regulations, the Islander Act and regulations and the 1965 Act and regulations.
  - B. The Director, protectors and superintendents acted for and on behalf of the Applicant and Group Members with regard to the enforcement of employment agreements and pursuing unpaid debts (1939 Act s. 16, Islander Act s 21, 1965 Act s 28).
- (b) the inequity of power between the Applicant and Group Members, and the Respondent, the Director, the protectors and superintendents;
- (c) the ability of the Director, protectors and superintendents to unilaterally exercise the rights of the Applicant and Group Members in relation to their employment and wages;

## Particulars

- A. 1939 Act ss. 14 and 16 and the 1945 regulations.
  - B. Islander Act s.21.
  - C. 1965 Act ss. 27 to 33 and 1965 regulations ss. 96 to 103.
- (d) the vulnerability of the Applicant and Group Members which arose from their lack of education and unsophistication;
- (e) [blank]
- (f) [blank]

- (g) the fact that wages earned by the Applicant and Group Members were ~~as~~ paid or ought to have been paid, by an employer directly to, or at the direction of, a protector or superintendent (or district officer or manager as the case may be).
  
- (h) the fact that:
  - (i) the Respondent had power to adversely affect the Applicant and Group Members with regard to the management of their finances, ownership of property, the location of where they live, employment, and travel;
  
  - (ii) the Applicant and Group Members were vulnerable to being exploited as:
    1. they were not paid the same wages as white workers; and
  
    2. within Australian society at the time, there was entrenched discrimination against each of them based on their colour, heritage, education and language.

259. The fiduciary duty arose independently and in addition to the duties that the Respondent, and its servants and agent being the Director, the protectors and superintendents held as a trustee, which are referred to in paragraph 256 herein.

**N. Validity of payments to the Welfare Fund**

260. The payment of money from the gross wages of a Claimant to the Welfare Fund purportedly by ss. 6 to 11 of the 1945 regulations was a tax and as such it amounted to a compulsory exaction of money for public purposes, enforceable by law, and was not a payment for services rendered.

261. In the premises, to the extent that the 1945 regulations sought to require compulsory payments to the Welfare Fund, such payments were invalid and unenforceable as they amounted to a tax which had not been authorised by parliament.

261A. Further, any payments of money from the gross wages of the Applicant or Group Members to the Welfare Fund or otherwise from the accounts to the Welfare Fund prior to the 1945 regulations coming into effect on 23 April 1945 were made without statutory authority.

261B. Further, the Applicant and any Group Member who was employed in the period 23 April 1945 to 28 April 1966 and whose wages were paid by his or her employer to a protector or superintendent but who:

- (a) was not subject to an employment agreement;
- (b) did not sign or mark any employment agreement;
- (c) was employed without the permission of the protector or superintendent; or
- (d) was employed otherwise than in accordance with the 1939 Act,

was not an “aboriginal employed under the provisions” of the 1939 Act and any payment to the Welfare Fund purportedly pursuant to s. 6 of the 1945 regulations in respect of that person’s wages was made without statutory authority.

261C. Further, or in the alternative:

- (a) To the extent that r. 6 of the 1945 regulations authorised the Welfare Fund Deductions, it was outside the scope of s. 12(9) of the 1939 Act, properly construed, and therefore invalid; and

#### **Particulars**

Regulation. 6 of the 1945 regulations was invalid because it:

- A. authorised an act that would otherwise be unlawful or a breach of trust or fiduciary duties and the words “*contributions by aboriginals as may from time to time be prescribed*” as used in s 12(9) of the 1939 Act (or any other provision of that Act) did not clearly or expressly authorise or necessarily imply a permanent ongoing transfer of a proportion of the gross wages of aboriginal workers to the Welfare Fund;
  - B. was so lacking in reasonable proportionality to the purpose of s. 12 of the 1939 Act as to be outside the power granted by that provision; and/or
  - C. was neither convenient nor necessary to the objects and purposes of the 1939 Act.
- (b) any deduction of such amounts by the Respondent from the wages of the Applicant and Group Members was without statutory authority.

261D. Further, or in the alternative:

- (a) To the extent that rr. 9(1) and 12(1) of the 1945 regulations authorised the Investment Deductions, they were outside the scope of s. 12(9) of the 1939 Act, properly construed, and invalid; and

### **Particulars**

Regulations 9(1) and 12(1) of the 1945 regulations were invalid because they:

- A. authorised appropriations that would otherwise be unlawful or a breach of trust or fiduciary duty and the words “*contributions by aboriginals as may from time to time be prescribed*” as used in s 12(9) of the 1939 Act (or any other provision of that Act) did not clearly or expressly authorise or necessarily imply authority to the Respondent to transfer to the Welfare Fund or otherwise retain the proceeds of investments carried out with funds in the accounts in excess of the Commonwealth Bank savings interest rate;

- B. was so lacking in reasonable proportionality to the purpose of s. 12 of the 1939 Act as to be outside the power granted by that provision; and/or
  - C. was neither convenient nor necessary to the objects and purposes of the 1939 Act.
- (b) any failure to return the full proceeds of such investments to the account of the Applicant or any Group Member on whose behalf it was invested was a breach of the trust or in breach of the Respondent's fiduciary duties to the Applicant and Group Members.

**NA. Improper purpose and unlawful conduct**

261E. In the alternative to the matters pleaded at paragraphs 261B to 261D, any or all of rr. 6, 9(1), 10 and 12(1) of the 1945 regulations were invalid because:

- (a) those regulations were made by or at the behest of the Respondent in circumstances in which it was aware of the matters pleaded at paragraph 261A hereof;
- (b) the Respondent knew that in the absence of rr. 6, 9(1), 10 and 12(1) of the 1945 regulations, in continuing to make the Welfare Fund Deductions and Investment Deductions, it would be acting without statutory authority and therefore unlawfully and/or in breach of trust;
- (c) the Respondent was aware that the making of the 1945 regulations would operate to render lawful the Welfare Fund Deductions and Investment Deductions on and from the commencement of those regulations; and
- (d) it may be reasonably inferred that a purpose of rr. 6, 9(1), 10 and 12(1) of the 1945 regulations was to validate what was otherwise unlawful or improper rather than to fulfil the objects of the 1939 Acts, such purpose being an improper purpose.

261F. Further or in the alternative to the matters pleaded at paragraphs 261A to 261E, the Respondent's withdrawals of money from the gross wages of the Applicant and Group Members deposited in the accounts, otherwise than as were necessary for the

payment of his or her just debts, were made without statutory authority and were therefore unlawful.

### **Particulars**

The withdrawals pleaded at paragraph 261F included, without limitation:

- (a) permitting deductions to be made from the accounts of Claimants ostensibly for the purpose of the maintenance generally of aboriginal reserves and missions (or aboriginals and aboriginal families residing on such reserves or missions), including deductions on account of or for the purposes of so-called “settlement maintenance”;
- (b) the imposition (from at least 1941) of an administrative charge on all accounts held on behalf of aboriginal Claimants with a balance greater than £20;
- (c) the payment of development tax from wages owed to a Group Member;
- (d) the withdrawal of funds from Group Members with credit balances in the accounts to fund Government projects including:
  - (i) The building of the following camps from 1939 to 1941:
    - (A) £12.11.0 in the Norman Camp Reserve;
    - (B) £76.17. in the Coen Reserve;
    - (C) £85.13.9 in the Georgetown Reserve;
    - (D) £84.1.9 in the Gregory Downs Reserve; and
    - (E) £10.2.3 in the Mount Molloy Reserve.
  - (ii) Expenditure of £566.3.10 to erect sixteen huts at the Weipa Mission in 1947.
  - (iii) Expenditure of £4,000.0.0 for the erection of 200 houses in the Torres Strait Islands in 1947.
  - (iv) The construction of toilets and sheds at the Charters Towers reserve in the 1940s.
  - (v) The replacement of sheds at the Cooktown reserve destroyed by a cyclone in the 1950s.

- (vi) Expenditure of £450.0.0 for the construction of a house at the Cloncurry reserve in 1946 to 1947, that was dismantled in 1950.
- (vii) Expenditure for provisions at the house constructed on the Cloncurry reserve during the period 1947 to 1950.

**NB. Slavery Abolition Act**

261G. The work that the Applicant was required to do at Hopevale and on Palm Island referred to in paragraphs 77 to 79 and 163 to 166 was compulsory labour he was required to perform by virtue of s. 28 of the 1945 regulations.

261H. The *Slavery Abolition Act 1833 (Imp) (Slavery Act)* was a Colonial Act of paramount force which was expressed to apply, relevantly, “throughout the British Colonies” and remained in force in Queensland during the Claim Period. ~~incorporated into the laws of Queensland by s. 20 of the *Supreme Court Act 1867 (Qld)* and s.33 of the *Constitution Act 1867 (Qld)*.~~

261I. The compulsory labour that the Applicant was required to do at Hopevale and on Palm Island referred to in paragraphs 77 to 79 and 163 to 166 herein was:

- (a) forced labour, in that it was an offence to refuse to work when required to do so by the superintendent (s. 28(2) 1945 regulations);
- (b) undertaken in circumstances where the Applicant had no right to terminate or bring to an end the arrangement under which he worked (s. 28(1) 1945 regulations);
- (c) undertaken for no payment at Hopevale and nominal payment at Palm Island;
- (d) undertaken at a time when the Applicant’s movements were restricted by, *inter alia*, the 1945 regulations, in that he was not permitted to leave the settlement or mission;
- (e) undertaken at a time when there were restrictions in place as to where he could reside by, *inter alia*, the 1945 regulations;

(ea) undertaken at a time when:

- (i) at least until he was 21 years of age, the Applicant required the consent of the Director to marry any person (section 18(2) of the 1939 Act);
- (ii) at least until he was 21 years of age, the Director was the Applicant's legal guardian (section 18(1), 1939 Act);
- (iii) the Applicant was prohibited from marrying any person other than an aboriginal without permission of the superintendent of the reserve or otherwise of the Director or a person especially authorised by him (sections 19(1)(b) and (c), the 1939 Act);
- (iv) the Director was empowered to order that the Applicant be moved to another reserve of the Director's choosing (section 22(4), 1939 Act);
- (v) it was unlawful for any person other than an aboriginal, not being a superintendent or person acting under his direction, and not being a person authorised under the regulations, to enter or remain or be within the limits of a reserve upon which aboriginals are living for any purpose whatsoever (section 31(1), 1939 Act);
- (vi) until he was aged 16, the Applicant was susceptible to corporal punishment without the authority of the Director, and after the age of 16, with the authority of the Director (section 29(1), 1945 regulations);
- (vii) from the time he was aged 16, the Applicant was susceptible to being sentenced to imprisonment in an aboriginal goal on the settlement or mission reserve (sections 29(3) and 51, 1945 regulations);
- (viii) clothing issued to the Applicant by the Respondent remained the property of the Respondent (section 27, 1939 Act);
- (ix) the protector was entitled to prohibit the customs or practices of aboriginals (section 23, 1939 Act);
- (x) the protector could order an aboriginal to present for medical review, where failure or refusal to do so was an offence (section 20, 1939 Act);

- (f) undertaken at a time when his property, finances and expenditure was controlled by the superintendent who was the same person who required him to do the work pursuant to, inter alia, the 1945 regulations; and/or
- (g) undertaken when there were restrictions on the Applicant's ability to be employed by persons other than the superintendent pursuant to, inter alia, the 1939 Act and 1945 regulations,

and in such circumstances amounted to slavery within the meaning of section XII of the Slavery Act.

261J. ~~The 1939 Act did not contain an express repeal or effect an implied repeal of any aspect of the Slavery Act as incorporated. [blank]~~

261K. To the extent s. 28 of the 1945 regulations authorised the slavery of the Applicant (as pleaded in paragraphs 77 to 79, 163 to 166, 261G and 261I herein (either alone or with the 1939 Act and 1945 regulations considered as a whole)) it was invalid.

### Particulars

Section 28 of the 1945 regulations was invalid because:

- A. it authorised a state of forced labour that was ~~contrary~~ repugnant to the Slavery Act contrary to s 2 of the *Colonial Laws Validity Act 1865* (Imp);
- B. [Blank] ~~the 1939 Act did not contain any express repeal or effect an implied repeal of any aspect of the Slavery Act and further as subordinate legislation the 1945 regulations were ineffective to alter the effect of the Slavery Act;~~
- C. it amounted to the sanction of a relationship that would otherwise be illegal and the scope of s. 12(2) of the 1939 Act was not sufficiently broad to encompass forced unpaid labour;
- D. it was so lacking in reasonable proportionality to the purpose of s. 12 of the 1939 Act as to be outside the power granted by that provision; and/or

E. was neither convenient nor necessary to the objects and purposes of the 1939 Act.

**O. Trust fund – the Applicant**

262. The money paid to the Hopevale or Palm Island superintendents as wages earned by the Applicant:

- (a) was held in trust by the Respondent (or by its servants or agents the Director and the Hopevale or Palm Island superintendents) for and on behalf of the Applicant as a beneficiary;
- (b) formed part of the trust money held in the trust fund and was subject to the trust.

263. [blank]

264. [blank]

**P. Breach of trust – the Applicant**

265. The Respondent through its servants or agents the Director and/or the superintendents of Hopevale and Palm Island breached its duties to the Applicant identified at paragraph 256 as a trustee of the trust by:

- (aa) failing to ensure that:
  - (i) the employment of the Applicant only took place with the permission of the relevant superintendent or protector;
  - (ii) the employment of the Applicant only took place when there was an employment agreement in place between the Applicant and his

employer which contained the same or similar terms to those referred to in sub-paragraphs 40(b) to (d) and paragraphs 42 to 46A herein;

### **Particulars**

A. Permit for Casual Employment number 224394 dated 27 December 1957.

- (iii) any employment agreement relating to any episode of employment was signed by the Applicant and the relevant employer and protector or superintendent and witnessed in the manner prescribed in Form 7 of the 1945 Regulations, referred to in sub-paragraphs 40(c) and (d) and paragraph 46A herein;

### **Particulars**

Permit for Casual Employment number 224394 dated 27 December 1957.

- (iv) appropriate recovery action was taken against any employer who failed to pay the Applicant's wages or pocket money in accordance with any employment agreement;
- (v) all money owed to the Applicant (being both wages and pocket money which was to be paid directly to the Applicant) had been both identified through an examination of the relevant employment agreement and pocket money book and paid by the employer either into the accounts or, in the case of pocket money, directly to the Applicant;
- (va) the pocket money books were verified to ensure that all pocket money had been paid to the Applicant, or in circumstances where the pocket money book was not available, the Applicant was asked whether he

had in fact been paid pocket money and the amount that he had been paid:

- (vi) the Applicant was paid for the full time he spent working for each of his employers, including in respect of the work the Applicant carried out whilst working at Kalinga Station;
- (vii) all money owed by an employer to the Applicant pursuant to an employment agreement was collected and paid into the accounts;

### **Particulars**

No record of the deposit of wages into the account of the Applicant for the work carried out by the Applicant for WH Wallace under Permit number 225224 for a period of 24 days commencing 1 February 1958, such wages recorded as having been “paid” in the Applicant’s Hopevale Ledger Card

- (a) failing to keep and maintain records concerning:
  - (ia) copies of any employment agreements in the form of Form 7 authorised by the protector or superintendent and entered into by the Applicant during the Claim Period;
  - (i) the amount which the Applicant’s employers were required to pay to either the Hopevale or Palm Island superintendents as the Applicant’s wages;
  - (ii) the amount which an employer was required to pay to the Applicant as “pocket money”;
  - (iii) the amount received from an employer as wages for the Applicant by the superintendents;

- (iv) the amount received by the Applicant as “pocket money”;
- (v) the manner in which the money received from the Applicant’s employers was dealt with by the superintendents;
- (vi) the amount paid to or into the accounts or any other fund, institution, account or person who held or in which the Applicant’s trust funds were advanced;
- (vii) the amount paid to the Welfare Fund by the superintendents on behalf of the Applicant;
- (viii) any payments or other expenditure made with the money received from the employer on behalf of the Applicant;
- (ix) all payments from the accounts and any other account in which the Applicant’s trust funds were advanced;
- (x) the way in which money in the accounts or any other account in which the Applicant’s wages were advanced was managed, used and invested;
- (xi) the amount of interest or other accretions on the money held in the accounts or any other account in which the Applicant’s wages were advanced;
- (xii) any payments made from the accounts to the Applicant and the time, reason and amount of such payment or payments;
- (xiii) the calculation of the purported payout made to the Applicant in 1964 as pleaded at paragraphs 272 to 273 herein;
- (xiv) the type of work undertaken, the time worked, and the amount of pocket money paid, with regard to work that the Applicant was

required to do by the superintendent at Hope Vale or Palm Island pursuant to s. 28 of the 1945 Regulations.

- (b) failing to pay all money received from employers as wages for the Applicant into the accounts or any other account into which the Applicant's wages were advanced;

**Particulars**

- A. As a matter of practice, some protectors or superintendents would pay into the Welfare Fund directly from money received from an employer, prior to depositing the employer's money into the ~~savings~~ accounts or another account.
- B. The Applicant cannot provide better particulars of the amount of his wages paid on his behalf by the superintendents into the Welfare Fund.
- C. The Applicant cannot provide better particulars of the amount of his wages paid by employers to the superintendents that was then paid by the superintendents into the accounts or any other account in which an aborigine's or islander's wages were advanced.
- (c) failing to preserve the corpus of money which was paid into the accounts;
- (d) failing to take reasonable care, diligence and prudence with regard to investing or dealing with the money held on behalf of the Applicant on trust by:
- (i) permitting money held on trust to be paid into the Welfare Fund;

**Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 3 and 7.

- (ii) permitting money held on trust to be intermingled with money held in the Welfare Fund;

**Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 3.

- (iii) Permitting money held on trust to be used to pay for the maintenance of aboriginal families, settlements and communities;

**Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 10 and Attachment 1.3.

- (iv) permitting trust money to be used to pay for rations which the Respondent had an obligation to provide, thereby relieving the Respondent of a financial obligation to the detriment of the Applicant;

- (v) withdrawing money from the accounts in order to either make up a shortfall in government revenue or expenditure, or to save the Respondent from having to make a payment from its own funds;

**Particulars**

- A. Letter Director of Native Affairs to Under Secretary, Department of Health and Home Affairs dated 30 June 1941 which is attachment 1.2 to the Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991.
- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 7.

C. The Applicant cannot provide further and better particulars until after discovery by the Respondent.

(vi) failing to pay or otherwise credit to the accounts all of the interest which had accrued on the accounts from trust investments;

**Particulars**

- A. 1945 regulations, s.9(1).
- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 12 and 17.

(vii) permitting loans to be made from the accounts for the building of hospitals in Queensland in circumstances where the interest on those loans was not paid to the accounts;

**Particulars**

- A. The interest on loans for the building of hospitals in Queensland made from the accounts was classified as “surplus interest” and was paid to the Welfare Fund.
- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.

(viii) forgiving loans made from the accounts for the building of hospitals in Queensland without there being any or any proper reimbursement back to the accounts;

(e) failing to act in good faith with regard to the investment of money held on trust;

**Particulars**

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the accounts or otherwise held on trust but paid to the Welfare Fund;
  - B. Investments from the accounts being loans to build hospitals in Queensland were for the benefit of the Respondent only and not for the direct benefit of the Applicant;
  - C. There was no commercial advantage to the trust in loans being made from the accounts to build hospitals in Queensland.
  - D. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.
- (f) failing to act in good faith when accounting to the Applicant about ~~trust~~ money held by the Respondent on trust for him;

**Particulars**

- A. The Applicant relies on the facts pleaded in sub-paragraphs (a) and (h) herein.
  - B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991.
  - C. The Applicant relies on the facts pleaded in paragraphs 272 to 275 herein.
- (g) failing to act in good faith with regard to the payment of money to the Applicant from the accounts.

**Particulars**

- A. The money held on trust in the accounts was invested in such a manner that there were insufficient funds available in the accounts available at call to satisfy or otherwise pay out any or all requests for payment of money from a beneficiary.
- (h) failing to account to the Applicant with regard to:

- (i) the amount of money paid by his employers specified in this pleading to the Hopevale and Palm Island superintendents as his wages;
- (ii) the amount of money paid by his employers specified in this pleading to him as “pocket money”;
- (iii) the amount paid on his behalf into the accounts or any other accounts in which an aborigine’s or islander’s wages were advanced by the protector or superintendent;
- (iv) the amount paid on his behalf to the Welfare Fund by the protector or superintendent;
- (v) the amount paid on his behalf to any fund, institution, person or account by the protector or superintendent prior to such money being paid into the accounts or any other accounts in which an aborigine’s or islander’s wages were advanced;
- (vi) where the money paid by his employer to a protector or superintendent was deposited;
- (vii) the amount held on trust on behalf of the Applicant;
- (viii) the manner in which money held on trust was invested;
- (ix) any expenses, deductions or payouts that had been made to the money held on trust;
- (x) the amount of interest or other accretions earned by the money held on trust;
- (xi) the amount of any payment from the accounts to the employed aborigine;

- (xii) the amount of the payout from the accounts made to the Applicant in 1964;
- (i) failing to invest the money held on trust only for the benefit of the Applicant;

**Particulars**

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the accounts but paid to the Welfare Fund;
  - B. Investments from the accounts being loans to build hospitals were for the benefit of the Respondent only;
  - C. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.
- (j) failing to place the Applicant’s interests ahead of their own interests with regard to the investment and use of the money held on trust;

**Particulars**

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the accounts but paid to the Welfare Fund;
  - B. Investments from the accounts being loans to build hospitals were for the benefit of the Respondent only;
  - C. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.
- (k) failing to take action once misappropriation of money from the trust fund was drawn to its attention.

**Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 8, 10, 18 (point 11) and Attachment 3.4.
- (l) failing to have in place proper or adequate control systems which would have operated to avert or check any fraudulent withdrawal of money from the accounts.

### **Particulars**

The facts relied upon in relation to paragraph 265(l) include:

- A. Failing to ensure that employment agreements were entered into with respect to each and every episode of employment.
- B. Failing to have witnessed withdrawals said to have been made by the Applicant;
  - (i) Hopevale Mission Ledger of withdrawals for the month ended 31 August 1957, sheet number 55.
  - (ii) Hopevale Mission Ledger of withdrawals for the month ended 30 June 1957, sheet number 45.
  - (iii) Hopevale Mission Ledger of withdrawals for the month ended 31 August 1957, sheet number 57.
- C. Failing to state any reason for withdrawals said to have been made by the Applicant:
  - (i) Hopevale Mission Ledger of withdrawals for the month ended 31 January 1957, sheet number 7.
  - (ii) Hopevale Mission Ledger of withdrawals for the month ended 31 January 1957, sheet number 3.
  - (iii) Hopevale Mission Ledger of withdrawals for the month ended 28 February 1957, sheet number 12.

- D. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 8, 10, 18 (point 11) and Attachment 3.4.
  - E. The Applicant repeats and relies on the matters pleaded in paragraphs (aa) and (a) of this paragraph 265.
- (m) failing to act with reasonable skill and diligence with respect to the administration of the trust.

### **Particulars**

The facts relied upon in relation to paragraph 265(m) include:

- A. Failing to record any lower (2.5%) percentage applied to Welfare Fund deductions made from the Applicant's account after he was married.
  - B. Failing to credit the accounts with monies received on account of the Applicant's wages in a timely manner, resulting in loss of interest credited to the Applicant's account (Native Affairs Department of Queensland receipt number 91266 dated 17 March 1958 issued to Starcke Graziers for the sum of £46/15/0, of which £7/0/0 was purportedly on account of the Applicant's wages for the period 24/12/57 – 31/12/57, yet the Applicant's Ledger Card for the Hopevale Protectorate for the period December 1956 to July 1958 indicates that that amount was not credited to the Applicant's account until 31 May 1958).
- (n) requiring, deducting or retaining the Welfare Fund Deductions and/or Investment Deductions despite the matters pleaded at paragraphs 260, 261, 261A, 261B, 261C, 261D, 261E and/or 261F.

The Respondent's actions referred to in paragraph 265(a), (c), (d) (except (d)(vii)) and (e) – (k) and (n) (to the extent the benefit of trust funds is retained by the

Respondent) above are continuing or in the alternative repeated breaches of trust by the Respondent and accordingly arose after 1991.

266. [blank]

267. [blank]

268. [blank]

269. [blank]

**Q. Breach of Fiduciary duty – the Applicant**

270. In breach of the fiduciary duty owed to the Applicant identified at paragraph 257, the Respondent through its servants or agents the Director and/or the superintendents at Hopevale and Palm Island, failed to act in the best interests of the Applicant with regard to the care and control of the money received from the Applicant's employers by:

(aa) failing to ensure that:

- (i) the employment of the Applicant only took place with the permission of the relevant superintendent or protector;
- (ii) the employment of the Applicant only took place when there was an employment agreement in place between the Applicant and his employer which contained the same or similar terms to those referred to in sub-paragraphs 40(b) to (g) and paragraphs 42 to 46A herein;
- (iii) any employment agreement relating to any episode of employment was signed by the Applicant and the relevant employer and protector or superintendent and witnessed in the manner prescribed in Form 7

of the 1945 regulations referred to in sub-paragraphs 40(c) and (d) and paragraph 46A;

- (iv) appropriate recovery action was taken against any employer who failed to pay the Applicant's wages or pocket money in accordance with any employment agreement;
  - (v) the Applicant was paid for the full time he spent working for each of his employers, including in respect of the work the Applicant carried out whilst working at Kalinga Station;
  - (vi) all money owed by an employer to the Applicant pursuant to an employment agreement was collected and paid into the accounts;
- (ab) failing to hold all money paid into the accounts on behalf of the Applicant in aggregate for the benefit of the Applicant and all Group Members who had contributed money into those accounts in proportion to their individual contribution;
- (a) failing to keep and maintain records concerning:
- (ia) copies of any employment agreements in the form of Form 7 authorised by the protector or superintendent and entered into by an Applicant during the Claim Period;
  - (i) the amount which the Applicant's employers were required to pay to either the Hopevale or Palm Island superintendents as the Applicant's wages;
  - (ii) the amount which an employer was required to pay to the Applicant as "pocket money";

- (iii) the amount received from an employer as wages for the Applicant by the superintendents;
- (iv) the amount received by the Applicant as “pocket money”;
- (v) the manner in which the money received from the Applicant’s employers was dealt with by the superintendents;
- (vi) the amount paid into the accounts or any other accounts in which an aborigine’s or islander’s wages were advanced;
- (vii) the amount paid into the Welfare Fund by the superintendents on behalf of the Applicant;
- (viii) the amount of money received from the Applicant’s employers which was paid (and the reason for such payment) to any other fund, institution, person or account by the superintendents prior to such money being paid into the accounts or any other account in which an aborigine’s or islander’s wages were advanced;
- (ix) any payments or other expenditure made with the money received from the employer on behalf of the Applicant;
- (x) all payments from the accounts and any other accounts in which the Applicant’s wages were advanced;
- (xi) the way in which money in the accounts or any other accounts in which the Applicant’s wages were advanced was managed, used and invested;
- (xii) the amount of interest or other accretions on the money held in the accounts or any other accounts in which the Applicant’s wages were advanced;

- (xiii) any payments made from the accounts to the Applicant and the time, reason and amount of such payment or payments;
  - (xiv) the calculation of the payout of £26/15/02d made to the Applicant in 1964 as pleaded in paragraphs 272 to 275 herein;
- (b) failing to pay all money received from employers as wages for the Applicant into the accounts or any other account into which an aborigine's or islander's wages were advanced;

### **Particulars**

- A. As a matter of practice, some protectors or superintendents would pay into the Welfare Fund directly from the money received from an employer, prior to depositing the employer's money into the ~~savings~~ accounts or some other account.
  - B. The Applicant cannot provide better particulars of the amount of trust money paid by the superintendents into the Welfare Fund until after discovery of documents by the Respondent.
  - C. The Applicant cannot provide better particulars of the amount of his wages paid by employers to the superintendents that was then paid by the superintendents into the accounts or any other account in which the Applicant's wages were advanced until after discovery of documents by the Respondent and the service of the Applicant's opinion evidence in chief.
- (c) failing to preserve the corpus of trust money which was paid into the accounts to the extent the Applicant had an interest in the trust money;
- (d) failing to take reasonable care, diligence and prudence with regard to investing or dealing with the money held on behalf of the Applicant on trust by:
- (i) permitting trust money held on trust to be paid into the Welfare Fund;

### **Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 3 and 7.
- (ii) permitting trust money held on trust to be intermingled with money held in the Welfare Fund;

### **Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 3.
- (iii) permitting trust money held on trust to be used to pay for the maintenance of aboriginal families, settlements and communities;

### **Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 10 and Attachment 1.3.
- (iv) permitting trust money to be used to pay for rations which the Respondent had an obligation to provide, thereby relieving the Respondent of a financial obligation to the detriment of the Applicant;
- (v) withdrawing trust money from the accounts in order to either make up a shortfall in government revenue or expenditure, or to save the Respondent from having to make a payment from its own funds;

### **Particulars**

- A. Letter Director of Native Affairs to Under Secretary, Department of Health and Home Affairs date 30 June 1941 which is attachment 1.2 to the Final Report into the Investigation of the Aborigines Welfare Fund and the

Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991.

- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 7.
- C. The Applicant cannot provide further and better particulars until after discovery by the Respondent.

- (vi) failing to pay or otherwise credit to the trust all of the interest which had accrued on the accounts or on any other account in which the Applicant's wages were advanced or on trust investments;

**Particulars**

- A. 1945 regulations, s.9(1).
- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 12 and 17.

- (vii) permitting loans to be made from the accounts for the building of hospitals in Queensland in circumstances where the interest on those loans was not paid to the trust;

**Particulars**

- A. The interest on loans for the building of hospitals in Queensland made from the trust was classified as "surplus interest" and was paid to the Welfare Fund.
- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.

- (viii) forgiving loans made from the accounts for the building of hospitals in Queensland without there being any or any proper reimbursement back to the trust;

- (e) failing to act in good faith with regard to the investment of money held on trust;

**Particulars**

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the trust but paid to the Welfare Fund.
- B. Investments from the trust being loans to build hospitals in Queensland were for the benefit of the Respondent only and not for the direct benefit of the Applicant.
- C. There was no commercial advantage to the Applicant or the trust in loans being made from the trust to build hospitals in Queensland.
- D. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.

- (f) failing to act in good faith by not accounting to the Applicant about money held on trust;

**Particulars**

- A. The Applicant relies on the facts pleaded in sub-paragraphs (a) and (h) herein.
- B. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991.
- C. The Applicant relies on the facts pleaded in paragraphs 272 to 275 herein.

- (g) failing to act in good faith with regard to the payment of money to the Applicant from the trust.

**Particulars**

- A. The money held on trust was invested in such a manner that there were insufficient funds available in the savings accounts available at

call to satisfy or otherwise pay out any or all requests for payment of money from a beneficiary.

- (h) failing to account to the Applicant with regard to:
  - (i) the amount of money paid by his employers specified in this pleading to the Hopevale and Palm Island superintendents as his wages;
  - (ii) the amount of money paid by his employers specified in this pleading to him as “pocket money”;
  - (iii) the amount paid on his behalf into the savings accounts or any other accounts in which an aborigine’s or islander’s wages were advanced by the protector or superintendent;
  - (iv) the amount paid on his behalf to the Welfare Fund by the protector or superintendent;
  - (v) the amount paid on his behalf to any fund, institution, person or account by the protector or superintendent prior to such money being paid into the accounts or any other accounts in which an aborigine’s or islander’s wages were advanced;
  - (vi) where the money paid by his employer to a protector or superintendent was deposited;
  - (vii) the amount held on trust on behalf of the Applicant;
  - (viii) the manner in which money held on trust was invested;
  - (ix) any expenses, deductions or payouts that had been made to the money held on trust;
  - (x) the amount of interest or other accretions earned by the money held on trust;

- (xi) the amount of any payment from the trust to the employed aborigine;
  - (xii) the amount of the payout from the trust made to the Applicant in 1964;
- (i) failing to invest the money held on trust only for the benefit of the Applicant;

**Particulars**

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the trust but paid to the Welfare Fund;
  - B. Investments from the trust being loans to build hospitals were for the benefit of the Respondent only;
  - C. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.
- (j) failing to place the Applicant’s interests ahead of their own interests with regard to the investment and use of the money held on trust;

**Particulars**

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the trust but paid to the Welfare Fund;
- B. Investments from the trust being loans to build hospitals were for the benefit of the Respondent only;
- C. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at page 12.
- D. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991.

- (k) failing to take action once misappropriation of money from the trust was drawn to its attention;

**Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 8, 10, 18 (point 11) and Attachment 3.4.

- (l) failing to have in place proper or adequate control systems which would have operated to avert or check the fraudulent withdrawal of money from the savings accounts.

**Particulars**

- A. Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at pages 8, 10, 18 (point 11) and Attachment 3.4.

- (m) requiring, deducting or retaining the Welfare Fund Deductions and/or Investment Deductions despite the matters pleaded at paragraphs 260 to 261F.

The Respondent's actions referred to in paragraph 270(a), (c), (d) (except (d)(vii)) and (e) – (k) and (m) (to the extent the benefit of funds acquired through breach of duty is retained by the Respondent) above are continuing or in the alternative repeated breaches of the fiduciary duty owed by the Respondent to the Applicant and accordingly arose after 1991.

270A. Further, in breach of the fiduciary duties owed to the Applicant, the Respondent (through its servants or agent the superintendents of Hopevale and Palm Island) failed to act in the best interests of the Applicant by:

- (a) causing the Applicant to work under conditions that were in breach of the Slavery Act as pleaded at paragraphs 261G to 261K;

- (b) taking the benefit of the Applicant's work at Hopevale and Palm Island;
- (c) saving the cost of employing someone to do the work undertaken by the Applicant at Hopevale and Palm Island.

271. [blank]

**QA The Respondent's wilful default or neglect**

*The Applicant*

271A. The Respondent through its servants or agents (the Director and/or the superintendents of Hopevale and Palm Island) breached its duties to the Applicant as a trustee of the trust by failing to receipt, obtain, or acquire amounts that would otherwise have been held on trust for the Applicant and formed part of the trust due to its wilful default or neglect identified by those breaches of trust at paragraphs 265(aa)(iv), (aa)(v), (aa)(vi), (aa)(vii), (b) (c), (d), (e), (i), (k) and (n).

*Group Members*

271B. The Respondent through its servants or agents failed to receipt, obtain, or acquire amounts that would otherwise have formed part of the accounts and/or trust to its wilful neglect or default by:

- (a) failing to obtain and credit the trust with the interest accrued on accounts or trust investments:
  - (i) from 1939 to 1945 with regard to:
    - (1) interest on amounts held by settlements which was credited to the 'Settlement Interest Account';

- (2) interest on amounts held by Brisbane and Country aborigines which was transferred to the Department of Health and Home Affairs; and
- (3) interest from the Aboriginal Protection of Property Account which was allocated to the 'Suspense Account'.

**Particulars**

- A. Auditor-General Reports on the books and accounts of the Director of Native Affairs for the periods 1 January 1940 to 31 December 1940; 1 January 1941 to 31 December 1941; 1 January 1942 to 11 January 1943; 12 January 1943 to 30 September 1944.
- (ii) from (at least) 1956 through crediting interest at an arbitrary rate of 1.5% on account balances between £1,000 to £1,500, and crediting no interest on account balances in excess of £1,500.

**Particulars**

- A. Auditor-General Report on the books and accounts of the Sub-Department of Native Affairs for the period 1 January 1956 to 31 December 1956.
- (iii) through not crediting interest accurately or correctly on the amounts held in account balances.

**Particulars**

- A. Auditor-General Report on the books and accounts of the Sub-Department of Native Affairs for the period 1 January 1959 to 31 December 1959.
- B. Arbitrary allocation of interest in island accounts for the period 1942 to 1946 by allowing interest only on minimum monthly balances, not paying any interest under £0.1.0, and failing to pay interest owing on those accounts that had been closed during that period: Auditor-General Report on the books and

accounts of the Protector of Islanders and Aboriginals for Thursday Island for the period 1 May 1945 to 30 April 1946.

- (iv) through failing to receive, or failing to take reasonable steps to receive, interest on account of loans made from the accounts to the Island Industries and Torres Strait Boats in 1940 and 1941.

**Particulars**

- A. Auditor-General Reports on the books and accounts of the Protector of Islanders and Aboriginals for Thursday Island for the periods 6 April 1939 to 18 April 1940; 19 April 1940 to 18 April 1941.

- (v) through failing to place interest that had been earned from islander accounts into interest earning accounts so as to accumulate further interest.

**Particulars**

- A. An amount of £248.13.4 as at 30 April 1942: Auditor-General Report on the books and accounts of the Protector of Islanders and Aboriginals for Thursday Island for the period 18 April 1941 to 30 April 1942.
- B. An amount of £620.16.9 as at 11 January 1943: Auditor-General Report on the books and accounts of the Protector of Islanders and Aboriginals for Thursday Island for the period 30 April 1942 to 11 January 1943.

- (b) permitting individual account balances in the trust to be overdrawn and therefore failing:

- (i) to obtain and credit the trust with interest that it would have otherwise earned on accounts or from trust investments; and

- (ii) to recover, or failing to take reasonable steps to recover, those overdrawn amounts;

**Particulars**

- A. Auditor-General Reports on the books and accounts of the Deputy-Director of Native Affairs for the periods 10 January 1948 to 31 January 1949; 1 February 1949 to 31 December 1949; 1 January 1957 to 31 December 1957; 1 July 1962 to 30 June 1963; 1 July 1964 to 30 June 1965; 1 July 1966 to 30 June 1967; 1 July 1967 to 30 June 1968; 1 July 1968 to 30 June 1969; 1 July 1970 to 30 June 1971; 1 July 1971 to 30 June 1972; 1 July 1972 to 30 June 1973; 1 July 1973 to 30 June 1974; 1 July 1974 to 30 June 1975.
- B. Auditor-General Reports on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the period 19 April 1940 to 18 April 1941; 30 April 1942 to 11 January 1943; 16 September 1943 to 30 April 1945; 1 May 1945 to 30 April 1946; 1 May 1946 to 31 March 1947.
- (c) permitting settlements and reserves to operate advance accounts funded by the trust and therefore failing to obtain and credit the trust with interest it would have otherwise earned;

**Particulars**

- A. Auditor-General Report on the books and accounts of the Deputy-Director of Native Affairs for the period 1 December 1950 to 31 March 1952.
- (d) failing to recover funds, or failing to take reasonable steps to recover funds, owed to the trust including the following loans which were not repaid:
- (i) an interest-free loan to the Mapoon Mission in 1939 made for the purchase of cattle;

### **Particulars**

- A. Auditor-General Reports on the books and accounts of the Director of Native Affairs for the periods 1 January 1939 to 31 December 1939; 1 January 1940 to 31 December 1940; 1 January 1941 to 31 December 1941.
- (ii) an interest-free loan to the Doomadgee Mission in 1939 made for the purchase of cattle;

### **Particulars**

- A. Auditor-General Reports on the books and accounts of the Director of Native Affairs for the periods 1 January 1939 to 31 December 1939; 1 January 1940 to 31 December 1940; 1 January 1941 to 31 December 1941.
- (iii) a £218 loan at 2% interest made in 1940 for a 'Turtle Boat';

### **Particulars**

- A. Auditor-General Reports on the books and accounts of the Director of Native Affairs for the periods 1 January 1940 to 31 December 1940; 1 January 1941 to 31 December 1941; 1 January 1942 to 11 January 1943; 12 January 1943 to 30 September 1944.
- (iv) a £164.11.4 loan made to Mr Jeffrey Doolah in 1962;

### **Particulars**

- A. Auditor-General Reports on the books and accounts of the Sub-Department of Native Affairs for the periods 1 July 1962 to 30 June 1963; 1 July 1963 to 30 June 1964; 1 July 1964 to 30 June 1965; 1 July 1965 to 30 June 1966; 1 July 1966 to 30 June 1967;

1 July 1967 to 30 June 1968; 1 July 1968 to 30 June 1969; 1 July 1970 to 30 June 1971; 1 July 1971 to 30 June 1972; 1 July 1972 to 30 June 1973; 1 July 1973 to 30 June 1974; 1 July 1974 to 30 June 1975; 1 July 1975 to 30 June 1976; 1 July 1976 to 30 June 1977.

- (v) a £4,950 loan made to Hopevale Mission in 1954 which remained outstanding in contravention of its terms of redemption from 1959 to 1969.

**Particulars**

A. Auditor-General Reports on the books and accounts of the Deputy Director of Native Affairs for the periods 1 December 1953 to 31 December 1954; 1 January 1959 to 31 December 1959; 1 January 1960 to 31 December 1960; 1 January 1961 to 30 June 1962; 1 July 1962 to 30 June 1963; 1 July 1963 to 30 June 1964; 1 July 1964 to 30 June 1965; 1 July 1965 to 30 June 1966; 1 July 1967 to 30 June 1968; 1 July 1968 to 30 June 1969.

- (e) failing to recover wages owed to the trust on behalf of aboriginal or island workers subject to the 1939 Act, the Islanders Act, or the 1965 Act, or failing to take reasonable steps to recover such wages;
- (f) further or alternatively, failing to expeditiously recover wages owed to the trust and therefore failing to obtain and credit the trust with the interest it would have otherwise earned;

**Particulars to (e) and (f)**

- A. £638.7.11 was outstanding as at 31 December 1939: Auditor-General Report on the books and accounts of the Director of Native Affairs for the period 1 January 1939 to 31 December 1939.
- B. £300.9.10 was outstanding as at 31 December 1940: Auditor-General Report on the books and accounts of the Director of Native Affairs for the period 1 January 1940 to 31 December 1940.

- C. £981.18.1 was outstanding as at 31 December 1941: Auditor-General Report on the books and accounts of the Director of Native Affairs for the period 1 January 1941 to 31 December 1941.
- D. £296.1.3 was outstanding as at 30 June 1943. Auditor-General Report on the books and accounts of the Director of Native Affairs for the period 1 January 1942 to 11 January 1943.
- E. £1504.8.5 was outstanding as at 30 September 1944: Auditor-General Report on the books and accounts of the Director of Native Affairs for the period 12 January 1943 to 30 September 1944.
- F. Auditor-General Reports on the books and accounts of the Deputy-Director of Native Affairs for the periods 1 October 1944 to 31 December 1945; 1 January 1946 to 4 February 1947; 5 February 1947 to 9 January 1948; 10 January 1948 to 31 January 1949; 1 February 1949 to 31 December 1949; 1 January 1950 to 30 November 1950; 1 December 1950 to 31 March 1952; 1 April 1952 to 31 December 1952; 1 December 1953 to 31 December 1954; 1 January 1956 to 31 December 1956; 1 January 1957 to 31 December 1957; 1 January 1958 to 31 December 1958; 1 January 1959 to 31 December 1959; 1 January 1960 to 31 December 1960; 1 January 1961 to 30 June 1962; 1 July 1962 to 30 June 1963.
- G. Outstanding wages totalling £227.1.8 were considered irrecoverable at 30 June 1964: Auditor-General Report on the books and accounts of the Sub-Department of Native Affairs for the period 1 July 1963 to 30 June 1964.
- H. Auditor-General Reports on the books and accounts of the Sub-Department of Native Affairs for the periods 1 July 1964 to 30 June 1965; 1 July 1966 to 30 June 1967; 1 July 1967 to 30 June 1968; 1 July 1968 to 30 June 1969; 1 July 1969 to 30 June 1970; 1 July 1970 to 30 June 1971; 1 July 1971 to 30 June 1972.
- I. £1,631.17.6 was owed as wages due on 'Company boats' as at 13 June 1941: Auditor-General Report on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the period 19 April 1940 to 18 April 1941.

- J. £1,599.6.4 was outstanding as at 30 April 1942: Auditor-General Report on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the period 18 April 1941 to 30 April 1942.
  - K. £1,259.19.2 was outstanding as at 11 January 1943 and a large portion of that was irrevocable and would need to be written off: Auditor-General Report on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the period 30 April 1942 to 11 January 1943.
  - L. £735.4.9 was outstanding as at 31 December 1944, and £523.2.5 of that had been outstanding at time of previous audit: Auditor-General Report on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the period 21 June 1943 to 31 December 1944.
  - M. Auditor-General Reports on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the periods 6 April 1939 to 18 April 1940; 19 April 1940 to 18 April 1941; 16 September 1943 to 30 April 1945; 1 May 1946 to 31 March 1947.
  - N. Wages of £19.15.0 owed from Boigu District were outstanding from 1942 until at least 1947: Auditor-General Reports on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the periods 16 September 1943 to 30 April 1945; 1 May 1945 to 30 April 1946; 1 May 1946 to 31 March 1947.
  - O. Some Islander employment agreements provided for all wages to be paid as pocket money and the pocket money was never paid: Auditor-General Report on the books and accounts of the Protector of Islanders and Aborigines for Thursday Island for the period 1 May 1946 to 31 March 1947.
- (g) imprudently and unreasonably investing money held on trust:
- (i) on no terms; and/or
  - (ii) at insufficient interest rates.

### **Particulars**

- A. Loan to Cherbourg Social and Welfare Association at 2% interest in 1946.
- B. Auditor-General Report on the books and accounts of the Director of Native Affairs for the period 1 January 1946 to 4 February 1947.
- C. Loan to Woorabinda Peanut Production in 1948 at Savings Bank interest rates.
- D. Auditor-General Reports on the books and accounts of the Deputy-Director of Native Affairs for the periods 1 February 1949 to 31 December 1949. And 1 January 1950 to 30 November 1950.
- E. Loan of £6,400 to Cherbourg Settlement for a Training Farm at 2% interest in 1944.
- F. Auditor-General Report on the books and accounts of the Deputy-Director of Native Affairs for the period 1 October 1944 to 31 December 1945.
- G. Loan to Island Industries Board at Savings Bank interest rates from 1937 to 1953.
- H. Auditor-General Reports on the books and accounts of the Director of Native Affairs for the periods 1 January 1939 to 31 December 1939; 1 January 1940 to 31 December 1940; 1 January 1941 to 31 December 1941; 1 October 1944 to 31 December 1945; 1 December 1950 to 31 March 1952.
- I. Loan of £10,000 to establish Foleyvale Reserve in 1946 without terms.
- J. Auditor-General Reports on the books and accounts of the Director of Native Affairs for the periods 1 January 1946 to 4 February 1947; 5 February 1947 to 9 January 1948; 10 January 1948 to 31 January 1949; 1 February 1949 to 31 December 1949; 1 January 1950 to 30 November 1950; 1 December 1950 to 31 March 1952; 1 January 1953 to 30 November 1953; 1 December 1953 to 31 December 1954.
- K. Loan of £508.0.3 to Palm Island Band Account in 1953 without terms.

- L. Auditor-General Reports on the books and accounts of the Deputy Director of Native Affairs for the periods 1 January 1953 to 30 November 1953 and 1 December 1953 to 31 December 1954.

**R. Applicant's payout**

- 272. In about May 1964 the Applicant was informed that as at 31 January 1964 the balance held on his behalf was £55/05/09d.

**Particulars**

- A. Letter to the Protector of Aborigines, Innisfail (b/c the Superintendent, Palm Island) from the "D.N.A." dated on or about 8 May 1964.
- 273. On or about 31 May 1964 the Applicant was provided with a cheque in the sum of £26/15/02d which purported to be the balance held by the Respondent (together with interest) to the Applicant's credit.

**Particulars**

- A. Letter from Acting Superintendent, Palm Island to the Protector of Aborigines, Innisfail dated 22 May 1964.
- 274. [blank]
  - 275. The Respondent did not at the time it paid the Applicant, nor subsequently, provide the Applicant with any explanation as to why the amount paid to him was only £26/15/02d (which purported to be payment of the balance held for him) and not some higher amount.

**S. Complaints by the Applicant**

276. The Applicant complained to the Director and the protector at Innisfail that the amount which he was paid (and which purported to be the balance of the wages held on his behalf) was incorrect and too low.

**Particulars**

- A. Letter Protector of Aboriginals Innisfail to Director of Native Affairs dated 22 April 1964.
- B. The Applicant spoke with the protector (or a representative of the protector) of aboriginals in Innisfail, Sergeant Hegarty, in or about 1964.

277. The Respondent:

- (a) knew from at least 22 April 1964 that the Applicant contended that monies were owing to him by the State on account of his wages that were paid to the Hopevale and/or Palm Island superintendent;

**Particulars**

- A. Letter from Edwin P. Chandler, protector of aboriginals at Innisfail, to the Director dated 22 April 1964.
- (b) knew from at least 1969 that there were complaints concerning discrepancies about money paid to protectors and superintendents as wages for aborigines under the 1939 Act and the 1965 Act and the amount that was purportedly credited to aborigines in the accounts or other accounts in which an aborigine's or islander's wages were advanced.

**Particulars**

- A. In January 1969 the Queensland Aboriginal and Torres Strait Island Advancement League reported in their newsletter that they had identified discrepancies in the accounts that would not occur in normal banking practice.
- B. In about 1969 a campaign was launched to alert the public to the payment of aboriginal wages and advertisements were placed in

newspapers around the country saying “Should a Queensland Aborigine still beg for his own wage”.

- C. Report of the Senate Standing Committee on Legal and Constitutional Affairs entitled “Unfinished business: Indigenous stolen wages”, December 2006.

**T. Applicant’s loss**

278. But for the Respondent’s conduct in breach of trust or alternatively in breach of the fiduciary duties referred to above, the Applicant:

- (a) would have been paid the whole of the money paid by his employers to the Hopevale or Palm Island superintendents plus accretions to the date of payment when he became exempt from the operation of the 1939 Act;
- (aa) further or in the alternative, would have had the benefit of the Welfare Fund Deductions and Investment Deductions to the extent they were deducted from or not credited to his interest in the account;
- (ab) further or in the alternative, would have had the benefit of the monies not brought into the account by reason of the defaults identified at paragraph 271A;
- (ac) further or in the alternative, would have had the benefit of the monies withdrawn from his account as pleaded at paragraph 261F;
- ~~(ad) further or in the alternative, would have had the benefit of wages for the labour he was required to perform at Hopevale and Palm Island;~~
- (b) using the funds referred to in (a), would have either purchased a house in Innisfail or alternatively have invested that money in accordance with financial advice that was appropriate to his financial circumstances and needs.

~~278A. Further or in the alternative, in the premises of paragraphs 249A to 265, and 270 to 270A to the extent the Respondent retained the benefit of the use of the proceeds of any breach of trust or fiduciary duty causing loss to the Applicant as pleaded at paragraph 278:~~

- ~~(a) — it was unjustly enriched because it had the benefit of trust monies or profits obtained in breach of fiduciary duty for its own purposes; and/or~~
- ~~(b) it holds its interest in such benefit subject to a constructive trust in favour of the Applicant.~~

278A. Further, if section 28 of the 1945 regulations is found to be invalid (as pleaded in paragraph 261K herein):

- (a) the Applicant undertook work at the request of the protector or superintendent at Hopevale and Palm Island (particulars of which are pleaded in paragraphs 46B, 77-79, 163-166, 261G and 261I herein) without receiving payment or, in the case of work performed at Palm Island, for a wholly negligible sum; and
- (b) on a basis mistaken as to the validity of the laws authorising that compulsory labour, and in circumstances where there was and remains an obligation upon the Respondent to reasonably compensate the Applicant for that unpaid work.

278AA. The Applicant says that a reasonable and present-day value for the work undertaken by him at Hopevale and Palm Island is \$120,410.

### **Particulars**

A. Report of Brian Wood, KordaMentha, dated 20 March 2019 at page 53.

278AB. In the alternative to paragraph 278A, if section 28 of the 1945 regulations was valid, then to the extent that the Applicant worked more than 32 hours per week at the request of the protector or superintendent at Hopevale or Palm Island made pursuant to section 28 of those regulations (particulars of which are pleaded at paragraphs 46B, 77-79, 163-166 and 261G herein) without receiving payment, there was in the circumstances an obligation upon the Respondent to compensate the Applicant for all such compulsory labour in excess of 32 hours per week.

**U. Reparation scheme - general**

279. On 16 May 2002 the Premier of Queensland announced a reparation scheme to pay compensation for the controls exercised by earlier Queensland Governments over the wages and savings of Aboriginal and Torres Strait Islander people under the “Protection Acts” (which included the 1939 and 1965 Acts).

**Particulars**

A. Ministerial Statement 16 May 2002 at Hansard p 1714.

280. The reparation scheme provided:

- (a) an acknowledgement of the controls exercised over aboriginal and islander people in Queensland under the Protection Acts;
- (b) an offer to make a monetary payment which was not based on any admission of legal liability;
- (c) that payments would be made to eligible claimants who were in either “Group A” or “Group B” (**eligible claimant**);
- (d) that persons who were Group A eligible claimants were to be paid \$4,000 per claimant;
- (e) that in order to be a Group A eligible claimant a person:
  - (i) had to have been born by the end of 1951;
  - (ii) was aged 50 or over in 2002;
  - (iii) lived under the 1939 and/or 1965 Acts;
  - (iv) was alive as at 9 May 2002;

- (f) that persons who were Group B eligible claimants were to be paid \$2,000 per person;
- (g) in order to be a Group B eligible claimant a person:
  - (i) had to have been born by the end of 1956;
  - (ii) was aged between 45 and 49 in 2002;
  - (iii) lived under the 1939 and/or 1965 Acts;
  - (iv) was alive as at 9 May 2002;
  - (v) could not be a Group A eligible claimant;
- (h) that payment under the reparation scheme was subject to each eligible claimant signing an agreement which indemnified the Queensland government against any common law or other legal action which may otherwise be available.

281. The reparation scheme in the form announced on 16 May 2002 closed on 31 January 2006.

282. The reparation scheme was not open to all Group Members as, in order to be an eligible claimant, a Group Member was required to fit within the criteria set out in paragraph 280 above.

283. In order to receive a payment under the reparation scheme an eligible claimant was required to sign a document called a “Deed of Agreement” (**Deed of Agreement**).

284. The Deed of Agreement required that each eligible claimant sign a release and discharge (the **release**).

285. The release was in the following terms:

*The Claimant acknowledges and agrees that he/she accepts the Payment in full and final satisfaction and discharge of all actions, claims, costs and demands which the Claimant, and all other persons claiming by or through or under the Claimant may now have or could have, whether pursuant to common law or under the Protection Acts, against the State, its servant or agents, arising out of or in any way related to the Controls and this Deed may be pleaded in bar to any such claim.*

286. The reference in the extract of the release set out in paragraph 285 to “Controls” is a reference to the controls exercised by previous State Governments under the Protection Acts over the wages and savings of Aboriginal and Torres Strait Islander peoples.

**Particulars**

- A. Ministerial Statement (Parliament), Honourable P.D. Beattie, 16 May 2002, Hansard, p. 1714.

287. The Deed of Agreement required each claimant to acknowledge and agree that he or she had received, prior to execution of the Deed, independent legal advice (**independent legal advice**).

288. The Respondent sought by means of a tender document expressions of interest and an estimate of costs from legal practitioners who were prepared to provide independent legal advice to eligible claimants

**Particulars**

- A. Offer No. IWSRP03/01 – Standing Offer Arrangement for a Panel of Legal Practitioners in Relation to the Indigenous Wages and Savings Preparations Process for Department of Aboriginal and Torres Strait Islander Policy (**tender document**).

289. By the tender document independent legal advice was required to be provided to eligible claimants by personal interview and/or telephone and/or letter of advice.

**Particulars**

A. Tender document clause 3.2.3.

290. As a matter of practice, independent legal advice was given to eligible claimants in a group setting or meeting together with pro forma written advice which was provided to eligible claimants at either the meeting or later by post.

**Particulars**

A. A copy of the pro forma legal advice is found in Schedule 1 to the Report on Consultations with Aboriginal Peoples and Torres Strait Islanders of Queensland regarding the Queensland Government Offer of Reparations, prepared by the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat Limited dated 13 June to 9 August 2002 under the headings “Advice to Claimants if offer is Rejected” and “Advice to Claimant if the offer is Accepted”.

291. The independent legal advice was limited to ensure that eligible claimants:

- (a) understood their “currents rights”;
- (b) understood the contents and effect of the claim form and the Offer and Deed of Agreement;
- (c) were fully informed as to the matters referred to in sub-paragraphs (a) and (b) above, having regard to all the relevant circumstances including cultural and language requirement of the claimants
- (d) completed and executed the Deed of Agreement correctly.

**Particulars**

A. Tender document clause 3.2.4

292. The tender document did not require, and the independent legal advice given to eligible claimants did not include, information on:

- (a) the amount of money paid to the superintendent or protector by an employer as wages earned by an eligible claimant;
- (b) the amount of money that had been paid into the accounts or any other account in which an aborigine's or islander's wages were advanced, on behalf of each eligible claimant;
- (c) the Respondent's duty to keep records with regard to the accounts and payments made into and out of those accounts;
- (d) the way in which the money in the accounts or any other account in which an aborigine's or islander's wages were advanced had been used;
- (e) the amount of interest or other accretions that had been earned by the money held into the accounts or any other account in which an aborigine's or islander's wages were advanced;
- (f) whether the Respondent was a trustee with regard to the money paid into the accounts or any other account in which an aborigine's or islander's wages were advanced;
- (g) whether the Respondent's conduct amounted to a breach of trust with regard to the way in which the accounts or any other account in which an aborigine's or islander's wages were advanced were operated;
- (h) whether the Respondent owed fiduciary or other duties to eligible claimants with regard to how the accounts or any other account in which an aborigine's or islander's wages were advanced were operated;
- (i) whether the Respondent had breached any duty it owed to eligible claimants and the effect of such breach;
- (j) the quantum of any claim that an eligible claimant might have against the Respondent.

293. The Respondent knew from the requirements of the tender document set out above that the independent legal advice provided to eligible claimants would not include legal advice with regard to any of the matters set out in paragraph 292 above.

#### **Particulars**

A. The Respondent knew that the independent legal advice would not include any of the matters set out in paragraph 292 of this pleading because the tender document did not require solicitors or lawyers to address those matters in providing advice to eligible claimants, nor was information relating to those matters provided by the Respondent to the persons engaged by the Respondent to provide the legal advice.

294. Further, the lawyers who were to provide independent legal advice to eligible claimants were not given any documents or other information by the Respondent to enable them to determine:

- (a) the amount each eligible claimant had paid into the accounts; and/or
- (b) the amount held in the accounts for each eligible claimant;
- (c) the way in which the accounts or the other accounts into which the wages were paid were operated.

294A. In the premises of the matters pleaded in paragraphs 292 to 294 herein, the Respondent was aware, or ought to have been aware, that eligible claimants would not be provided with even the limited legal advice referred to in paragraphs 291(a) – (c) herein.

295. The reparation scheme closed on 31 January 2006. 8761 claims were received. 5413 claims were deemed to be eligible. \$19.11 million was paid out by the Respondent to eligible claimants.

296. In August 2008 the reparations scheme was reopened by the Respondent. Payouts were increased to \$7000 for Group A eligible claimants and \$3500 for Group B

eligible claimants. Save for an increase in the amount to be paid out, the eligibility criteria for receiving a payment under the reparation scheme remained the same.

297. The August 2008 increases to the reparation scheme closed on 30 June 2010. 5779 claimants were found eligible and \$35.5 million (which included earlier payments) was paid out by the Respondent to eligible claimants.
298. In about December 2015 the reparation scheme was again reopened permitting eligible claimants to a top up payment by a further \$2,200 (if born before 1952) or \$1,100 (if born between 1 January 1952 and 31 December 1956). This increased the total payment to eligible claimants to \$9,200 for a Group A claimant and \$4,600 (if the claimant was born between 1 January 1952 and 31 December 1959). Collectively the three rounds of reparation pleaded above are referred to herein as “the **reparation scheme.**”
299. In making a further payment under the reparation scheme in August 2008 (which is referred to in paragraph 296 herein) and in December 2015 (which is referred to in paragraph 298 herein) the Respondent did not require an eligible claimant to sign a release in order to receive the additional payments.

## **V. Reparation scheme – the Applicant**

300. In 2002 the Applicant and his wife attended a meeting at the Aitkenvale Aboriginal Reserve with regard to the reparation scheme (the **meeting**).
301. About 30 or 40 people attended the meeting.
302. At least one government officer and a number of out-of-town aboriginal leaders from Brisbane and Cherbourg attended the meeting in addition to local aborigines.
303. The Applicant cannot recall:
- (a) whether any lawyers were present at the meeting;
  - (b) which aboriginal leaders attended the meeting;

(c) who spoke at the meeting or in what capacity that person spoke.

304. At the meeting the Applicant was told that the reparation offer was available as a “one off” and that if he signed the relevant document he would be given some money, but if he did not sign the document he would not be given any money.

### **Particulars**

A. The “relevant document” is a reference to the Deed of Agreement.

305. The Applicant met with a solicitor appointed by the Respondent on or about 6 October 2003.

306. The Applicant was not given any personal legal advice at the meeting, save for that which formed part of the meeting’s general discourse, nor at the meeting with the solicitor referred to in the preceding paragraph.

307. [blank]

308. [blank]

309. The Applicant signed the Deed of Agreement at the solicitor’s office and at the end of the meeting referred to in paragraph 305 in the absence of being informed by any person as to the true amount owing to him by the State.

310. Subsequently, the Applicant received the sum of \$4,000 as payment under the reparation scheme as he was classified as being a Group A eligible claimant.

311. Subsequently the Applicant sought to receive an additional payment under the reparation scheme once it was reopened in August 2008.

312. The Applicant received an additional payment of \$3,000 under the reparation scheme as it was reopened in August 2008, making the total payment that he had received \$7,000.

313. In about early 2016 the Applicant sought and received an additional top-up payment of \$2,200 under the reparation scheme after it was reopened in December 2015. This top up payment (and the \$3,000 received which is referred to in paragraph 312 herein) was made by the Respondent:

- (a) notwithstanding the Applicant having executed the release in 2002; and
- (b) without any further request or requirement for the Applicant to sign any further release or discharge.

314. Prior to signing the Deed of Agreement the Applicant was not told or otherwise informed about:

- (a) the amount of money that had been paid to the Hopevale or Palm Island superintendents by the Applicant's employers as wages earned by him;
- (b) the amount of money that had paid into the ~~savings~~ accounts or any other account on the Applicant's behalf;
- (c) the Respondent's duty to keep records with regard to the ~~savings~~ accounts or any other accounts into which his wages were paid, and payments made into and out of those accounts and the reason for such payments;
- (d) the way in which the money in the ~~savings~~ accounts had been used;
- (e) the amount of interest or other accretions that had been earned on the money held in the ~~savings~~ accounts;
- (f) whether the Respondent was a trustee with regard to the money paid into the accounts and correspondingly whether the Applicant was a beneficiary in respect of those monies;
- (g) whether the Respondent's conduct was in breach of trust with regard to the way in which the accounts were operated;

- (h) whether the Respondent owed a fiduciary or other duties to him with regard how the accounts were operated;
  - (i) whether the Respondent had breached any duty it owed to him and the effect of such breach or breaches;
  - (j) the quantum of any legal claim he might have against the Respondent.
315. The Applicant accepts that the Deed of Agreement signed by him included a release in the terms set out in paragraph 285 herein.
316. In addition, at the meeting the Applicant was given a document called “Advice to Claimants” (the **Advice**).
317. The Advice was prepared by QAILLS which had been engaged by the Respondent to conduct the consultation process in relation to the reparation scheme.
318. In the Advice, the Applicant was informed that, if he was to say “no” to the government’s offer:
- (a) any court case could take many years and the government had the money to oppose the case and to delay it;
  - (b) “remember the Mabo case took 12 years to resolve”;
  - (c) although he was entitled to take the government to court, funding a court case would depend on ATSIC being given a special grant and that would depend upon legal advice as to whether the case was ‘winnable’;
  - (d) if the court case was lost the cost of the case may be awarded against the person bringing the case to court.
319. Further, in the Advice the Applicant was informed that if the offer was accepted then he would be requested to sign a form stating that he would give up any future rights

to sue the government about anything to do with being “under the Acts” (which was a reference to the 1939 Act and 1965 Act).

320. At the time the Applicant attended the meeting, received the Advice, attended the meeting at the solicitor’s office referred to in paragraph 305 herein and subsequently signed the Deed of Agreement:

- (a) he was 63 years old;
- (b) his financial circumstances were poor;

**Particulars**

- A. The Applicant had no assets of any significant value.
  - B. The Applicant lived from pension payment to pension payment.
  - C. The Applicant lived in a Housing Commission house.
  - D. After deduction of expenses, the Applicant had little left with which to live on.
- (c) he had limited education having been educated to grade 3 and had not attended secondary school-;
  - (d) the relationship between the Applicant and the Respondent was, by virtue of the matters pleaded herein (and in particular having regard to the matters pleaded in paragraphs 252(m), 258(h), 280(a) and 292 to 294) one that was unequal or of special or particular disadvantage to the Applicant;
  - (e) by virtue of the matters pleaded in paragraphs 252(m), 258(h), 280(a) and 294A, the Respondent had knowledge of, or ought in the circumstances to have had knowledge of, the matter pleaded in sub-paragraph (d) above.

**W. Effect of the release.**

321. The actions of the Respondent:

- (a) in purporting to provide the Applicant with independent legal advice that was less than full legal advice; and/or

### **Particulars**

The independent legal advice was less than full legal advice because:

- (i) the advice took no account of the Applicant's age, background (including lack of education) or financial circumstances;
- (ii) the advice took no account of the fact that the respective positions of the Applicant and the Respondent were unequal;
- (iii) the advice took no account of the fact that the Respondent held records and documents relating to the payment of the Applicant's wages to the Respondent, its servants and agents, and the Applicant had not seen those documents, nor had the Respondent offered to provide them;
- (iv) the advice took no account of the true amount that was owing to the Applicant;
- (v) the advice took no account of the fact that the solicitor providing the independent advice did not have information to hand indicating the true amount that was owing to the Applicant:
- (vi) the advice took no account of the circumstances in which the solicitor had been engaged by the Respondent to provide the independent advice;
- (vii) the advice took no account of the fact that the Applicant would be accepting a sum of money manifestly less than that to which he was actually entitled;
- (viii) the advice took no account of the fact that the financial outcome to the Applicant of signing the Deed of Agreement would be manifestly improvident to the Applicant;
- (ix) the advice did not incorporate any advice to the Applicant to not sign, or to consider not signing, the Deed of Agreement;
- (x) having regard to the matters set out above, the advice failed to explain or to fully explain to the Applicant the true implications to him of signing the Deed of Agreement.

- (b) in tendering for the provision of legal advice in circumstances where it did not provide full information to lawyers to enable independent legal advice to be given; and/or

**Particulars**

- A. Particulars as to what information was given to lawyers is within the knowledge of the Respondent and the Applicant cannot provide particulars until discovery has taken place, save to say that the information provided to lawyers did not include the true amount owing to the Applicant by the Respondent.

- (c) in requiring the release to be signed when independent legal advice had not been provided;

**Particulars**

- A. The Applicant repeats and relies on the particulars given to paragraph 321(a) of this pleading and cannot give further particulars until discovery has taken place.

constituted unconscionable conduct.

**Particulars**

- A. The Applicant repeats and relies on the facts pleaded in paragraphs 285, 287 to 295, and 314 to 320 herein.

321A. Further or in the alternative, in the premises of the matters pleaded in paragraphs 309 and 320 herein, the actions of the Respondent in requiring the Applicant to execute the Deed of Agreement as a pre-condition to receiving payment under the reparation scheme constituted unconscionable conduct.

322. In the premises the Respondent is estopped from relying on the release as a bar to any claim brought by the Applicant against the Respondent.

**X. Group Members**

323. The Respondent through its servants or agents breached its duties to the Group Members identified at paragraph 256 as a trustee.

**Particulars**

The breaches of trust referred to in paragraph 323 include:

- A. any deductions or withholdings in respect of Welfare Fund Deductions in respect of any Group Member's wages;
- B. Investment Deductions in respect of any Group Member who at the relevant time had a proportionate interest in the funds held in the accounts; and
- C. the matters identified in paragraph 271B,

Further particulars in relation to breaches of trust as between the respondent and Group Members will be provided following the initial trial of the Applicant's claims.

324. The Respondent through its servants or agents the Director and/or the superintendents of Hopevale and Palm Island breached its duties to the Group Members identified at paragraph 257 as a fiduciary.

**Particulars**

The breaches of fiduciary duty referred to in paragraph 324 include:

- A. any deductions or withholdings in respect of Welfare Fund Deductions in respect of any Group Member's wages;
- B. Investment Deductions in respect of any Group Member who at the relevant time had a proportionate interest in the funds held in the accounts; and
- C. the matters identified in paragraph 271B,

Further particulars in relation to breaches of trust as between the respondent and Group Members will be provided following the initial trial of the Applicant's claims.

325. By the breaches of trust and fiduciary duty identified at paragraphs 323 and 324, the Respondent has caused the Group Members to suffer loss and damage.

### **Particulars**

Further particulars in relation to the loss and damage suffered Group Members will be provided following the service of opinion evidence in chief and the initial trial of the Applicant's claims.

326. In the premises of paragraphs 249A to 261K, 323 and 324, to the extent the Respondent retained the benefit of the use of the proceeds of any breach of trust or fiduciary duty causing loss to Group Members (or any of them) as pleaded at paragraph 325:
- (a) it was unjustly enriched because it had the benefit of trust monies or profits obtained in breach of fiduciary duty for its own purposes; and/or
  - (b) it holds its interest in such benefit subject to a constructive trust in favour of the Group Member or Group Members.

327. [blank]

328. [blank]

329. [blank]

330. [blank]

331. [blank]

### **Y. Complaint under the Australian Human Rights Commission Act 1986**

332. On or about 9 March 2016 the Applicant lodged a complaint with the Australian Human Rights Commission (the **Commission**) on behalf of himself and one or more

other persons pursuant to s.46P(2)(a)(ii) of the *Australian Human Right Commission Act 1986* (Cth) (**AHRC Act**) alleging unlawful discrimination (the **complaint**).

333. The complaint was a representative complaint under s.46PB of the AHRC Act as it:

- (a) was made against the same person;
- (b) arose out of the same, similar or related circumstances, namely the payment of wages earned by aborigines directly to a protector or superintendent and the failure of the Respondent to account and/or repay such money or to give full or proper legal advice to aborigines regarding acceptance of a payment under the reparation scheme; and
- (c) gave rise to a substantial common issue of law or fact namely whether the acts of the Respondent amounted to unlawful discrimination in breach of the *Racial Discrimination Act 1975* (Cth) (**RDA**).

#### **Particulars**

A. The acts of the Respondent are as pleaded in paragraph 333(b) of this pleading.

334. The complaint:

- (a) described the class members as being persons who:
  - (i) were employed in Queensland and were entitled to be paid for that employment;
  - (ii) had some or all of their wages taken or retained by, or otherwise paid to, the Respondent or its servants or agents pursuant to legislation in force in Queensland at the time;

- (iii) (where relevant) had deductions made from their wages for the purpose of contributions to the Welfare Fund or other funds established or controlled by the respondent or its agents;
  - (iv) have not been paid the balance of their wages or had returned to them their Welfare Fund or other fund contributions (such contributions being paid out of their wages) by the Respondent;
- (b) specified the nature of the complaint made on behalf of the class members as being:
- (i) class members were entitled to be paid wages in Queensland for work done by them;
  - (ii) some or all of the wages of class members were retained by or otherwise paid to the Respondent or its agents pursuant to a statutory regime formerly in place in Queensland, including under the 1939 Act and regulations and the 1965 Act and regulations;
  - (iii) in addition, mandatory contributions may have been made to the Welfare Fund or other funds established or controlled by the Respondent or its agent by way of deductions from class members' wages;
  - (iv) class members have not been paid their wages, or all of their wages that were retained by or otherwise paid to the Respondent;
  - (v) class members have not had returned to them their mandatory welfare or other fund contributions that were deducted from their wages by the Respondent;
  - (vi) white people were not subject to the same deductions from their wages as class members were subjected to;

- (vii) the failure to pay to class members the amounts described above constituted, at least since the commencement of the RDA, discrimination based on race;
  - (viii) any Deed of Agreement that class members may have signed in favour of the Respondent and which concerned their unpaid wages or other entitlements owing to them in connections with work undertaken in Queensland was ineffective;
- (c) sought the repayment of money owing to them by the Respondent and interest thereon.

335. The class members the subject of the complaint included all Group Members and persons who had satisfied all of the requirements for being a Group Member set out in paragraphs 2 and 3 herein, save for the conditions set out in sub-paragraph 2(l) and save for the fact that money may have been retained under legislation which preceded the 1939 Act and regulations.

336. The complaint was terminated by the President under s.46P of the AHRC Act by notice dated 31 August 2016.

337. The President gave the Respondent notice of the termination on or about 31 August 2016.

***Unlawful racial discrimination***

338. [blank]

338A. Due to the race of the Applicant and eligible Group Members the Respondent engaged in the following conduct (the **conduct**) which was in breach of ss. 9 and 10 of the *Racial Discrimination Act 1975* (Cth) (**RDA**) as it:

- (a) did not provide the Applicant with legal advice of a nature which would have permitted him to make an informed decision on whether to sign the Deed of

Agreement as the Applicant was not informed by the solicitor in the meeting referred to in paragraph 305 herein about:

- (i) the amount of money that had been paid to the Hopevale or Palm Island superintendents by the Applicant's employers as wages earned by him;
  - (ii) the amount of money that had been paid, or ought to have been paid, into the accounts or any other account on the Applicant's behalf;
  - (iii) the Respondent's duty to keep records with regard to the accounts or any other accounts into which his wages were paid, and payments made into and out of those accounts and the reason for such payments;
  - (iv) the way in which the money in the accounts had been used;
  - (v) the amount of interest or other accretions that had been earned on the money held in the accounts;
  - (vi) whether the Respondent was a trustee with regard to the money paid into the accounts and correspondingly whether the Applicant was a beneficiary in respect of those monies;
  - (vii) whether the Respondent's conduct was in breach of trust with regard to the way in which the accounts were operated;
  - (viii) whether the Respondent owed a fiduciary or other duties to him with regard to how the accounts were operated;
  - (ix) whether the Respondent had breached any duty it owed to him and the effect of such breach or breaches;
  - (x) the quantum of any legal claim he might have against the Respondent.
- (b) did not provide eligible Group Members with legal advice of a nature which would have permitted them to make an informed decision of whether to sign a Deed of Agreement as they were not informed of the same type of matters as those set out in sub-paragraph (a) above
- (c) mandated that the type of legal advice that would be given to the Applicant and eligible Group Members was "pro forma" in nature and did not include all matters that were relevant to the determination of the Applicant and eligible Group Members;
- (d) did not provide the Applicant and eligible Group Members with any documents or other information from which a proper determination could be

- made of the level of money held by the Respondent, or a proper assessment of their legal rights or remedies they may have against the Respondent;
- (e) failed to ensure that at the Aitkenvale meeting (referred to in paragraph 300) any proper legal advice was provided to the Applicant or the eligible Group Members who attended that meeting;
  - (f) failed to ensure that at the meeting with the solicitor referred to in paragraph 305 herein the Applicant received information about the matters referred to in paragraph 314 herein in circumstances where such information was necessary in order for him to make an informed decision on whether to signed the Deed of Agreement;
  - (g) failed to ensure that the Applicant and eligible Group Members received full independent legal advice for the reasons set out in paragraph 321(a) herein;
  - (h) failed to provide information to the legal representatives which it employed to provide independent legal advice to the Applicant and eligible Group Members to enable them to properly and adequately undertake this task;
  - (i) required the release to be signed when independent legal advice had not been provided.

### **Particulars**

- A. The Applicant repeats and relies on the facts pleaded in paragraphs 288 to 294A and 300 to 320 herein.
- 338B. The conduct of the Respondent had the effect of nullifying or impairing the recognition, enjoyment or exercise of the Applicant's and eligible Group Members' rights and freedoms on an equal footing as the conduct:
- (a) amounted to a policy which was in breach of Articles 2(c) of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*;
  - (b) nullified, impaired or restricted the Applicant's and eligible Group Members' right to seek equal treatment before tribunals and all other organs administering justice in breach of Articles 5(a) and 6 of the ICERD;
  - (c) nullified, impaired or restricted the Applicant's and eligible Group Members' right to a fair, impartial, independent and effective service in breach of Articles 5(c) and 5(f) of the ICERD;

- (d) nullified, impaired or restricted the Applicant's and eligible Group Members' right to pursue remedies for their pay and remuneration in breach of Article 5(e) of the ICERD;
- (e) nullified, impaired or restricted the Applicant's and eligible Group Members' right to remedies for the violation of their economic, social and cultural development in breach of Article 1(1) of the *International Convention on Civil and Political Rights (ICCPR)*;
- (f) nullified, impaired or restricted the Applicant's and eligible Group Members' right to seek effective remedies for the violation of their rights in breach of Article 2(3) of the ICCPR;
- (g) nullified, impaired or restricted the Applicant's and eligible Group Members' civil and political rights in breach of Article 3 of the ICCPR;
- (h) nullified, impaired or restricted the Applicant's and eligible Group Members' rights to equal protection of the law in breach of Article 26 of the ICCPR.

338C. The Applicant and eligible Group Members suffered hurt, humiliation and insult as a result of the conduct.

338D. At the time of the meeting and when the Deed of Agreement was signed the Respondent knew or ought to have known that:

- (a) the Applicant had minimal formal education and limited financial means;
- (b) there were generally low levels of formal education and high levels of financial disadvantage suffered by the Applicant and eligible Group Members which made them more reliant of advice being provided to them by the Respondent;
- (c) the effect of the Applicant's and eligible Group Members' low levels of education and high levels of financial disadvantage meant that they were unlikely to be able to seek independent legal advice;
- (d) the effect of the Applicant's and eligible Group Members' low levels of education and high levels of financial disadvantage meant that they were more likely to accept a payment under the reparations scheme.

### **Particulars**

A. The Applicant repeats and relies on the facts pleaded in paragraph 320 herein.

338E. The Applicant and eligible Group Members seek:

- (a) damages pursuant to s. 46PO of the AHRC Act on the basis that the conduct of the respondent infringed the rights of the Applicant and eligible Group Members and they are entitled to be vindicated for that infringement;
- (b) aggravated damages for the reasons set out in paragraph 338D above;

**Z. Relief sought**

*Account on the basis of wilful default*

339A. As a trustee and/or as a fiduciary, the Respondent is in an accounting relationship with both the Applicant and Group Members and as such is liable to be the subject of an order for an account being made against it.

339B. The Applicant seeks on his own behalf and on behalf of the Group Members an order that an account on the basis of wilful default be taken of the accounts from 12 October 1939 on the basis of the existence of the Respondent's wilful defaults pleaded at paragraphs 271A and 271B.

339C. If an account on the basis of wilful default is taken pursuant to paragraph 339B, the Respondent as trustee is to be charged with and accountable to the trust for such monies as:

- (a) it received or wrongfully disbursed from the trust by the breaches of trust pleaded at paragraph 265 or as otherwise revealed in the taking of the account; and, or alternatively
- (b) it ought to have received as trustee but for the wilful defaults pleaded at paragraphs 271A and 271B or as otherwise revealed in the taking of the account.

*Common account*

339D. In the alternative to the account on the basis of wilful default pleaded at paragraphs 339B and 339C, the Applicant seeks on his own behalf and on behalf of the Group

Members an order that an account in common form be taken of the accounts from 12 October 1939 on the basis of:

- (a) the Respondent's breaches of trust pleaded at paragraph 265;
- (b) the wilful defaults pleaded at paragraphs 271A and 271B,

and in aid of any of the other relief pleaded at sub-paragraphs 339(a), (b), (d), (i), (ia) (ib), (ic) below.

339E. If a common account is taken pursuant to paragraph 339D, the Respondent as trustee is to be charged with and accountable to the trust for such monies as it received or wrongfully disbursed from the trust by the breaches of trust pleaded at paragraph 265 or as otherwise revealed in the taking of the account.

*Other relief*

339. Further, or in the alternative to paragraphs 339A to 339E, the Applicant claims the following relief on his own behalf and on behalf of the Group Members:

- (a) a declaration that the Respondent is a trustee of the money held in trust on behalf of the Applicant and Group Members from time to time as pleaded at paragraph 250;
- (b) a declaration that the Respondent breached the trust as a result of the matters pleaded at paragraphs 265, 271A or 271B;
- (ba) a declaration that any or all of ss. 6, 9(1), 10, 12(1) and 28 of the 1945 regulations were invalid or otherwise made without statutory authority, as pleaded at paragraphs 261, 261A, 261B, 261C, 261D, 261E, 261F or 261K;
- (c) further or in the alternative, a declaration that the Respondent was in a fiduciary relationship with the Applicant and Group Members and as a fiduciary owed the Applicant and Group Members the duties identified at paragraph 257;

- (d) a declaration that the Respondent was in breach of the fiduciary duty owed to the Applicant as a result of the matters pleaded at paragraphs 270, 270A or 271A;
- (e) \$120,410 being the reasonable present-day value of compulsory labour undertaken by the Applicant at the direction of the protector or superintendent at Hopevale and Palm Island pursuant to s. 28 of the 1945 Regulations;
- (f) reasonable (present-day value) remuneration on a quantum meruit basis for compulsory labour undertaken by aboriginal Claimants at the direction of the protector or superintendent of a reserve, settlement or mission reserve pursuant to s. 28 of the 1945 Regulations.
- (g) [blank]
- (h) [blank]
- (i) an order that the respondent make by way of equitable compensation ~~restitution of the trust estates of~~ to the Applicant and each Group Member on account of those breaches of trust and/or fiduciary duties pleaded at paragraphs 265, 270, 270A, 271A or 271B;
- (ia) in the alternative to paragraph 339(i), following an account pursuant to paragraph 339B or 339D, an order that the Respondent account to the trust and/or accounts in the amount charged pursuant to paragraph 339C or 339E;
- (ib) an order pursuant to ss 33Z(1)(f) and/or 33ZF of the FCA awarding damages in an aggregate amount in order to give effect to the equitable compensation claimed at paragraph 339(i) in relation to those breaches of trust and/or fiduciary duties pleaded at paragraphs 265, 270, 270A, 271A or 271B that are capable of reasonably accurate assessment;

## **Particulars**

- A. The breaches of trust and/or fiduciary duties pleaded at paragraphs 265, 270, 270A, 271A or 271B are capable of reasonably accurate assessment because of the Respondent's obligation to keep records under ss. 10 and 12(1) of the 1945 Regulations and as pleaded at paragraphs 57 and 256(a).
  - B. The Applicant will provide further particulars in relation to the quantum of those breaches of trust which are capable of reasonably accurate assessment following service of expert evidence.
- (ic) in the alternative to paragraph 339(ib), an order pursuant to ss 33Z(1)(f) and/or 33ZF of the FCA awarding damages in an aggregate amount in order to give effect to the relief claimed at paragraph 339(ia) in relation to those defaults identified by account that are capable of reasonably accurate assessment;

#### **Particulars**

- A. The quantum of the relief claimed at paragraph 339C or 339E which is capable of reasonably accurate assessment will be established by an account pursuant to paragraph 339B or 339D.
- (id) an order pursuant to ss 33Z(1)(f), 33Z(2) and/or 33ZF of the FCA for the distribution of any aggregate award of damage pursuant to paragraphs 339(ia) or 339(ic):
- (i) first to the Claimants in accordance with their individual entitlement to claim as determined by the fund administrators; and
  - (ii) second, with respect to any undistributed residue, not to the Respondent but in a manner analogously to a *cy-près* scheme as determined by Court or the fund administrators.
- (j) further, a declaration pursuant to s.46PO(4) of the *Australian Human Rights Commission Act 1986* (Cth) that there has been unlawful discrimination by the Respondent against the Applicant;

(k) [blank]

(l) damages by way of compensation for loss or injury suffered by the Applicant and Group Members pursuant to s. 46PO(4)(d) of the AHRC Act.

**Particulars**

A. The basis of compensation being sought for loss or injury is unlawful racial discrimination by the Respondent as is pleaded in paragraph 338A-338E of this pleading.

(la) aggravated damages for breaches of ss. 9 and 10 of the RDA;

(lb) a declaration that the Respondent holds its interest in the benefit of any breach of trust or fiduciary duty subject to a constructive trust in favour of the Applicant and Group Members as pleaded at paragraphs 278A and 326;

(lc) an order for restitution by the Respondent as a consequence of its unjust enrichment pleaded at paragraphs 278A and 326;

(m) exemplary damages;

**Particulars**

A. The Applicant seeks exemplary damages for contumelious disregard of the Applicant's rights arising from:

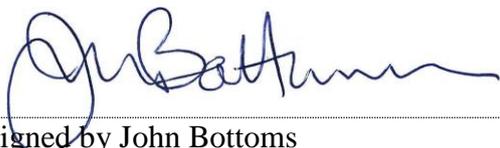
(i) the matters pleaded in paragraphs 265 to 275~~2~~ of this pleading;

(ia) the matters pleaded in paragraphs 77 to 79, 163 to 166 and 261G to 261K of this pleading;

(ib) the matters pleaded in paragraphs 278A and 326 of this pleading;

- (ic) the matters pleaded in paragraphs 261 to 261D of this pleading;
  - (id) the matters pleaded in paragraphs 261E to 261F of this pleading;
  - (ii) the matter pleaded in paragraph 278 of this pleading;
  - (iii) the matter pleaded in paragraphs 321 and 322 of this pleading;
  - (iv) the matters pleaded in paragraphs 338A to 338E of this pleading.
- 
- (n) interest calculated on a compound basis;
  - (o) costs;
  - (p) such further or other orders as the court may think appropriate.

Date: 27 May 2019



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Signed by John Bottoms  
Lawyer for the Applicant

This third amended pleading was prepared by Douglas Campbell QC and Antony Newman of Counsel.

### Certificate of lawyer

I, John Bottoms certify to the Court that, in relation to the third amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 27 May 2019

A handwritten signature in blue ink, appearing to read 'J Bottoms', written over a horizontal dotted line.

Signed by John Bottoms  
Lawyer for the Applicant