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Details of Filing

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A handwritten signature in blue ink, reading "Warwick Soden".

Registrar

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THIRD AMENDED STATEMENT OF CLAIM

(Amended on 12 July 2018 pursuant to the order of Murphy J dated 9 July 2018)

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 Part IVA of the *Federal Court of Australia Act 1976* (**FCA**).
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 Aborigines Preservation and Protection Act of 1939* (Qld) (as amended) (**1939 Act**); ~~and/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] 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**);~~
- (d) during all or part of the Claim Period was subject to the 1939 Act and/or *The Aborigines 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 ~~in paid employment~~ during all or part of the Claim Period, such employment being ~~arranged or entered into pursuant to~~ 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 ~~paid~~ employment during the Claim Period, ~~had~~ the whole or part of his or her wages was directed to be taken, retained or otherwise 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);
- (j) has not been given the money or the whole of the money ~~taken, retained by or 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;
- (k) by reason of the matters pleaded herein is entitled to equitable relief and/or the payment of compensation.

(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 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;
 - (iii) 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 ~~taken, retained by, or otherwise 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 Welfare Fund (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;
 - (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 ~~taken, retained by~~ or 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.

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 ~~eh~~ 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) ~~made pursuant to s.12 of the 1939 Act;~~

(b) proclaimed on 23 April 1945 and were in force until 28 April 1966.

24. The Islander regulations were:

(a) ~~made pursuant to s.6 of the Islander Act;~~

(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) ~~a permit to employ an aborigine~~ 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(~~5~~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 ~~contributions from the earnings of aborigines~~ 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 ~~compulsory payment from gross wages to the Welfare Fund~~ 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 wages~~, 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. ~~[blank] All contributions payable to the Welfare Fund from earnings of aborigines were deducted from the wages of employed aborigines by the protector or superintendent either before money was deposited into any bank account or bank accounts or from money held in a bank account or bank accounts on behalf of an employed aborigine.~~

Particulars

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

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

<u>Place of employment</u>	<u>Employer (where known)</u>	<u>Approximate year (and duration) of employment</u>
<u>Starcke Station</u>	<u>Starcke Station</u>	<u>1954 (7 or 8 months)</u>
<u>Droving</u>	<u>Len Elmes (head drover)</u>	<u>1955 (9 or 10 weeks)</u>
<u>Starcke Station</u>	<u>Starcke Station</u>	<u>1955 (2 or 3 months)</u>
<u>Laura Station</u>	<u>Mossman Butchering Company</u>	<u>1956 or 1957 (in any event prior to March 1958, about 2 or 3 months)</u>
<u>Lakefield Station</u>	<u>Mossman Butchering Company</u>	<u>1956 or 1957 (following straight on from Laura Station) (about 6 or 7 months)</u>
<u>Kings Plains Station</u>	<u>Kings Plains Station</u>	<u>Unknown (about 3 or 4 weeks)</u>
<u>Starcke Station</u>	<u>Starcke Station</u>	<u>1957 or 1958 (about 3 or 4 months)</u>
<u>Laura Station and Lakefield Station</u>	<u>Mossman Butchering Company</u>	<u>Unknown (2 or 3 months in total)</u>
<u>Droving</u>	<u>Phil Parsons (head drover)</u>	<u>Unknown but this occurred on 2 or 3 occasions and lasted for about 5 or 6 weeks on each occasion)</u>
<u>Droving</u>	<u>Bill Wallace (head drover)</u>	<u>Unknown but this occurred on 2 or 3 occasion and lasted between 4.5 and 6 weeks on each occasion)</u>
<u>Dunraven Station</u>	<u>Vince Rose (owner)</u>	<u>1960 (5 or 6 weeks)</u>
<u>Rokeby Station</u>	<u>Lloyd House (owner)</u>	<u>About 1961 (about 6 months)</u>
<u>Kalinga Station</u>	<u>Bowie Gostelow (owner or manager)</u>	<u>1962 (about 6 or 7 months)</u>

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.

Starke Station (1)

69. ~~In or about February 1954 at the age of 14 years the Applicant commenced work on Stareke Station in Far North Queensland as a stockman.~~

Particulars

- A. ~~Starke Station was located about 80 kilometres north of Cooktown on the Southern Cape York Peninsula;~~
- B. ~~By the *Starke Pastoral Holdings Acquisition Act 1994* (Qld), Stareke Station was acquired by the State of Queensland and its land holdings became unallocated~~

70. — ~~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;~~

(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's sale yards;~~

(d) — ~~working until dusk;~~

(e) — ~~being in the saddle for 10 to 12 hours per day.~~

71. — ~~At the time the Applicant commenced work on Stareke Station it was owned by Mr Charlie King and managed by Mr Tom Foster.~~

72. — ~~The Applicant's employment at Stareke Station was arranged by the then superintendent at Hopevale, Pastor Victor Wenke (Pastor Wenke and subsequent holders of the office of superintendent at Hopevale are hereafter referred to in this pleading as the **Hopevale superintendent**).~~

Particulars

A. — ~~In or about February 1954 the Hopevale superintendent approached the Applicant and told him that he had arranged for him to work at Stareke Station as a stockman. The Applicant cannot recall the place or when this conversation took place save that it was prior to him signing the first Stareke employment agreement and commencing to work at Stareke Station.~~

73. ~~The Applicant's employment at Starcke Station was sanctioned by the Director as he was under the age of 16 years at the time he commenced work.~~

Particulars

- A. ~~The agreement of the Director to the Applicant's employment is inferred from s. 57(3) of the 1945 regulations and the fact that the Applicant was only 14 at the time he first commenced work at Starcke Station with the knowledge and permission of the Hopevale superintendent.~~
74. ~~Prior to commencing work on Starcke Station the Applicant signed one or more documents called a "Memorandum of Agreement" which set out the terms and conditions of his employment (first Starcke employment agreement).~~

Particulars

- A. ~~The Applicant signed the first Starcke employment agreement a day or two before he left to commence his duties at Starcke Station.~~
75. ~~When the Applicant signed the first Starcke employment agreement:~~
- ~~(a) — he was living at Hopevale;~~
 - ~~(b) — his employment at Starcke Station had been arranged by the Hopevale superintendent;~~
 - ~~(c) — he was told by the Hopevale superintendent that:~~
 - ~~(i) — it was necessary for him to sign the first Starcke employment agreement in order to work at Starcke Station;~~
 - ~~(ii) — his wages would be paid into a bank account and held for him by the Director;~~
 - ~~(iii) — [blank];~~

- (iv) — the form of the agreement was set by the government;
- (v) — taking work at Stareke Station was a good opportunity for him;
- (vi) — his employment at Stareke Station would last for 6 about months after which he would return to Hopevale.

Particulars

A. — The Applicant cannot recall the place or time when he was told the matters referred to above by the Hopevale superintendent save that the conversation took place at or about the time the first Stareke employment agreement was signed by him.

76. — The first Starke employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:

- (a) — the employer was Stareke Station or a person or entity associated with Stareke Station;
- (b) — the employee was the Applicant;
- (c) — the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;
- (d) — the Applicant would be paid wages at the rate of £4 per week;
- (e) — the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;
- (f) — the employer would return the Applicant to his place of residence on termination of his employment and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses of the employee as required by the 1945 regulations;

- (g) — the period of employment was from about 19 February 1954 until about 30 March 1954, from about May 1954 to August 1954, and again from 1 October 1954 to 26 October 1954 (about 6 months in total);
- (h) — the occupation of the Applicant was stockman;
- (i) — with the exception of pocket money of 10 shillings per week, the whole of the Applicant's wages were to be paid to the Hopevale superintendent;
- (j) —

Particulars

- A. — The facts pleaded in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 77 below).
- B. — The facts pleaded in sub-paragraphs (g) and (i) are taken from a document referred to as a "Savings Bank Ledger Card" numbered 391937 provided by the State in response to a Right to Information request made on behalf of the Applicant.
- C. — The other facts pleaded above are within the Applicant's own knowledge and recollection.

77. — The form of the Stareke employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:

- (a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;
- (b) — the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;
- (c) — the fact that the agreement was prepared and given to the Applicant to sign by the Hopevale superintendent who had a duty under the 1939 Act and the

1945 regulations to ensure that the regime set out in the legislation was followed;

- (d) — the fact that the document given by the Hopevale superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink, which is consistent with the formula set out in Form 7 of the 1945 regulations;
- (e) — the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;

Particulars

A. — The Applicant relies on the facts pleaded in paragraph 81 herein.

- (f) — the information which the Applicant was told by the Hopevale superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the Hopevale superintendent was in accordance with the regime set out in the legislation.

78. — Further as a matter of practice:

- (a) — protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under a State industrial award.

Particulars

A. — The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which set the rate of pay of an aboriginal working in the pastoral industry at two-thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.

~~(b) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;~~

Particulars

~~A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

~~B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

~~79. — The first Starcke employment agreement was signed by the Applicant (who also affixed a copy of his right thumb print) and by the Hopevale superintendent.~~

Particulars

~~A. — The superintendent at Hopevale who signed the first Starcke employment agreement was Pastor Kernich.~~

~~80. — The Applicant does not recall who signed the first Starcke employment agreement on behalf of Starcke Station.~~

Particulars

~~A. — The owner and manager of Starcke Station was as pleaded at paragraph 71 of this pleading.~~

~~81. — At the time the first Starcke employment agreement was signed, the Hopevale superintendent:~~

~~(a) — explained the terms and conditions of the agreement to the Applicant including the amount of money that would be paid by his employer to the superintendent; and~~

~~(b) — signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

82. — ~~The Applicant was not given and does not have a copy of the first Stareke employment agreement.~~

83. — ~~The Applicant worked at Stareke Station for a period of about 6 months in total under the first Stareke employment agreement and returned to Hopevale in about November 1954.~~

Particulars

A. — ~~The Applicant worked from daylight to dark and worked on a continuous basis without taking any unpaid leave.~~

B. — ~~The Applicant repeats and relies upon paragraph 70 of this pleading.~~

84. — ~~Pursuant to the first Stareke employment agreement the Hopevale superintendent was paid the sum of approximately £96/19/10 for the work undertaken by the Applicant.~~

Particulars

A. — ~~The Applicant repeats and relies upon paragraphs 76(d), 76(g) and 76(i) of this pleading.~~

85. — ~~The Applicant received pocket money while working at Stareke Station of approximately £12/14/2.~~

86. — ~~Other than the any pocket money referred to in the preceding paragraph, the whole of the Applicant's wages earned at Stareke Station were paid by the Applicant's employer to the Hopevale superintendent.~~

Particulars

A. — ~~Part IV of the 1939 Act and Part III of the 1945 regulations governed the payment of aboriginal wages, including a direction given pursuant to s 14(6) that an employer pay the whole or any portion of the wages of an aboriginal to a protector or some other person on his behalf.~~

B. — ~~The Applicant does not know when and how payments were made by the Applicant's employer to the superintendent and says that this is information in the knowledge of, or otherwise available to the Respondent.~~

Laura Station

87. — ~~In or about early 1955 the Applicant commenced work on Laura Station in Far North Queensland as a stockman.~~

Particulars

A. — ~~Laura Station is located north of Laura in Far North Queensland.~~

B. — ~~To the best of the Applicant's recollection, the owner of Laura Station was a corporation with the name (or a name similar to) Mossman, Butcher & Company and the manager of Laura Station was George Illes (or Eleyes, but pronounced "Eyeless") (the Applicant cannot recall the precise spelling).~~

88. — ~~The Applicant's employment at Laura Station was arranged by the Hopevale superintendent.~~

Particulars

A. — ~~In or about late 1954 the Hopevale superintendent approached the Applicant and told him that he had arranged for him to work at Laura Station as a stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the Laura employment agreement and commencing to work at Laura Station.~~

B. — ~~To the best of the Applicant's recollection, the Hopevale superintendent was Pastor Kernich.~~

89. — ~~Prior to commencing work at Laura Station the Applicant was living at Hopevale having returned home from working at Stareke Station.~~

90. — ~~Prior to commencing work on Laura Station the Applicant signed one or more documents called a "Memorandum of Agreement" which set out the terms and conditions of his employment (Laura employment agreement).~~

91. — ~~The Laura employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~

- (a) — the employer was Laura Station;
- (b) — the employee was the Applicant;
- (c) — the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;
- (d) — the Applicant would be paid wages at the rate of £3 per week until he attained the age of 16 at which time his wages would increase to £7 per week;
- (e) — the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;
- (f) — the employer would return the Applicant to his place of residence on termination of his employment and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses of the employee as required by the 1945 regulations;
- (g) — the period of employment was from about January 1955 until about June 1955 and again from about August 1955 to December 1955 (about 10 months in total);
- (h) — the occupation of the Applicant was stockman;
- (i) — the whole of the Applicant's wages were to be paid to the Hopevale superintendent;
- (j) — the Applicant was not to be paid pocket money by his employer as he was unmarried and did not smoke.

Particulars

- A. — The facts referred to in sub paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see

~~paragraph 92 below). The other facts pleaded above are within the Applicant's own knowledge and recollection.~~

~~92. The form of the Laura employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:~~

- ~~(a) the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;~~
- ~~(b) the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~
- ~~(c) the fact that the agreement was prepared and given to the Applicant to sign by the Hopevale superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;~~
- ~~(d) the fact that the document given by the Hopevale superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;~~
- ~~(e) the effect of the agreement (as it was explained to the Applicant by the superintendent) was the same as that contained in Form 7;~~

Particulars

~~A. The Applicant relies on the facts pleaded in paragraph 96 herein.~~

- ~~(f) the information which the Applicant was told by the Hopevale superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the Hopevale superintendent was in accordance with the regime set out in the legislation;~~

93. — As a matter of practice:

- (a) — protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station workers, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial award.

Particulars

A. — The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which set the rate of pay of an aboriginal working in the pastoral industry at two-thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.

- (b) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;

Particulars

- A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.
- B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".

94. — The Laura employment agreement was signed by the Applicant (who also affixed a copy of his right thumb print) and by the Hopevale superintendent.

Particulars

- A. — The Applicant signed the employment agreement a couple of days before starting out on the journey to Laura Station.

~~B. — To the best of the Applicant's recollection, it was Pastor Kernich who signed the employment agreement.~~

~~95. — The Applicant does not recall who signed the Laura employment agreement on behalf of Laura Station.~~

Particulars

~~A. — The Applicant repeats and relies on upon the particulars given to paragraph 88 of this pleading.~~

~~96. — At the time the Laura employment agreement was signed the Hopevale superintendent:~~

~~(a) — explained the terms and conditions of the agreement to the Applicant including why he would not be paid pocket money and the amount of money that would be paid to the superintendent; and~~

~~(b) — signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

~~97. — The Applicant was not given and does not have a copy of the Laura employment agreement.~~

~~98. — The Applicant worked at Laura Station for a period of about 102 months and returned to Hopevale at about the end of 1955.~~

Particulars

~~A. — The Applicant worked from daylight to dark and worked on a continuous basis without taking any unpaid leave, except for one weekend for which he was given one or two days off work to attend the races at Laura.~~

~~99. — Pursuant to the Laura employment agreement the employer paid the Hopevale superintendent the sum of about £223/8/6 for the work undertaken by the Applicant on Laura Station, being 106 days at £3 per week and 178 days at £7 per week (the increase being caused by the Applicant turning 16 on 17 April 1955).~~

~~100.—The Applicant did not receive any pocket money (or any other money) while working at Laura Station.~~

~~101.—The whole of the Applicant's wages earned at Laura Station were paid to the Hopevale superintendent.~~

Particulars

~~A.—The Applicant received no wages in the hand.~~

~~B.—Part IV of the 1939 Act and Part III of the 1945 regulations governed the payment of aboriginal wages, including a direction given pursuant to s 14(6) that an employer pay the whole or any portion of the wages of an aboriginal to a protector or some other person on his behalf.~~

~~C.—The Applicant does not know when and how payments were made by the Applicant's employer to the superintendent and says that this is information in the knowledge of, or otherwise available to, the Respondent.~~

~~D.—To the best of the Applicant's recollection the Hopevale superintendent was Pastor Kernich.~~

Kings Plains Station

~~102.—In mid 1956, and after finishing his employment at Starcke Station, the Applicant commenced work on Kings Plains Station in Far North Queensland as a stockman.~~

Particulars

~~A.—Kings Plains Station was located approximately 30 km south of Cooktown.~~

~~103.—The Applicant's employment at Kings Plains Station was arranged by the Hopevale superintendent who by this time was Pastor Kernig.~~

Particulars

~~A.—In or about the first half of 1956 the Hopevale superintendent approached the Applicant and told him that he had arranged for him to work at Kings Plains Station as a stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the Kings Plains employment agreement and commencing to work at Kings Plains Station.~~

~~104. Prior to commencing work at Kings Plains Station the Applicant was living at Hopevale having returned home from working at Stareke Station.~~

~~105. Prior to commencing work on Kings Plains Station the Applicant signed a document called a "Memorandum of Agreement" which set out the terms and conditions of his employment (**Kings Plains employment agreement**).~~

Particulars

~~A. The Applicant signed the Kings Plains employment agreement a couple of days before departing for Kings Plains Station.~~

~~106. The Kings Plains employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~

~~(a) the employer was Kings Plains Station;~~

~~(b) the employee was the Applicant;~~

~~(c) the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~

~~(d) the Applicant would be paid wages at the rate of 7 pounds per week;~~

~~(e) the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~

~~(f) the employer would return the Applicant to his place of residence on termination of his employment and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses as required by the 1945 regulations;~~

~~(g) the period of employment was from about July 1956 until about December 1956 (6 months in total);~~

- ~~(h) — the occupation of the Applicant was stockman;~~
- ~~(i) — the whole of the Applicant's wages were to be paid to the superintendent;~~
- ~~(j) — the Applicant was not to be paid pocket money by his employer as he was unmarried and did not smoke.~~

Particulars

~~A. — The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 107 below). The other facts pleaded above are within the Applicant's own knowledge and recollection.~~

~~107. — The form of the Kings Plains employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:~~

- ~~(a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;~~
- ~~(b) — the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~
- ~~(c) — the fact that the agreement was prepared and given to the Applicant to sign by the Hopevale superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;~~
- ~~(d) — the fact that the document given by the Hopevale superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;~~

~~(e) — the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;~~

Particulars

~~A. — The Applicant relies on the facts pleaded in paragraph 111 herein.~~

~~(f) — the information which the Applicant was told by the Hopevale superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the Hopevale superintendent was in accordance with the regime set out in the legislation;~~

~~108. — Further as a matter of practice:~~

~~(a) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;~~

Particulars

~~A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

~~B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

~~(b) — protectors and superintendents required wages to be paid either at the rate set out in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial award.~~

Particulars

~~A. — The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union~~

~~which set the rate of pay of an aboriginal working in the pastoral industry at two thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.~~

~~109. The Kings Plains employment agreement was signed by the Applicant who also affixed a copy of his right thumb print and by the Hopevale superintendent.~~

Particulars

~~A. To the best of the Applicant's recollection the superintendent who signed the employment agreement was Pastor Kernich.~~

~~110. The Applicant does not recall who signed the Kings Plains employment agreement on behalf of Kings Plains Station.~~

Particulars

~~A. To the best of the Applicant's recollection the owner and manager of Kings Plains Station was Joek Christeson (the Applicant cannot recall the precise spelling of the surname).~~

~~111. At the time the Kings Plains employment agreement was signed the Hopevale superintendent:~~

~~(a) explained the terms and conditions of the agreement to the Applicant including that he would not be paid any pocket money and that his wages would be paid to the superintendent; and~~

~~(b) signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

~~112. The Applicant was not given and does not have a copy of the Kings Plains employment agreement.~~

~~113. The Applicant worked at Kings Plains Station for a period of about 6 months and returned to Hopevale in about December 1956.~~

Particulars

~~A. The Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~

~~114. Pursuant to the Kings Plains employment agreement the employer paid the Hopevale superintendent the sum of £182 for the work undertaken by the Applicant on Kings Plains Station being 26 weeks at £7 per week.~~

~~115. The Applicant did not receive any pocket money (or any other money) while working at Kings Plains Station.~~

~~116. The whole of the Applicant's wages earned at Kings Plains Station were paid to the Hopevale superintendent.~~

Particulars

~~A. The Applicant received no wages in the hand.~~

~~B. Part IV of the 1939 Act and Part III of the 1945 regulations governed the payment of aboriginal wages, including that a direction could be given pursuant to s 14(6) that an employer pay the whole or any portion of the wages of an aboriginal to a protector or some other person on his behalf.~~

~~C. The Applicant does not know when and how payments were made by the Applicant's employer to the superintendent and says that this is information in the knowledge of, or otherwise available to, the Respondent.~~

~~D. To the best of the Applicant's recollection the Hopevale superintendent was Pastor Kernich.~~

Stareke Station (2)

~~117. After his return from working on Laura Station in December 1955, on or about 25 December 1955 the Applicant commenced work for the second time on Stareke Station as a stockman.~~

~~118. The Applicant's employment at Stareke Station was arranged by the Hopevale superintendent~~

Particulars

~~A. In or about December 1955 the Hopevale superintendent approached the Applicant and told him that he had again arranged for him to work at Stareke Station as a stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the second Stareke employment agreement and commencing to work at Stareke Station.~~

~~B. The Hopevale superintendent was Pastor Kernich.~~

~~119. Prior to commencing work on Stareke Station for a second time the Applicant signed one or more documents called a "Memorandum of Agreement" which set out the terms and conditions of his employment (second Stareke employment agreement).~~

Particulars

~~A. The Applicant signed the employment agreement a couple of days before travelling to Stareke Station.~~

~~120. The second Stareke employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~

~~(a) the employer was Stareke Station;~~

~~(b) the employee was the Applicant;~~

~~(c) the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~

~~(d) the Applicant would be paid wages at the rate of £7 per week;~~

~~(e) the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~

- (f) — the employer would return the Applicant to his place of residence on termination of the agreement and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses as required by the 1945 regulations;
- (g) — the periods of employment were from about 25 December 1955 to 31 December 1955, 2 January 1956 to 16 May 1956 and 21 May 1956 to 24 June 1956 (178 days or about 25.5 weeks in total);
- (h) — the occupation of the Applicant was stockman;
- (i) — the whole of the Applicant's wages were to be paid to the superintendent;
- (j) — the Applicant was not to be paid pocket money by the employer at the rate of £1 per week.

Particulars

- A. — The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 to those regulations.
 - B. — The facts referred in sub-paragraphs (g) and (j) above are taken from the Applicant's Savings Bank Ledger Card numbered 391937 provided by the State in response to a Right to Information request made on behalf of the Applicant.
 - C. — The other facts pleaded above are within the Applicant's own knowledge and recollection.
121. — The form of the second Stareke employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:
- (a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;

- (b) — ~~the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~
- (c) — ~~the fact that the agreement was prepared and given to the Applicant to sign by the Hopevale superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;~~
- (d) — ~~the fact that the document given by the Hopevale superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;~~
- (e) — ~~the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;~~

Particulars

A. — ~~The Applicant relies on the facts pleaded in paragraph 125 herein.~~

- (f) — ~~the information which the Applicant was told by the Hopevale superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the Hopevale superintendent was in accordance with the regime set out in the legislation;~~

122. — ~~Further as a matter of practice:~~

- (a) — ~~protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;~~

Particulars

A. — ~~Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

~~B. — Final Report prepared by the Consultancy Bureau dated March 1991 called “Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts”.~~

~~(b) — protectors and superintendents required wages to be paid either at the rate set out in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial award.~~

Particulars

~~A. — The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which set the rate of pay of an aboriginal working in the pastoral industry at two-thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.~~

~~123. — The second Starcke employment agreement was signed by the Applicant (who also affixed a copy of his right thumb print) and by the Hopevale superintendent.~~

Particulars

~~A. — The Hopevale superintendent was Pastor Kernich.~~

~~124. — The Applicant does not recall who signed the second Starcke employment agreement on behalf of Starcke Station.~~

Particulars

~~A. — The owner and manager of Starcke Station remained the same as pleaded in paragraph 71 of this pleading.~~

~~125. — At the time the second Starcke employment agreement was signed the Hopevale superintendent:~~

- (a) ~~explained the terms and conditions of the agreement to the Applicant including the amount of money that would be paid to the superintendent; and~~
- (b) ~~signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

126. ~~The Applicant was not given and does not have a copy of the second Stareke employment agreement.~~

127. ~~The Applicant worked at Stareke Station for a period of about 25.5 weeks and returned to Hopevale at about the end of June 1956.~~

Particulars

A. ~~The Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~

128. ~~Pursuant to the said agreement the employers paid the Hopevale superintendent the sum of £152/11/5 for the work undertaken by the Applicant on Stareke Station, being 178 days at £7 per week less the pocket money paid to the Applicant as pleaded in paragraph 129.~~

129. ~~The Applicant received pocket money in about the sum of £25/8/6 while working at Stareke Station.~~

130. ~~Other than in respect of the pocket money paid to the Applicant as pleaded in paragraph 129, the whole of the Applicant's wages earned at Stareke Station were paid to the Hopevale superintendent.~~

Particulars

A. ~~The Applicant received no wages in the hand.~~

B. ~~Part IV of the 1939 Act and Part III of the 1945 regulations governed the payment of aboriginal wages, including that a direction could be given pursuant to s 14(6) that an employer pay the whole or any portion of the wages of an aboriginal to a protector or some other person on his behalf.~~

- C. ~~The Applicant does not know when and how payments were made by the Applicant's employer to the superintendent and says that this is information in the knowledge of, or otherwise available to, the Respondent.~~
- D. ~~To the best of the Applicant's recollection the Hopevale superintendent was Pastor Kernich.~~

1957

131. ~~After finishing work at Kings Plains Station, the Hopevale superintendent arranged for the Applicant to do short periods of work (three months each) on Crocodile Station and Lakefield Station and approximately 72 days' work on Laura Station.~~

Particulars

- A. ~~Crocodile Station was located approximately halfway between Laura and Cooktown.~~
- B. ~~Lakefield Station was located north of Laura.~~

132. ~~The Applicant's employment at Crocodile, Laura and Lakefield Station was arranged by the Hopevale superintendent.~~

Particulars

- A. ~~The Hopevale superintendent was Pastor Kernich.~~

133. ~~Prior to commencing work on each of the abovementioned stations the Applicant signed a one or more documents called a "Memorandum of Agreement" which set out the terms and conditions of his employment.~~

Particulars

- A. ~~The Applicant signed the memorandum of agreement for each of the stations approximately a few days before he left to work on each of those stations.~~

134. ~~The said agreements were in the form prescribed by the 1945 regulations and contained the following terms:~~

- (a) ~~the name of the employer;~~
- (b) ~~the employee was the Applicant;~~

- ~~(c) — the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~
- ~~(d) — the Applicant would be paid wages at the rate of £7 per week except in respect of Laura Station, where he was to be paid at the rate of £5 per week;~~
- ~~(e) — the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~
- ~~(f) — the employer would return the Applicant to his place of residence on termination of the agreement and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses as required by the 1945 regulations;~~
- ~~(g) — the period of employment on each of Crocodile Station and Lakefield Station was about 3 months and about 72 days on Laura Station;~~
- ~~(h) — the occupation of the Applicant was stockman;~~
- ~~(i) — the whole of the Applicant's wages were to be paid to the Hopevale superintendent, with the exception of Laura Station where the Applicant was to be paid £1 pocket money per week;~~
- ~~(j) — other than as set out in the preceding sub-paragraph, the Applicant was not to be paid pocket money by an employer as he was unmarried and did not smoke.~~

Particulars

- ~~A. — The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 135 below).~~
- ~~B. — The facts referred to in sub-paragraphs (d), (g) and (i) concerning Laura Station are taken from Savings Bank Ledger Card number~~

~~391938 provided by the State in response to a Right to Information Request made on behalf of the Applicant.~~

~~C. The other facts pleaded above are within the Applicant's own knowledge and recollection.~~

~~135. The form of each of the said employment agreements and the fact that their terms complied with Form 7 and the 1945 regulations can be inferred from:~~

- ~~(a) the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;~~
- ~~(b) the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~
- ~~(c) the agreements were prepared and given to the Applicant to sign by the Hopevale superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;~~
- ~~(d) the fact that the documents given by the Hopevale superintendent to the Applicant to sign were printed documents with a number of entries inserted in ink, which was consistent with the formula set out in Form 7 of the 1945 regulations;~~
- ~~(e) the effect of the agreements (as was explained to the Applicant by the superintendent) were the same as that contained in Form 7;~~

Particulars

- ~~• The Applicant relies on the facts pleaded in paragraph 139 herein.~~
- ~~(f) the information which the Applicant was told by the Hopevale superintendent regarding the need for him to sign the agreements and the fact that his wages~~

would be paid to the Hopevale superintendent was in accordance with the regime set out in the legislation.

136.—Further, as a matter of practice:

- (a) —protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;

Particulars

A. —Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.

B. —Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".

- (b) —protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial award.

Particulars

A. —The wage rate applicable to aboriginal station workers is found in an agreement with the Respondent and the Australian Workers Union which set the rate of pay of an aboriginal working in the pastoral industry at two-thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.

137.—Each of the said agreements were signed by the Applicant (who also affixed a copy of his right thumb print) and by the Hopevale superintendent.

Particulars

A. — ~~The Applicant signed the memorandum of agreement for each of the stations approximately a few days before he left to work on each of those stations.~~

B. — ~~The Hopevale superintendent was Pastor Kernich.~~

138. — ~~The Applicant does not recall who signed the said agreements on behalf of each of the above mentioned employers.~~

Particulars

A. — ~~To the best of the Applicant's recollection, Crocodile Station was owned by Bill Wallace and managed by Mr Wallace and his wife.~~

B. — ~~As regards Laura Station, the Applicant repeats and relies upon the particulars given to paragraph 87 of this pleading.~~

C. — ~~To the best of the Applicant's recollection the owner of Lakefield Station was a corporate entity with the name (or a name similar to) Mossman, Butcher & Company.~~

139. — ~~At the time the said agreements were signed the Hopevale superintendent:~~

(a) — ~~explained the terms and conditions of the agreements to the Applicant including that he would not (except in respect of the work carried out at Laura Station) be paid pocket money and that his wages would be paid to the superintendent; and~~

(b) — ~~signed the agreements and attested that the Applicant appeared to understand the terms of the agreements prior to them being signed by him.~~

140. — ~~The Applicant was not given and does not have a copy of any of the said agreements.~~

141. — ~~The Applicant worked on Laura Station from 4 April 1957 to 26 April 1957, from 1 May 1957 to 27 May 1957 and again from 1 June 1957 to 22 June 1957, but otherwise the Applicant cannot recall the exact dates that he worked on each of the above mentioned stations or the order that he worked on the stations, save that he~~

~~worked about 3 months on each of Lakefield and Crocodile Stations and about 72 days on Laura Station.~~

Particulars

~~A. — For each of the stations, the Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~

~~142. — Between working on each of the above mentioned stations the superintendent at Hopevale arranged for the Applicant to be employed on cattle drives (droving). Particulars of the droving undertaken by the Applicant are set out below under a separate heading.~~

~~143. — During 1957 and pursuant to the employment agreements with Crocodile, Laura or Lakefield Stations:~~

~~(a) — the Hopevale superintendent received the sum of about £168 in total for the work undertaken by the Applicant on Crocodile and Lakefield Stations, being 24 weeks' work (in total) at £7 per week; and~~

~~(b) — the Hopevale superintendent received the sum of about £41/2/9 for the work undertaken by the Applicant on Laura Station (that is, after payment to the Applicant of approximately £10/5/7 in respect of pocket money).~~

Particulars

~~A. — Other than in respect of the pocket money referred to in paragraph 134(i) and sub-paragraph (b) above, the Applicant received no wages in the hand.~~

~~B. — Part IV of the 1939 Act and Part III of the 1945 regulations governed the payment of aboriginal wages, including that a direction could be given pursuant to s 14(6) that an employer pay the whole or any portion of the wages of an aboriginal to a protector or some other person on his behalf.~~

~~C. — The Applicant does not know when and how payments were made by the Applicant's employer to the superintendent and says that this is information in the knowledge of, or otherwise available to, the Respondent.~~

~~D. — To the best of the Applicant's recollection the Hopevale superintendent was Pastor Kernich.~~

~~*Starcke Station (3)*~~

~~144. — In or about late December 1957 the Applicant commenced work for the third time on Starcke Station as a stockman.~~

~~145. — The Applicant's employment at Starcke Station was arranged by the Hopevale superintendent.~~

Particulars

~~A. — In or about December 1957 the Hopevale superintendent approached the Applicant and told him that he had again arranged for him to work at Starcke Station as a stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the third Starcke employment agreement and commencing to work at Starcke Station.~~

~~B. — To the best of the Applicant's recollection, the Hopevale superintendent was Pastor Preuzler.~~

~~146. — Prior to commencing work on Starcke Station for a third time the Applicant signed one or more documents called a "Memorandum of Agreement" which set out the terms and conditions of his employment (**third Starcke employment agreement**).~~

Particulars

~~A. — The Applicant signed the employment agreement a couple of days before travelling to Starcke Station.~~

~~147. — The third Starcke employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~

~~(a) — the employer was Starcke Station;~~

~~(b) — the employee was the Applicant;~~

- (e) — ~~the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~
- (d) — ~~the Applicant would be paid wages at the rate of £7 or £8/10/0 per week depending upon the period of time at which the work was undertaken, as described in paragraph 156 below;~~
- (e) — ~~the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~
- (f) — ~~the employer would return the Applicant to his place of residence on termination of his employment and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses of as required by the 1945 regulations;~~
- (g) — ~~the period of employment was from about 24 December 1957 until about 30 December 1957, from 22 March 1958 to 27 March 1958 and from about September 1958 to December 1958 (about 19 weeks in total);~~
- (h) — ~~the occupation of the Applicant was stockman;~~
- (i) — ~~with the exception of pocket money that was to be paid at the rate of £1 per week for the work the Applicant performed at Stareke Station during the periods 24 December 1957 to 30 December 1957 and 22 March 1958 to 27 March 1958, the whole of the Applicant's wages were to be paid to the Hopevale superintendent;~~
- (j) — ~~other than as pleaded in the preceding sub-paragraph, the Applicant was not to be paid pocket money by his employer as he was unmarried and did not smoke.~~

Particulars

- A. — The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 148 below).
- B. — The facts pleaded in sub-paragraphs (d), (g) and (i), in so far as those sub-paragraphs relate to work carried out by the Applicant during the periods 24 December 1957 to 30 December 1957 and 22 March 1958 to 27 March 1958, are taken from the Savings Bank Ledger card number 391938 provided by the State in response to a Right to Information request made on behalf of the Applicant.
- C. — The other facts pleaded above are within the Applicant's own knowledge and recollection.

148. — The form of the third Starcke employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:

- (a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;
- (b) — the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;
- (c) — the fact that the agreement was prepared and given to the Applicant to sign by the Hopevale superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;
- (d) — the fact that the document given by the Hopevale superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;
- (e) — the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;

Particulars

A.——~~The Applicant relies the facts pleaded in paragraph 152 herein.~~

(f)——~~the information which the Applicant was told by the Hopevale superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the Hopevale superintendent was in accordance with the regime set out in the legislation.~~

149.——~~Further, as a matter of practice:~~

(a)——~~protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforce savings;~~

Particulars

A.——~~Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

B.——~~Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

(b)——~~protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station workers, at a rate which was two-thirds of the rate applicable to a white employee under equivalent State industrial awards.~~

Particulars

A.——~~The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which sets the rate of pay of an aboriginal working in the pastoral industry at two-thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the~~

Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.

150. — ~~The third Starke employment agreement was signed by the Applicant (who also affixed a copy of his right thumb print) and by the Hopevale superintendent.~~

Particulars

A. — ~~The Applicant repeats and relies on the particulars given to paragraph 146 of this pleading.~~

B. — ~~To the best of the Applicant's recollection the superintendent who signed the employment agreement was Pastor Preuzler.~~

151. — ~~The Applicant does not recall who signed the third Starke employment agreement on behalf of Stareke Station.~~

152. — ~~At the time the third Starke employment agreement was signed the Hopevale superintendent:~~

(a) — ~~explained the terms and conditions of the agreement to the Applicant including that the Applicant would not be paid pocket money other than as set out in paragraph 147(i) above and that his wages would be paid to the superintendent; and~~

(b) — ~~signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

153. — ~~The Applicant was not given and does not have a copy of the third Starke employment agreement.~~

154. — ~~The Applicant turned 18 on 17 April 1957.~~

155. — ~~The Applicant worked at Stareke Station for a period of about 19 weeks and returned to Hopevale in about late December 1958.~~

Particulars

A. — ~~The Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~

156. — ~~Pursuant to the said agreement the employer paid the Hopevale superintendent the sum of about £131/8/6, comprised of:~~

(a) — ~~£6 for the work undertaken by the Applicant during the period 24 December 1957 to 30 December 1957, paid at the rate of £7 per week with a deduction of £1 paid in pocket money to the Applicant;~~

(b) — ~~£6/8/6 for the work undertaken by the Applicant during the period 22 March 1958 to 27 March 1958, paid at the rate of £8/10/0 per week with a deduction of 17 shillings paid in pocket money to the Applicant;~~

(c) — ~~about £119 for the work undertaken by the Applicant in the months September to December 1958, paid at the rate of £7 per week for 17 weeks.~~

157. — ~~The Applicant received about £1/17/1 in total in pocket money while working at Stareke Station for the third time.~~

158. — ~~Other than in respect of the pocket money referred to the preceding paragraph, the whole of the Applicant's wages earned at Stareke Station were paid to the Hopevale superintendent.~~

Particulars

A. — ~~Other than as set out in paragraph 157, the Applicant received no wages in the hand.~~

B. — ~~Part IV of the 1939 Act and Part III of the 1945 regulations governed the payment of aboriginal wages, including that a direction could be given pursuant to s 14(6) that an employer pay the whole or any portion of the wages of an aboriginal to a protector or some other person on his behalf.~~

C. — ~~The Applicant does not know when and how payments were made by the Applicant's employer to the superintendent and says that this is information in the knowledge of, or otherwise available to, the Respondent.~~

D. — ~~To the best of the Applicant's recollection the Hopevale superintendent was Pastor Preuzler.~~

Laura Station

~~158A. In June, July and August 1958 the Applicant again undertook work on Laura Station as a stockman, during the following periods:~~

- ~~(a) — from 25 June 1958 to 29 June 1958;~~
- ~~(b) — from 1 July 1958 to 27 July 1958; and~~
- ~~(c) — from 1 August 1958 to 18 August 1958;~~

~~—— (Second Laura employment).~~

~~158B. The work specified in paragraph 158A was undertaken by the Applicant on substantially the same basis as his previous work on Laura Station, and to that end the Applicant repeats and relies on the following paragraphs of this pleading in connection with the Second Laura employment:~~

- ~~—— (a) — paragraph 88, excluding the particulars thereto;~~
- ~~(b) — paragraphs 89 and 90;~~
- ~~(c) — paragraph 91(a) — (c), (e), (f) and (h);~~
- ~~(d) — paragraphs 92, 93, 94, 95;~~
- ~~(e) — paragraph 96 (except for that part of paragraph 96(a) providing that the Hopevale superintendent explained to the Applicant why he would not be paid pocket money).~~

~~158C. The employment agreement (or agreements, where there was more than one such agreement) for the Second Laura employment was in the form prescribed by the 1945 regulations and contained the following terms:~~

- ~~(a) — the Applicant would be paid gross wages at the rate of £8/10/0 per week;~~
- ~~(b) — the Applicant was to be paid pocket money at the rate of £1 per week by his employer out of the wages specified in sub-paragraph (a); —~~
- ~~(d) — other than in respect of the payment of pocket money, the whole of the Applicant's wages were to be paid to the Hopevale superintendent;~~
- ~~(e) — the period of employment was as set out in paragraph 158A (50 days in total).~~

Particulars

~~A. — Savings Bank Ledger Card number 391939 provided by the State in response to a Right to Information request made on behalf of the Applicant.~~

~~158D. At the time the employment agreement for the Second Laura employment was signed the Hopevale superintendent:~~

- ~~(a) — explained the terms and conditions of the agreement to the Applicant including the amount of money that would be paid to the superintendent;~~
- ~~(b) — signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

~~158E. The Applicant worked at Laura Station for the Second Laura employment for a total period of about 50 days and returned to Hopevale near the end of August 1958.~~

~~158F. Pursuant to the employment agreement(s) for the Second Laura employment, the employer paid the Hopevale superintendent the sum of about £53/11/3 for the work undertaken by the Applicant for the Second Laura employment, being:~~

- ~~(a) — £5/7/1 for the work undertaken during the period 25 June 1958 to 29 June 1958, being gross wages of £6/1/4 less pocket money of £0/14/3;~~
- ~~(b) — £28/18/6 for the work undertaken during the period 1 July 1958 to 27 July 1958, being gross wages of £32/15/7 less pocket money of £3/17/1; and~~
- ~~(c) — £19/5/8 for the work undertaken during the period 1 August 1958 to 18 August 1958, being gross wages of £21/17/1 less pocket money of £2/11/5.~~

~~Particulars~~

~~A. — The facts in paragraph 158F are inferred from Savings Bank Ledger Card number 391939, provided by the State in response to a Right to Information request made on behalf of the Applicant.~~

~~158G. The Applicant received approximately £7/2/9 in pocket money in total from the Second Laura employment.~~

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 ~~1960~~ 1959 or 1960 until sometime in 1961 ~~until the end of that month and again throughout 1959~~ in between droving trips undertaken by the Applicant and an episode of employment at Dunraven Station (referred to in paragraph 69 herein). ~~for a period of about 3 months in total.~~

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.

Dunraven Station

~~167. On 4 April 1960, at a time when the Applicant was living on Palm Island and prior to his marriage, the Applicant commenced work for Dunraven Station, north of Hughenden as a stockman.~~

~~168. The Applicant's employment at Dunraven Station was arranged by the Palm Island superintendent.~~

Particulars

- ~~A. In or about March 1960 the Palm Island superintendent approached the Applicant and told him that he had arranged for him to work at Dunraven~~

~~Station as a stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the Dunraven employment agreement and commencing to work at Dunraven Station.~~

~~B. — The Palm Island superintendent was Mr Bartlam.~~

~~169. — Prior to commencing work on Dunraven Station the Applicant signed a document called a “Memorandum of Agreement” which set out the terms and conditions of his employment (**Dunraven employment agreement**).~~

Particulars

~~A. — The Applicant signed the employment agreement approximately one week before he left for Dunraven Station.~~

~~170. — The Dunraven employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~

~~(a) — the employer was Dunraven Station;~~

~~(b) — the employee was the Applicant;~~

~~(c) — the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~

~~(d) — the Applicant would be paid wages at the rate of £8/10/00d per week;~~

~~(e) — the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~

~~(f) — the employer would return the Applicant to his place of residence on termination of his employment and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses as required by the 1945 regulations;~~

- (g) — the period of employment was from 4 April 1960 until 23 May 1960;
- (h) — the occupation of the Applicant was stockman;
- (i) — £5/10/00d per week of the Applicant's wages were to be paid to the Palm Island superintendent;
- (j) — the Applicant was to be paid pocket money of £3 per week.

Particulars

A. — The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from the requirements of the 1945 regulations and Form 7 (see paragraph 171 below). The other facts pleaded above are within the Applicant's own knowledge and recollection.

171. — The form of the Dunraven employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:

- (a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;
- (b) — the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;
- (c) — the fact that the agreement was prepared and given to the Applicant to sign by the Palm Island superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;
- (a) — the fact that the document given by the Palm Island superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;

~~(d) — the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;~~

Particulars

~~A. — The Applicant relies on the facts pleaded in paragraph 175 herein.~~

~~(e) — the information which the Applicant was told by the Palm Island superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the superintendent as enforced savings was in accordance with the regime set out in the legislation;~~

~~172. — Further as a matter of practice:~~

~~(a) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;~~

Particulars

~~A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

~~B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

~~(b) — protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under and equivalent State industrial awards.~~

Particulars

A.——~~The wage rate applicable to aboriginal station worker is found in an agreement between the Respondent and the Australian Workers Union which set the rate of pay of an aboriginal working in the pastoral industry at two thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particular of this agreement cannot be given until after discovery~~

173. ~~The Dunraven employment agreement was signed by the Applicant (who also affixed a copy of his right thumb print) and by the Palm Island superintendent.~~

Particulars

A.——~~The Applicant repeats and relies on the particulars given to paragraph 169 of this pleading.~~

B.——~~The Palm Island superintendent was Mr Bartlam.~~

174. ~~The Applicant does not recall who signed the said agreement on behalf of Dunraven Station.~~

Particulars

A.——~~Vince Rose was the owner of Dunraven Station and Mr Rose also managed the property.~~

- A.——~~The Applicant signed the employment agreement approximately one week before he left for Dunraven Station.~~

175. ~~At the time the said agreement was signed the Palm Island superintendent:~~

(a)——~~explained the terms and conditions of the agreement to the Applicant including the amount of pocket money he was to be paid and the portion of his wages that would be paid to the superintendent; and~~

(b)——~~signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

176. ~~The Applicant was not given and does not have a copy of the said agreement.~~
177. ~~The Applicant worked at Dunraven Station from 4 April 1960 until 23 May 1960.~~

Particulars

A. ~~— The Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~

178. ~~Pursuant to the Dunraven agreement the employer paid the Palm Island superintendent the sum of £40/8/6d for the work undertaken by the Applicant.~~

Particulars

A. ~~— Letter of demand from Palm Island superintendent to Manager Dunraven Station dated 6 January 1961.~~

B. ~~— The amount of £40/8/6d was paid for the work undertaken by the Applicant at Dunraven Station because during the period 4 April 1960 to 23 May 1960 the Applicant was paid at a rate of £8/10/- and paid pocket money of £3 week, resulting in the sum of £5/10/- per week being payable to the superintendent by the employer.~~

C. ~~— It is not within the Applicant's knowledge as to when and how his employer at Dunraven Station made payments to the Palm Island superintendent, but such information is within the knowledge of the Respondent.~~

D. ~~— To the best of the Applicant's recollection the Palm Island superintendent was Mr Bartlam.~~

Palm Island (2)

179. ~~Following working at Dunraven Station the Applicant returned to Palm Island.~~
180. ~~While the Applicant was at Palm Island and from May 1960 until about August 1961 the superintendent at Palm Island arranged for the Applicant to be employed on cattle~~

~~drives (droving). Particulars of the droving undertaken by the Applicant are set out below under a separate heading.~~

Particulars

~~A. — The superintendent at Palm Island was Mr Bartlam.~~

Rokeby Station

181. ~~In or about September 1961 and when he was domiciled on Palm Island and following his marriage, the Applicant commenced work for Rokeby Station near Coen as head stockman.~~

Particulars

~~A. — The Applicant, as head stockman, was in charge of one of two mustering camps for Rokeby Station. The duties of head stockman included ensuring that horses were looked after, ensuring that the muster ran smoothly and providing instructions to stockmen.~~

182. ~~The Applicant was accompanied to Rokeby Station with his wife and child.~~

183. ~~The Applicant's wife worked at Rokeby Station as a domestic.~~

184. ~~The Applicant's employment at Rokeby Station was arranged by the Palm Island superintendent~~

Particulars

~~A. — In or about August 1961 the Palm Island superintendent approached the Applicant and told him that he had again arranged for him to work at Rokeby Station, but as head stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the Rokeby agreement and commencing to work at Rokeby Station.~~

~~B. — The Palm Island superintendent was Mr Bartlam.~~

185. Prior to commencing work on Rokeby Station the Applicant signed a document called a “Memorandum of Agreement” which set out the terms and conditions of his employment (~~Rokeby employment agreement~~).

Particulars

- A. — ~~The Applicant recalls signing the employment agreement on Palm Island approximately one week before he left for Rokeby Station.~~
186. ~~The Rokeby employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~
- (a) — ~~the employer was Rokeby Station;~~
 - (b) — ~~the employee was the Applicant;~~
 - (c) — ~~the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~
 - (d) — ~~the Applicant would be paid wages at the rate of £14 per week;~~
 - (e) — ~~the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~
 - (f) — ~~the employer would return the Applicant and his wife and family to their place of residence on termination of his employment and pay all expenses of the Applicant and his wife and family to and from the place of his employment and would pay any other expenses of the employee as required by the 1945 regulations;~~
 - (g) — ~~the period of employment was from about 5 September 1961 to 31 December 1961 (about 118 days);~~
 - (h) — ~~the occupation of the Applicant was head stockman;~~
 - (i) — ~~£6 per week of the Applicant’s wages were to be paid to the superintendent;~~

~~(j) — the Applicant was to be paid pocket money by the employer of £8 per week.~~

Particulars

~~A. — The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 187 below). The other facts pleaded above are within the Applicant's own knowledge and recollection.~~

187. ~~The form of the Rokeby employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:~~

~~(a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;~~

~~(b) — the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~

~~(c) — the agreement was prepared and given to the Applicant to sign by the Palm Island superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;~~

~~(d) — the fact that the document given by the Palm Island superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;~~

~~(e) — the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;~~

Particulars

~~A. — The Applicant relies on the facts pleaded in paragraph 191 herein.~~

~~(f) — the information which the Applicant was told by the Palm Island superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the superintendent was in accordance with the regime set out in the legislation;~~

188. Further as a matter of practice:

~~(a) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;~~

Particulars

~~A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

~~B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

~~(b) — protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial awards.~~

Particulars

~~A. — The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which sets the rate of pay of an aboriginal working in the pastoral industry at two thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.~~

189. ~~The Rokeby employment agreement was signed by the Applicant (who also affixed a copy of his right thumb print) and by the Palm Island superintendent.~~

Particulars

- A. ~~—The applicant repeats and relies on the particulars given to paragraphs 184 and 185 of this pleading.~~
190. ~~The Applicant does not recall who signed the said agreement on behalf of Rokeby Station.~~
191. ~~At the time the Rokeby employment agreement was signed, the Palm Island superintendent:~~
- ~~(a) —explained the terms and conditions of the agreement to the Applicant including that his wages would be paid to the superintendent; and~~
- ~~(b) —signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~
192. ~~The Applicant was not given and does not have a copy of the said agreement.~~
193. ~~The Applicant worked at Rokeby Station from 5 September 1961 to 31 December 1961.~~

Particulars

- A. ~~—The Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~
194. ~~Pursuant to the said agreement the employers paid the Palm Island superintendent the sum of £101/2/10 for the work undertaken by the Applicant, being gross wages of £235/19/11 less pocket money of £134/17/1.~~

Particulars

- A. ~~—The basis for stating that £101/2/10 was payable by the employer to the superintendent is that the Applicant's wage was £14 per week with £6 per~~

~~week payable to the superintendent as pleaded at paragraph 186 of this pleading.~~

~~B. — When and how the payments were made is not within the knowledge of the Applicant, but should be within the knowledge of the Respondent.~~

~~C. — The fact of the Applicant's employment was confirmed in a letter from the superintendent of Palm Island to the manager of Rokeby Station dated (it appears) 5 July 1962.~~

~~D. — The superintendent at Palm Island was Mr Bartlam.~~

Kalinga Station

195. ~~In or about September February 1962, the Applicant commenced work at Kalinga Station, north of Laura, as a stockman.~~

Particulars

~~A. — Kalinga Station is located on the way to Coen, between Musgrave and Laura, on the Hann River.~~

196. ~~The Applicant's employment at Kalinga Station was arranged by the Hope Vale superintendent.~~

Particulars

~~A. — In or about August 1962 the Hope Vale superintendent approached the Applicant and told him that he had again arranged for him to work at Kalinga Station as a stockman. The Applicant cannot recall the place or time when this conversation took place save that it was prior to him signing the Kalinga employment agreement and commencing to work at Kalinga Station.~~

~~B. — The superintendent at Hopevale was Pastor Preuzler.~~

197. ~~Prior to commencing work on Kalinga Station the Applicant signed a document called a "Memorandum of Agreement" which set out the terms and conditions of his employment (Kalinga employment agreement).~~

Particulars

~~A. — The Applicant signed the employment agreement a couple of days before leaving to take up his position at Kalinga Station.~~

198. ~~The Kalinga employment agreement was in the form prescribed by the 1945 regulations and contained the following terms:~~

~~(a) — the employer was Kalinga Station;~~

~~(b) — the employee was the Applicant;~~

~~(c) — the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~

~~(d) — the Applicant would be paid wages at the rate of £140 per week;~~

~~(e) — the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~

~~(f) — the employer would return the Applicant to his place of residence on termination of the agreement and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses as required by the 1945 regulations;~~

~~(g) — the period of employment was from about February 1962 until about May 1962 (16 weeks);~~

~~(h) — the occupation of the Applicant was stockman;~~

~~(i) — the whole of the Applicant's wages were to be paid to the Hope Vale superintendent;~~

~~(j) — the Applicant was not to be paid pocket money by the employer.~~

Particulars

A. — ~~The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 199 below). The other facts pleaded above are within the Applicant's own knowledge and recollection.~~

199. ~~The form of the Kalinga employment agreement and the fact that its terms complied with Form 7 and the 1945 regulations can be inferred from:~~

- ~~(a) — the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;~~
- ~~(b) — the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~
- ~~(c) — the agreement was prepared and given to the Applicant to sign by the Hope Vale superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was followed;~~
- ~~(d) — the fact that the document given by the Hope Vale superintendent to the Applicant to sign was a printed document with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;~~
- ~~(e) — the effect of the agreement (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7;~~

Particulars

A. — ~~The Applicant relies on the facts pleaded in paragraph 203 herein.~~

- ~~(f) — the information which the Applicant was told by the Hope Vale superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the superintendent was in accordance with the regime set out in the legislation;~~

200. Further as a matter of practice:

- (a) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings:

Particulars

A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.

B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".

- (b) — protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial awards.

Particulars

A. — The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which sets the rate of pay of an aboriginal working in the pastoral industry at two-thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.

201. The Kalinga employment agreement was signed by the Applicant who also affixed a copy of his right thumb print and by the Hope Vale superintendent.

Particulars

A. — ~~The Applicant repeats and relies upon the particulars given to paragraph 197 of this pleading.~~

B. — ~~The superintendent who signed the Kalinga employment agreement was Pastor Preuzler.~~

202. ~~The Applicant does not recall who signed the said agreement on behalf of Kalinga Station.~~

Particulars

A. — ~~To the best of the Applicant's recollection, Kalinga Station was owned by a company called (or called something similar to) Australia and New Zealand Loans Co and was managed by Mr Bowie Costello.~~

203. ~~At the time the Kalinga employment agreement was signed the Hope Vale superintendent:~~

(a) — ~~explained the terms and conditions of the agreement to the Applicant including that he would not be paid pocket money and that his wages would be paid to the superintendent; and~~

(b) — ~~signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

204. ~~The Applicant was not given and does not have a copy of the Kalinga employment agreement.~~

205. ~~The Applicant worked at Kalinga Station from about February 1962 until about May 1962.~~

Particulars

A. — ~~The Applicant worked from daylight to dusk and cannot recall taking any unpaid leave.~~

206. ~~Pursuant to the said agreement the employers paid the Hope Vale superintendent the sum of £224 for the work undertaken by the Applicant at Kalinga Station.~~

Particulars

- A. ~~£224 was paid by the employer to the superintendent as set out in the table at paragraph 233 of this pleading.~~
- B. ~~The basis for stating that £224 was payable by the employer to the superintendent is that the Applicant's wage was £14 per week with the entirety of that amount being paid to the superintendent.~~
- C. ~~When and how the payments were made is not within the knowledge of the Applicant, but should be within the knowledge of the Respondent.~~
- D. ~~The superintendent at Hopevale was Pastor Preuzler.~~

Droving

207. ~~From 1954 until 1962, in addition to the work referred to above, the Applicant undertook a number of cattle drives (which were often referred to as "droving").~~

Particulars

- A. ~~Other than as set out in paragraph 225A of this pleading, particulars as to when the Applicant worked on each cattle drive in each year cannot be given until discovery has taken place.~~
- B. ~~Each cattle drive was a continuous period of paid employment and the Applicant did not take any unpaid leave during any of the cattle drives.~~
208. ~~The total number of cattle drives undertaken by the Applicant was about 20, including the cattle drives listed in paragraph 225A.~~
209. ~~The Applicant undertook cattle drives:~~
- ~~(aa) — for about 7 weeks in 1955;~~
- ~~(a) —~~
- ~~(b) — for about 112 weeks in 1957;~~
- ~~(c) — for about 19.5 weeks during 1958; and~~

~~(e) — for about 43 weeks across 1960 and 1961.~~

210. ~~The cattle drives involved moving cattle by horse from Stations in Far North Queensland to Mareeba where they were sold.~~
211. ~~Each full cattle drive would take from 4 to 7 weeks in one direction depending upon the weather, length of the trip and the number of Stations that cattle were collected from along the route. In addition, the Applicant took a period of approximately 2 weeks to return from Mareeba to either Hopevale or Palm Island.~~
212. ~~Other than as set out in paragraph 225A below, the Applicant cannot provide the exact date for each cattle drive, save that when he was not permanently working on a Station he was engaged in droving.~~
213. ~~At no time was the Applicant unemployed at Hopevale or Palm Island due to his skills as a stockman.~~
214. ~~Each of the Applicant's work on a cattle drive was arranged by either the Hopevale superintendent or the Palm Island superintendent.~~

Particulars

~~A. — Particulars cannot be given until discovery has taken place.~~

215. ~~The Applicant was employed on cattle drives by the following people:~~

~~(a) — Len Elmes, who ran the butcher shop at Cooktown;~~

~~(b) — Henry Hanush;~~

Particulars

~~A. — Henry Hanush was a head drover and he was based out of Cooktown.~~

~~(c) — Phil Parsons, whose equipment and pack horses were based at Koolburra Station;~~

~~(d) — Bill Wallace, who was the owner of Crocodile Station.;~~

~~(e) — Stareke Graziers; and~~

~~(f) — LC Chisholm.~~

216. ~~Prior to commencing work on a cattle drive the Applicant signed a document called a “Memorandum of Agreement” which set out the terms and conditions of his employment.~~

217. ~~The said agreements were in the form prescribed by the 1945 regulations and contained the following terms:~~

~~(a) — the employer was the person who had arranged for the cattle drive, usually being the head drover;~~

~~(b) — the employee was the Applicant;~~

~~(c) — the 1945 regulations so far as applicable were deemed to be incorporated into the agreement;~~

~~(d) — the Applicant would be paid wages at the rate of £8 per week (which was a higher rate than the Applicant would be paid as a stockman) or otherwise at the rate specified in paragraph 225A for the specific drives referred to therein;~~

~~(e) — the employer would provide food and accommodation in accordance with regulations 59 to 66 of the 1945 regulations;~~

~~(f) — the employer would return the Applicant to his place of residence on termination of his employment and pay all expenses of the Applicant to and from the place of his employment and would pay any other expenses as required by the 1945 regulations;~~

~~(g) — each full cattle drive lasted about 4–7 weeks plus 2 weeks to return;~~

~~(h) — the occupation of the Applicant was a drover;~~

- (i) ~~except as specified in paragraph 225A, the whole of the Applicant's wages were to be paid to the superintendent;~~
- (j) ~~except as specified in paragraph 225A, the Applicant was not to be paid pocket money by the employer.~~

Particulars

A. ~~The facts referred to in sub-paragraphs (c), (e) and (f) above are inferred from requirements of the 1945 regulations and Form 7 (see paragraph 218 below). The other facts pleaded above are within the Applicant's own knowledge and recollection.~~

218. ~~The form of the said agreements and the fact that their terms complied with Form 7 and the 1945 regulations can be inferred from:~~

- (a) ~~the requirements of the 1939 Act and the 1945 regulations which set out a mandatory wording and form for such an agreement in Form 7 of the 1945 regulations;~~
- (b) ~~the fact that, pursuant to the 1945 regulations, the employment of an aborigine had to be undertaken in accordance with the regulations;~~
- (c) ~~the agreements were prepared by either the Hopevale or Palm Island superintendent who had a duty under the 1939 Act and the 1945 regulations to ensure that the regime set out in the legislation was used and followed;~~
- (d) ~~the fact that the documents given to the Applicant to sign by the Hopevale or Palm Island superintendents were printed documents with a number of entries inserted in ink which is consistent with the formula set out in Form 7 of the 1945 regulations;~~

~~(e) — the fact that the effect of the agreements (as was explained to the Applicant by the superintendent) was the same as that contained in Form 7 of the 1945 regulations;~~

Particulars

~~A. — The Applicant relies on the facts pleaded in paragraph 222 herein.~~

~~(f) — the information which the Applicant was told by the Hopevale or Palm Island superintendent regarding the need for him to sign the agreement and the fact that his wages would be paid to the superintendents was in accordance with the regime set out in the legislation.~~

219. Further as a matter of practice:

~~(a) — protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings;~~

Particulars

~~A. — Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

~~B. — Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

~~(b) — protectors and superintendents required wages to be paid either at the rate set in the regulations, or in the case of station hands, at a rate which was two-thirds of the rate applicable to a white employee under an equivalent State industrial awards.~~

Particulars

A.——~~The wage rate applicable to aboriginal station workers is found in an agreement between the Respondent and the Australian Workers Union which sets the rate of pay of an aboriginal working in the pastoral industry at two thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be given until after discovery.~~

220. ~~The said agreements were signed by the Applicant (who also affixed a copy of his right thumb print) and by either the Hopevale superintendent or the Palm Island superintendent.~~

Particulars

A.——~~Particulars cannot be given until discovery has taken place.~~

221. ~~The said agreements were signed on behalf of the employer in each case by or on behalf of the head drover who had engaged the Applicant.~~

Particulars

A.——~~The head drovers who employed the Applicant are listed in paragraph 215 of this pleading.~~

B.——~~Further particulars cannot be provided until discovery has taken place.~~

222. ~~At the time each of the said agreements were signed each superintendent:~~

(a)——~~explained the terms and conditions of the agreement to the Applicant including that he would not be paid pocket money (other than as set out in paragraph 225A) and that his wages would be paid to the superintendent; and~~

(b)——~~signed the agreement and attested that the Applicant appeared to understand the terms of the agreement prior to it being signed by him.~~

223. ~~The Applicant was not given and does not have a copy of the said agreements.~~

224. ~~Other than as set out in paragraph 225A below, the Applicant did not receive any pocket money (or any other money) while working as a drover.~~
225. ~~Other than as set out in paragraph 225A below, the whole of the Applicant's wages earned from droving was paid to either the Hopevale superintendent or the Palm Island superintendent.~~

Particulars

- A. ~~The amount of wages earned by the Applicant for each cattle drive is as set out in the table at paragraph 233 of this pleading.~~
- B. ~~When droving the Applicant worked all day and for much of the night, in order to monitor the mustered herd.~~
- C. ~~Further particulars cannot be provided until discovery has taken place.~~
- 225A. ~~The Applicant's employment as a drover included employment by the following head drovers during the following periods:~~
- (a) ~~Len Elmes, from 28 June 1955 to 15 August 1955 (7 weeks), for which the Applicant was to be paid gross wages of £7 per week with £2 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of £49 less pocket money paid of £14, meaning that the superintendent of Hopevale was to be paid £35;~~
 - (b) ~~Bill Wallace, from 31 January 1958 to 24 February 1958 (25 days), for which the Applicant was to be paid gross wages of £8/10/0 per week with £1 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of approximately £30/7/1 less pocket money paid of approximately £3/11/5, meaning that the superintendent of Hopevale was to be paid £26/15/8;~~
 - (c) ~~Bill Wallace, from 30 January 1959 to 22 February 1959 (24 days), for which the Applicant was to be paid gross wages of £8/10/0 per week with £1 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of approximately £29/2/6 less pocket money paid of approximately £3/8/6, meaning that the superintendent of Hopevale (or alternatively, of Palm Island) was to be paid £25/14/3;~~
 - (d) ~~Len Elmes, from 8 April 1959 to 27 April 1959 (20 days), for which the Applicant was to be paid gross wages of £9/10/0 per week with £1 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of approximately £27/2/9 less pocket money paid of~~

approximately £2/17/1, meaning that the superintendent of Hopevale (or alternatively, of Palm Island) was to be paid £24/5/8;

- (e) ~~Len Elmes, from 1 May 1959 to 17 May 1959 (17 days), for which the Applicant was to be paid gross wages of £8/10/0 per week with £1 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of approximately £20/12/9 less pocket money paid of £2/8/6, meaning that the superintendent of Hopevale (or alternatively, of Palm Island) was to be paid £18/4/3;~~
- (f) ~~Starcke Graziers, from 1 July 1959 to 10 July 1959 (10 days), for which the Applicant was to be paid gross wages of £8/10/0 per week with £1 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of approximately £12/2/9 less pocket money paid of approximately £1/8/6, meaning that the superintendent of Hopevale (or alternatively, of Palm Island) was to be paid £10/14/3;~~
- (g) ~~L.C. Chisholm (the Applicant is uncertain of the spelling), from 4 November 1959 to 18 November 1959 (15 days), for which the Applicant was to be paid gross wages of £8/10/0 per week with £1 pocket money per week paid out of that sum, which resulted in the Applicant earning gross wages of approximately £18/4/3 less pocket money paid of approximately £2/2/10, meaning that the superintendent of Hopevale (or alternatively, of Palm Island) was to be paid £16/1/5.~~

Particulars

- A. ~~Savings Bank Ledger Cards numbered 391937, 391939 and 391940 provided by the State in response to a Right to Information request made on behalf of the Applicant.~~

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 earnt 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 paid by the Applicant's employers (including the Applicant's employers at Kalinga Station) to the superintendents at Hopevale or Palm Island prior to the Applicant moving to Innisfail (as pleaded at paragraph 226 herein) remained subject to the 1939 Act and regulations and under the care and control of the Director or superintendents and were not, with the exception of the amounts pleaded at paragraphs 241 and 273 herein, paid to the Applicant.

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. as follows:-

Particulars

AA. Table of estimated gross wages:

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

<u>Kalinga Station</u>	<u>Bowie Gostelow (owner or manager)</u>	<u>1962 (about 6 or 7 months)</u>	<u>£305/0/0</u>
<u>TOTAL</u>			<u>£1,563/7/3</u>

- A. The dates in the ~~first~~ 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.

Date of employment	Employer	Gross wages (in pounds)	Pocket money (in pounds)	Wages paid to superintendent (in pounds)
19.02.54 to 30.03.54, 01.10.54 to 26.10.54 and about May to August 1954	Stareke Station (1)	109/14/0	12/14/2	96/19/10
About January 1955 – June 1955 & August 1955 to December 1955 (10 months)	Laura Station	223/8/6	0	223/8/6
28.06.55 – 15.08.55 (49 days)	Droving – Len Elmes	49	14	35
25.12.55 to 31.12.55, 02.01.56 to 16.05.56 & 21.05.56 to 24.06.56 (25.5 weeks)	Stareke Station (2)	177/19/11	25/8/6	152/11/5
About July 1956 – December 1956 (6 months)	Kings Plans Station	182	0	182
1957 (3 months)	Crocodile Station	84	0	84

04.04.57 to 26.04.57, 01.05.57 to 27.05.57 & 01.06.57 to 22.06.57 (72 days)	Laura Station	51/8/4	10/5/7	41/2/9
1957 (3 months)	Lakefield Station	84	0	84
1957 (11 weeks)	Droving	77	0	77
24/12/57 to 30.12.57, 22.03.58 to 27.03.58 & about September to December 1957 (19 weeks)	Stareke Station (3)	133/5/7	1/17/1	131/8/6
31.01.58 to 24.02.58 (25 days)	Droving—Bill Wallace	30/7/1	3/11/5	26/15/18
25.06.58 to 29.06.58, 01.07.58 to 27.07.58 & 01.08.58 to 18.08.58 (50 days)	Laura Station	60/14/0	7/2/9	53/11/3
1958 (16 weeks)	Droving	128	0	128
30.01.59 to 22.02.59 (24 days)	Droving—Bill Wallace	29/2/6	3/8/6	25/14/3
08.04.59 to 27.04.59 (20 days)	Droving—Len Elmes	27/2/9	2/17/1	24/5/8
01.05.59 to 17.05.59 (17 days)	Droving—Len Elmes	20/12/9	2/8/6	18/4/3
01.07.59 to 10.07.59 (10 days)	Droving—Stareke Graziers	12/2/9	1/8/6	10/14/3
04.11.59 to 18.11.59 (15 days)	Droving—LC Chisholm	18/4/3	2/2/10	16/1/5
1959 (3 months)	Palm Island	84	12	72
04.04.60 to 23.05.60 (50 days)	Dunraven Station	61/17	21/8/6	40/8/6
About November 1960—August 1961) (43 weeks)	Droving	344	0	344

05.09.61 to 31.12.61	Rokeby Station	235/19/11	134/17/1	101/2/10
February 1962 – May 1962 (16 weeks)	Kalinga Station	224	0	224
			Total wages paid to superintendent (in pounds)	£2,192/9/11

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 ~~\$145,950~~ which is calculated as follows:

- ~~2,192~~ ~~107~~ = 2,085 (being the amount paid to the superintendents by employers less withdrawals which are noted in paragraphs 241 below)
- ~~2,085~~ x £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 ~~4,170~~ (this converts Australian pounds to dollars using the prevailing conversion rate in 1966)
- \$3,126 ~~4,170~~ x 35 = \$109,410 ~~= 145,950~~ (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, The Applicant cannot provide details of when each request for a withdrawal was made or the amount of money paid to him by the Hopevale superintendent save that:

- (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.
- ~~B. The withdrawals are included in the table set out in paragraph 241 herein.~~
- ~~C. Further particulars cannot be provided until discovery has taken place.~~

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 the Applicant between 1954 and 1964, was about £107 and is calculated as follows:

Year	Place	Amount of withdrawal (in pounds)
1954	Hopevale	5
1955	Hopevale	10
1956	Hopevale	10
31.07.57	Hopevale	1
31.08.57	Hopevale	1
1957	Laura	10
1958	Hopevale	10
Unknown	Palm Island	30
1961/1962	Coen	10
02.02.64	Townsville	10
06.04.64	Townsville	10
	Total withdrawn	£107

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] ~~The savings accounts were:~~

- (a) ~~operated in the same manner as each other;~~
- (b) ~~the subject of annual audits conducted by the Auditor General.~~

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 ~~conducted~~ 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 pursuant to an employment agreement made under the 1939 Act and regulations, the Islander Act or the 1965 Act and regulations, was held ~~in~~ 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] ~~Money received by a protector or superintendent from an employer and then paid by the protector or superintendent into the savings accounts, islander accounts (or any other account) or invested in some other way was also held in trust by the Respondent through its servants or agents the Director and the protectors and superintendents to whom the money was paid, and forms part of the trust referred to in paragraph 250 above. The money which was paid to a protector or superintendent by an employer pursuant to an employment agreement made under the 1939 Act and regulations, the Islander Act or the 1965 Act and regulations or otherwise is referred to herein as “trust money”. The account or accounts (including the savings accounts and islander accounts) or other investments into which the money paid by an employer to a protector or superintendent was deposited or otherwise invested is referred to herein as “the trust fund”.~~
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 earnt 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 earnt 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 ~~and 69 to 225~~ herein.
- (n) the fact that the Applicant and each Claimant Group Member had a pre-existing interest in the property the subject of the trust as it consisted of money which had been earnt 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 ~~an aborigine or islander~~ 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 ~~pursuant to an employment agreement entered into in accordance with the 1939 Act and regulations, the Islander Act and regulations or the 1965 Act and regulations.~~

254. The object of the trust was to preserve and protect ~~an~~ employed aborigines or islanders and to promote the well-being and progressive development of the aboriginal inhabitants of the State, 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] The beneficiaries of the trust were aborigines or islanders whose wages were paid by their employer to a protector or superintendent pursuant to an employment agreement entered into in accordance with the 1939 Act and regulations, the Islander Act and regulations or the 1965 Act and regulations.~~

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 ~~continuing~~ 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;
- (vi) up until 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 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 ~~an~~ aborigine or islander;

 - (ii) the amount which an employer was required to pay to the Applicant or Group Member ~~an aborigine or islander~~ as “pocket money”;

 - (iii) the amount received from an employer as wages for the Applicant or Group Member ~~an aborigine or islander~~ by a protector or superintendent;

 - (iv) the identity of the Claimant ~~aborigine or islander~~ 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 ~~aboriginal or islander worker~~;

- (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 ~~savings accounts, islander~~ accounts or any other account or investment in which the Applicant's or Group Members' wages were advanced ~~trust money was kept by the protector or superintendent~~;
- (viii) the identity of the aborigine or islander on whose behalf such money was paid into the ~~savings accounts, islander~~ accounts or any other account in which the Applicant's or Group Members' wages were advanced ~~trust money was kept~~;
- (ix) the amount paid to the Welfare Fund by the protector or superintendent on behalf of the Applicant or Group Member ~~an aboriginal worker~~;
- (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 ~~an aboriginal or islander worker~~;
- (xi) all payments from the ~~savings accounts, islander~~ accounts and any other accounts or investments in which the Applicant's or Group Members' wages were advanced ~~trust money was kept~~;
- (xii) the way in which money in the ~~savings accounts, islander~~ accounts or other accounts or investments in which the Applicant's or Group Members' wages was advanced ~~trust money was kept~~, was managed, used and invested;
- (xiii) the amount of interest or other accretions on the money held in the ~~savings accounts, islander~~ accounts or other accounts in which the Applicant's or Group Members' wages were advanced ~~trust money was kept~~;

- (xiv) any payout or purported payout from the accounts trust fund to the Applicant or Group Member ~~an aboriginal or islander worker~~ including when such payout was made, the reason for the payout, the amount of the payout, and the calculation of the payout;
- (b) pay all money received from employers as wages for the Applicant or Group Member ~~aboriginal and islander workers~~ into the ~~savings accounts or islander~~ accounts;
- (c) preserve the corpus of ~~money which constituted the~~ accounts trust fund;
- (d) act with reasonable care, diligence and prudence with regard to investing the money held in the accounts trust fund;
- (e) render accounts to the Applicant or any Group Member ~~aborigine or islander~~ whose wages formed part of the accounts trust fund, 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 ~~an aboriginal or islander worker~~;
 - (ii) the amount of money paid by an employer to the Applicant or employed Group Member ~~aborigine or islander~~ as “pocket money”;
 - (iii) the amount paid into the ~~savings account, islander~~ accounts or any other fund, institution, person or account in which an aborigine’s or islander’s wages were advanced ~~trust money was kept by the protector or superintendent~~;
 - (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 trust fund for each individual Claimant aborigine or islander whose wages was held on ~~formed part of the trust fund~~;
 - (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 ~~in the trust fund~~;
 - (ix) the amount of interest or other accretions earned by the money held on ~~in the trust fund~~;
 - (x) the amount of any payment from the accounts trust fund to the Applicant or Group Member ~~an aboriginal or islander worker~~;
 - (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 ~~in the trust fund~~ in a proper and safe manner;
 - (g) invest the money held on ~~in the trust fund~~ only for the benefit of ~~the aboriginal and islander workers~~ 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 ~~in the trust fund~~;

- (j) act in good faith with regard to the accounting of money held on ~~in the~~ trust ~~fund~~;
- (k) act in good faith with regard to the payment of money to beneficiaries from the accounts ~~trust fund~~;
- (l) not unreasonably to withhold money held on ~~in the~~ trust ~~fund~~ 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 ~~in the~~ trust ~~fund~~;
- (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 assertion of the continuing duty arises from the~~ 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.

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 ~~aboriginal and islander workers~~ 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 ~~aboriginal and islander workers~~ 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: ~~which existed between the aboriginal and islander workers and each of the Respondent, the Director, the protectors and superintendents arose as an incident of the statutory provisions identified in paragraphs 19 to 67 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 an aboriginal or islander's wages and possibly also, other property of the aboriginal or islander.~~

- 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 ~~aboriginal or islander worker~~ 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 aboriginal or islander worker~~ 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 ~~aboriginal or islander workers~~ Applicant and Group Members which arose from their lack of education and unsophistication;
- (e) [blank] ~~the fact that the aboriginal and islander workers 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;~~
- (f) [blank] ~~the fact that the Director, protectors and superintendents acted for and on behalf of the aboriginal or islander workers with regard to the enforcement of employment agreements and pursuing unpaid debts;~~

Particulars

A. — ~~1939 Act s. 16.~~

B. — ~~Islander Act s 21.~~

C. — ~~1965 Act s 28.~~

(g) the fact that ~~money wages~~ earnt by an aboriginal or islander worker 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 ~~aboriginal and islander people~~ 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) ~~aboriginal and islander people~~ 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 ~~an aboriginal worker~~ a Claimant to the Welfare Fund ~~as required~~ 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 work he was required to perform by virtue of s. 28 of the 1945 regulations.

261H. The *Slavery Abolition Act 1833 (Imp)* (**Slavery Act**) was 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 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 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 put on the place as to where he could reside by, *inter alia*, the 1945 regulations;
- (f) undertaken at a time when his 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.

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 to the Slavery Act;
- B. 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] ~~As a matter of practice part or all of the money paid to the Hopevale or Palm Island superintendents as wages earned by the Applicant was paid by the superintendents into the savings accounts.~~

Particulars

A. ~~The Applicant repeats and relies on the facts pleaded in paragraphs 244 to 251 herein.~~

B. ~~The Applicant cannot provide better particulars of the amount of money paid by the superintendents into the savings accounts until after discovery of documents by the Respondent.~~

264. [blank] ~~The practice of paying the Applicant's wages into the savings accounts can be inferred from:~~

- (a) ~~the conversation between the Applicant and the superintendent at Hopevale in which he was told that his wages would be banked by the superintendent into a bank account for him but he would not have access to that account without the permission of the superintendent;~~

Particulars

A. — ~~The Applicant repeats and relies on the facts pleaded in sub-paragraph 75(c)(ii) herein.~~

- (b) ~~audit reports for the years 1954 to 1964 prepared by the Auditor General for the Director and the Minister for Health and Services (who was then the Minister responsible for the 1939 Act and regulations) which showed payment of money into the savings accounts and action taken by the Director to ensure that wages owed to aboriginals by employers were paid into those accounts;~~
- (c) ~~the requirements of the 1945 regulations and the 1966 regulations which dealt with the establishment of the trust fund for wages;~~

Particulars

A. — ~~The Applicant repeats and relies on the facts pleaded in paragraph 254 herein.~~

- (d) ~~instructions given by the Director to protectors and superintendents as to how money received from an employer as wages for an aboriginal worker was to be treated;~~
- (e) ~~a letter from the acting superintendent at Palm Island to the protector at Innisfail dated 22 May 1964 which enclosed a cheque purportedly being for the balance of account held for the Applicant;~~
- (f) ~~the fact that the Applicant was an eligible claimant for payment under the reparation scheme as defined in paragraph 298 herein.~~

Particulars

A. ~~The Applicant refers to and relies on the facts pleaded in paragraphs 300 to 320 herein.~~

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;
- (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 ~~savings~~ accounts or any other fund, institution, account or person who held or in which the Applicant's trust funds were advanced ~~trust money was kept~~;
- (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 ~~savings~~ accounts and any other account in which the Applicant's trust funds were advanced ~~trust money was kept~~;

- (x) the way in which money in the ~~savings~~ accounts or any other account in which the Applicant's wages were advanced ~~trust money was kept~~ was managed, used and invested;
- (xi) the amount of interest or other accretions on the money held in the ~~savings~~ accounts or any other account in which the Applicant's wages were advanced ~~trust money was kept~~;
- (xii) any payments made from the ~~accounts~~ ~~trust fund~~ 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;

Particulars

- A. ~~1939 Act s 16(1); 1945 regulations, s. 12(2).~~
- 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 4.~~
- C. ~~The failure of the Respondent its servants or agents to keep and/or maintain the type of records referred to above is inferred from the fact that despite payments being made under the reparation scheme and the Respondent undertaking investigations in response to an Inquiry conducted by the Senate Standing Committee on Legal and Constitutional Affairs (both of which would have included a need for consideration of the type of records referred to above) to date no records of the type referred to above have been provided to the Applicant or otherwise disclosed to the Applicant by the Respondent.~~
- D. ~~Further particulars of the records held by the Respondent cannot be provided until after discovery.~~

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

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 ~~trust money~~ paid on his behalf 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 ~~money~~ paid by employers to the superintendents that was then paid by the superintendents into the ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept until after discovery of documents by the Respondent~~.

- (c) failing to preserve the corpus of ~~trust~~ money which was paid into the accounts ~~trust fund~~;

Particulars

- A. ~~The Applicant estimates that the amount of money paid by his employers to the superintendents was £2,192/9/11 yet he received a final payout from the savings account of only £26/15/02d.~~
- B. ~~The Applicant relies on the facts pleaded in paragraphs 272 to 275 herein.~~

- (d) failing to take reasonable care, diligence and prudence with regard to investing the ~~trust~~ money held on behalf of the Applicant on ~~in the trust fund~~ by:

- (i) permitting ~~trust~~ money held on ~~in the trust fund~~ 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 ~~in the trust fund~~ 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 ~~in the trust fund~~ 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) failing to have in place proper or adequate control systems which prevented 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.~~

- (v) withdrawing ~~trust~~ money from the accounts ~~trust fund~~ 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 ~~trust fund~~ all of the interest which had accrued on the ~~savings~~ accounts ~~or on any other account in which trust money was kept or on~~ from trust fund 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 ~~savings~~ accounts for the building of hospitals in Queensland in circumstances where the interest on those loans was not paid to the accounts ~~trust fund~~;

Particulars

- A. The interest on loans for the building of hospitals in Queensland made from the accounts trust fund 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 savings accounts for the building of hospitals in Queensland without there being any or any proper reimbursement back to the accounts trust fund;
- (e) failing to act in good faith with regard to the investment of ~~trust~~ money held on in the trust fund;

Particulars

- A. Interest on investments made with trust ~~fund~~ money was classified as “surplus interest” and was not paid to the accounts or otherwise held on trust fund but paid to the Welfare Fund;
 - B. Investments from the accounts ~~trust fund~~ 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 fund~~ in loans being made from the accounts trust fund 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 in the trust fund 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 ~~trust fund~~.

Particulars

- A. The money held on ~~in the trust fund~~ in the accounts 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 ~~the trust fund was kept~~ 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 ~~savings~~ accounts or any other accounts in which an aborigine’s or islander’s wages were advanced ~~the trust fund was kept~~;

- (vi) where the money paid by his employer to a protector or superintendent was deposited;
- (vii) the amount held on ~~in the trust fund~~ on behalf of the Applicant;
- (viii) the manner in which money held on ~~in the trust fund~~ was invested;
- (ix) any expenses, deductions or payouts that had been made to the money held on ~~in the trust fund~~;
- (x) the amount of interest or other accretions earned by the money held on ~~in the trust fund~~;
- (xi) the amount of any payment from the accounts trust fund to the employed aborigine;
- (xii) the amount of the payout from the accounts trust fund made to the Applicant in 1964;
- (i) failing to invest the money held on ~~in the trust fund~~ only for the benefit of the Applicant;

Particulars

- A. Interest on investments made with trust ~~fund~~ money was classified as “surplus interest” and was not paid to the accounts trust fund but paid to the Welfare Fund;
- B. Investments from the accounts trust fund 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 ~~in the trust fund~~;

Particulars

- A. Interest on investments made with trust ~~fund~~ money was classified as “surplus interest” and was not paid to the accounts ~~trust fund~~ but paid to the Welfare Fund;
 - B. Investments from the accounts ~~trust fund~~ 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.

Particulars

~~A. — Further particulars cannot be provided until discovery has taken place.~~

266. ~~[blank] Further, a breach of trust by the Respondent can be inferred from the fact that the Applicant was only re-paid about 1.25% of the value of the funds which had been deposited (or ought to have been deposited) into the trust fund on his behalf.~~

Particulars

~~A. — The Applicant relies on the facts pleaded in paragraphs 272 to 275 herein.~~

267. ~~[blank] With regard to some of the actions of the Respondent or its servants or agents referred to in paragraphs 265 above, namely:~~

- (a) — ~~not paying all money received from employers as wages for the Applicant into the savings accounts or any other account in which an aborigine's or islander's wages were advanced the trust fund was kept and using that money for purposes unrelated to the Applicant (sub-paragraphs 265(b), (d)(i), (d)(iii), (d)(v), (d)(vii) and (j) herein);~~
 - (b) — ~~paying money from the accounts trust fund to the Welfare Fund (paragraph 265(d)(i) herein);~~
 - (c) — ~~paying money from the accounts trust fund for the maintenance of aboriginal families, settlements and communities (paragraph 265(d)(iii) herein);~~
 - (d) — ~~not having in place a control system or systems which prevented the fraudulent withdrawal of money from the trust fund in circumstances where the Audit Reports for the years 1954 to 1972 drew this fact to the Respondent's attention (paragraph 265(d)(iv) herein);~~
 - (e) — ~~withdrawing money from the trust fund in order to make up a shortfall in government revenue (paragraph 265(d)(v) herein);~~
 - (f) — ~~not paying or otherwise crediting the trust fund with interest which had accrued on the savings accounts or on trust fund investments (paragraph 265(d)(vi) herein);~~
 - (g) — ~~permitting money held on in the trust fund to be intermingled with the Welfare Fund (paragraph 265(d)(ii) herein);~~
 - (h) — ~~permitting loans to be made from the savings accounts for the building of hospitals in Queensland in circumstances where the interest on those loans was not paid to the trust fund (paragraph 265(d)(vii) herein);~~
- (collectively called herein “the **actions**”)

the Respondent

~~(i) — knew or ought to have known of the actions; and~~

Particulars of knowledge

- ~~A. — Payments in and out of the savings accounts were the subject of annual audit prepared by the Auditor General for the Respondent and the relevant Minister. The audit reports disclosed the way in which the trust fund was being operated by the Respondent's servants or agents.~~
- ~~B. — Payments in and out of the Welfare Fund were the subject of annual audit prepared by the Auditor General for the Respondent and the relevant Minister. The audit reports disclosed that trust money was being transferred from the trust fund into the Welfare Fund.~~
- ~~C. — The payments, loans, forgiveness of loans or otherwise failures of the Respondent referred to in paragraphs 265(d)(i), (d)(ii), (d)(iii), (d)(v), (d)(vii), (d)(viii), (h), (i), (j) and (k) herein were for the benefit of the Respondent.~~
- ~~D. — The fact that the day to day control of the savings accounts and the Welfare fund was with the Respondent or its servants or agents.~~
- ~~E. — The Respondent had access to all bank records and other financial documents with regard to how the trust fund was being operated.~~
- ~~F. — The Respondent was aware that there were complaints about the fact that the payouts from the trust fund were insufficient. In this regard the Applicant refers to the facts pleaded in paragraphs 276 and 277 herein.~~
- ~~G. — Payment equal to a full return on of the trust money held by the Respondent for the Applicant on in the trust fund has not being made. In this regard that Applicant relies on the facts pleaded in paragraph 275 herein~~

~~(j) — was morally complicit, or alternatively its conduct was unconscionable, with regard to the actions;~~

Particulars

- ~~A. — The Respondent knew of the actions and permitted them to be undertaken and continued.~~

- ~~B. — The Respondent did not inform the Applicant of the actions in circumstances where as trustee it should have done so.~~
- ~~C. — The actions resulted in financial loss to the Applicant which was contrary to the purpose of the 1939 Act and regulations and the 1965 Act and regulations.~~
- ~~D. — The actions resulted in the Applicant being treated differently from other citizens of the State who were not subject to the requirement of the 1939 Act and regulations and the 1965 Act and regulations.~~
- ~~E. — The Respondent failed to keep and maintain proper records relating to the trust or to ensure that such records were kept and maintained in circumstances where it was aware or ought to have been aware of the matters set out in particulars A to D above.~~
- ~~F. — The Respondent failed to make full payments to the Applicant from the trust fund despite knowing of complaints about its failure to do so (paragraph 276 and 277 herein).~~
- ~~G. — The Respondent purported to “right a wrong” (to use the language of the then Premier Beattie in his ministerial statement to the Queensland Parliament on 16 May 2002) in making a payment to the Applicant by means of the reparations scheme but in doing so did not calculate or attempt to calculate the full amount of money owed by the Respondent to the Applicant (paragraphs 279 to 320 herein);~~
- ~~H. — The Respondent was aware or ought to have been aware of the matters referred to in sub-paragraphs (a) to (i) of paragraph 267 of this pleading.~~

~~and has accordingly engaged in conduct which constituted equitable fraud.~~

268. [blank] Further or in the alternative, the Respondent retains trust property (being the balance of the Applicant’s wages which were paid by his employers to the superintendents and not repaid to him) or retains possession of the proceeds of the use of the trust property held on his behalf fund, and the Applicant seeks recovery of such property or proceeds that remain in the possession of the Respondent.

Particulars

~~A. — The Applicant cannot will provide further particulars of the amount of trust property (being the balance of the Applicant's wages which were paid by his employers to the superintendents and not repaid to him) which the Respondent retains or of the proceeds of the use of the trust property held on his behalf fund by the Respondent until after discovery of documents by the Respondent the Applicant serves its expert evidence and/or an account takes place.~~

269. [blank] ~~At no time has the Applicant received a copy of any bank book associated with the trust fund or the savings accounts or any other account in which the trust property fund was kept, or any bank statements or other documents which shows or otherwise sets out:~~

~~(a) — the amount of money paid into the savings accounts or any other account in which money was held on the trust fund was kept on his behalf;~~

~~(b) — the amount of money held in the savings accounts or any other account in which money was held on the trust fund was kept for him;~~

~~(c) — the manner in which the money held in the savings accounts or any other account in which the trust fund was kept was invested or otherwise used by the Respondent;~~

~~(d) — the amount of money which was paid out of the savings account or any other account in which trust property the trust fund was kept and the reason for such payments; or~~

~~(e) — the amount of interest or other accretions that the savings accounts or any other account in which trust property the trust fund was kept earnt.~~

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 ~~savings~~ accounts or any other accounts in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~;
 - (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 ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~;

- (ix) any payments or other expenditure made with the money received from the employer on behalf of the Applicant;
 - (x) all payments from the ~~savings~~ accounts and any other accounts in which the Applicant's wages were advanced ~~the trust fund was kept~~;
 - (xi) the way in which money in the ~~savings~~ accounts or any other accounts in which the Applicant's wages were advanced ~~the trust fund was kept~~ was managed, used and invested;
 - (xii) the amount of interest or other accretions on the money held in the ~~savings~~ accounts or any other accounts in which the Applicant's wages were advanced ~~the trust fund was kept~~;
 - (xiii) any payments made from the accounts ~~trust fund~~ 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 ~~savings~~ accounts or any other account into which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~;

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 ~~trust money~~ paid by employers to the superintendents that was then paid by the superintendents into the savings accounts or any other account in which the Applicant's wages were advanced ~~the trust fund was kept~~ 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 ~~trust fund~~;

Particulars

- A. ~~The Applicant estimates that the amount of money paid by his employers to the superintendents was £2,192/9/11 yet he received a final payout from the savings accounts of only £26/15/02d.~~
 - B. ~~The Applicant relies on the facts pleaded in paragraphs 272 to 277 herein.~~
- (d) failing to take reasonable care, diligence and prudence with regard to investing the trust money held on behalf of the Applicant ~~in the trust fund~~ by:
- (i) permitting trust money held on ~~in the trust fund~~ 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 ~~in the trust fund~~ 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 ~~in the~~ trust fund 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) failing to have in place proper or adequate control systems which prevented the fraudulent withdrawal of money from the savings accounts or other accounts in which trust money was kept;~~

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.~~
- (v) withdrawing trust money from the accounts ~~trust fund~~ 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 ~~fund~~ all of the interest which had accrued on the ~~savings~~ accounts or on any other account in which the Applicant's wages were advanced ~~trust money was kept~~ or on trust ~~fund~~ 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 ~~savings~~ accounts for the building of hospitals in Queensland in circumstances where the interest on those loans was not paid to the trust ~~fund~~;

Particulars

- A. The interest on loans for the building of hospitals in Queensland made from the trust ~~fund~~ 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 ~~savings~~ accounts for the building of hospitals in Queensland without there being any or any proper reimbursement back to the trust ~~fund~~;

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

Particulars

- A. Interest on investments made with trust money was classified as “surplus interest” and was not paid to the trust ~~fund~~ but paid to the Welfare Fund.
- B. Investments from the trust ~~fund~~ 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 ~~fund~~ in loans being made from the trust ~~fund~~ 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 ~~trust~~ money held on ~~in the~~ trust ~~fund~~;

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 ~~fund~~.

Particulars

- A. The money held on ~~in the trust fund~~ 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 ~~the trust fund was kept~~ 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 ~~savings~~ accounts or any other accounts in which an aborigine’s or islander’s wages were advanced ~~the trust fund was kept~~;
 - (vi) where the money paid by his employer to a protector or superintendent was deposited;
 - (vii) the amount held on ~~in the trust fund~~ on behalf of the Applicant;
 - (viii) the manner in which money held on ~~in the trust fund~~ was invested;
 - (ix) any expenses, deductions or payouts that had been made to the money held on ~~in the trust fund~~;

- (x) the amount of interest or other accretions earned by the money held on ~~in the trust fund~~;
- (xi) the amount of any payment from the trust ~~fund~~ to the employed aborigine;
- (xii) the amount of the payout from the trust ~~fund~~ made to the Applicant in 1964;
- (i) failing to invest the money held on ~~in the trust fund~~ only for the benefit of the Applicant;

Particulars

- A. Interest on investments made with trust ~~fund~~ money was classified as “surplus interest” and was not paid to the trust ~~fund~~ but paid to the Welfare Fund;
- B. Investments from the trust ~~fund~~ 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 ~~in the trust fund~~;

Particulars

- A. Interest on investments made with trust ~~fund~~ money was classified as “surplus interest” and was not paid to the trust ~~fund~~ but paid to the Welfare Fund;
- B. Investments from the trust ~~fund~~ 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 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 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] Further, a breach of fiduciary duty can be inferred from the fact that the Applicant was only re-paid about 1.25% of the value of the funds which had been deposited (or ought to have been deposited) into the trust fund on his behalf.

Particulars

A. ~~The Applicant relies on the facts pleaded in paragraphs 272 to 275.~~

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 Aborigines 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 Aborigines 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 Aborigines 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 Aborigines 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
Aboriginals, Innisfail dated 22 May 1964.

274. [blank] ~~In fact, in 1964 there should have been a balance of at least £2,451 2,085 held in the savings accounts or other accounts in which the trust fund was kept on behalf of the Applicant.~~

Particulars

Amount of wages paid by the Applicant's employers (see table in paragraph 233 herein)	2,192
LESS Amount withdrawn by the Applicant (see table in paragraph 241 herein)	107
TOTAL (in pounds)	2,085

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 there ~~was a discrepancy between the amount paid to the Applicant in May 1964 of £26/15/02d (which purported to be payment of the balance held for him) and not some higher amount the amount to his credit in the savings accounts or other accounts in which the trust fund was kept, which was (or ought to have been) £2,451 2,085.~~

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 Aborigines Innisfail to Director of Native Affairs dated 22 April 1964 (~~the year is indistinct but thought to be 1965~~).
- B. The Applicant spoke with the protector (or a representative of the protector) of aborigines 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 aborigines 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 ~~savings~~ accounts or other accounts in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~.

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 ~~savings~~ 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 ~~additional~~ 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.

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 ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~, on behalf of each eligible claimant;
- (c) the Respondent's duty to keep records with regard to the ~~savings~~ accounts and payments made into and out of those accounts;
- (d) the way in which the money in the ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~ had been used;
- (e) the amount of interest or other accretions that had been earned by the money held into the ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~;
- (f) whether the Respondent was a trustee with regard to the money paid into the ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~;
- (g) whether the Respondent's conduct amounted to a breach of trust with regard to the way in which the ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~ were operated;

- (h) whether the Respondent owed fiduciary or other duties to eligible claimants with regard how the ~~savings~~ accounts or any other account in which an aborigine's or islander's wages were advanced ~~the trust fund was kept~~ 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 ~~savings~~ accounts; and/or
- (b) the amount held in the ~~savings~~ accounts for each eligible claimant;
- (c) the way in which the ~~savings~~ 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] ~~About a week after the meeting the Applicant received documents relating to the reparation scheme in the mail.~~

Particulars

- A. ~~The Respondent sent the documents to the Applicant.~~
- B. ~~The Applicant received the documents at 18 Sturges Street, Hermit Park, Townsville.~~

308. [blank] ~~One of the documents received by the Applicant was a Deed of Agreement.~~
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 ~~a cheque for~~ \$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 ~~savings~~ 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 ~~savings~~ accounts were operated;
- (h) whether the Respondent owed a fiduciary or other duties to him with regard to how the ~~savings~~ 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.

~~During the Claim Period each Group Member was domiciled in a District, settlement, reserve, islander reserve or mission, and his or her employment, and the payment of his or her wages was under the control of a protector or superintendent pursuant to the 1939 Act and regulations, the Islander Act and regulations and/or the 1965 Act and regulations.~~

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.

~~Except where an exemption had been granted, pursuant to the requirements of the 1939 Act and regulations, the Islander Act and regulations and/or the 1965 Act and regulations prior to undertaking any employment, a Group Member signed a document called a "Memorandum of Agreement" or "agreement of hiring" which set out the terms and conditions of his or her employment (the **employment agreement**).~~

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.

The employment agreement was in the form prescribed by the 1945 regulations, Islander regulations or 1966 regulations and contained the following terms:

- (a) — the name of the employer;
- (b) — the name of the employee;
- (c) — that the 1945 or 1966 regulations so far as applicable were deemed to be incorporated into the agreement;
- (d) — the rate of wages to be paid.
- (e) — that the employer would provide food and accommodation in accordance with a standard set out in the regulations;
- (f) — that the employer would return the employee to his or her place of residence on termination of his employment and pay all expenses to and from the place of employment and any other expenses of the employee;
- (g) — the period of employment;
- (h) — the occupation of the employee;
- (i) — whether any part of an employee's wages was to be paid to the protector or superintendent and if so, the amount of such wages to be paid;
- (j) — the amount of pocket money to be paid to an employee.

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.

~~The form of the employment agreements and the fact that they complied with the 1939 Act and regulations, the Islander Act and regulations and the 1965 Act and regulations can be inferred from:~~

- ~~(a) — the requirements of the 1939 Act and regulations and the 1965 Act and regulations which set out the mandatory wording and form for such an agreement;~~
- ~~(b) — the fact that the employment of an aborigine or islander had to be undertaken in accordance with the 1945 regulations, Islander regulations or 1966 regulations;~~
- ~~(c) — the fact that employment agreements were only prepared by the relevant protector or superintendent who had a duty under the 1939 Act and regulations, the Islander Act and regulations and the 1965 Act and regulations to ensure that the form required by the legislation was used and that all other statutory requirements were complied with;~~
- ~~(d) — the fact that the employment agreement was given to a Group Member to sign by the protector or superintendent who had a duty under the 1939 Act and regulations and the 1965 Act and regulations to ensure that it was correctly signed and understood by the Group Member.~~

327. [blank] Further, as a matter of practice:

- ~~(a) — protectors and superintendents required wages to be paid at either the rate set in the 1945 or 1966 regulations (as amended or updated), the Islander regulations or, in the case of station hands, at a rate which was two thirds of the rate applicable to a white employee employed under an equivalent State industrial award;~~

Particulars

A.——~~The wage rate to be paid to aboriginal station hands is to be found in an agreement between the Respondent with the Australian Workers Union which set the rate of pay of an aboriginal working in the pastoral industry at two thirds of the rate applicable to a white employee under State awards. This agreement is referred to in a letter from the Director to the Under Secretary, Department of Health and Home Affairs dated 22 November 1943. Further particulars of this agreement cannot be provided until after discovery.~~

B.——~~Further particulars cannot be given until discovery has taken place.~~

(b)——~~at least since 1958, the wages and working conditions for aborigines and islanders employed on vessels was to be governed by an annual agreement entered into between the Director and the Pearl Shellers' Association;~~

(c)——~~protectors and superintendents required at least 70% of an aboriginal's wages to be paid directly to the protector or superintendent as enforced savings.~~

Particulars

A.——~~Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disabilities Services, made on 16 May 2002 at Hansard p.1717.~~

B.——~~Final Report prepared by the Consultancy Bureau dated March 1991 called "Investigation of the Aboriginal Welfare Fund and the Aboriginal Accounts".~~

328. [blank] ~~Money paid to a protector or superintendent by an employer pursuant to an employment agreement made under the 1939 Act and regulations, the Islander Act and regulations or the 1965 Act and regulations:~~

(a) ~~was held in trust by the Respondent (through its servant or agents the Director and the protectors or superintendents) for the Group Member for whom it was paid;~~

(b) ~~was trust money (which is referred to in paragraph 251 herein)~~

(c) ~~formed part of the money held in the trust fund (which is referred to in paragraph 251 herein);~~

(d) ~~as a matter of practice was paid by the protector or superintendent into the savings accounts or islander accounts.~~

329. [blank] The practice of paying the money received by a protector or superintendent as wages for a Group Member into the savings accounts can be inferred from the following:

(a) ~~audit reports for the years 1954 to 1964 prepared by the Auditor General for the Director and the Minister for Health and Services (who was then the responsible Minister) which showed payment of money into the savings accounts and action taken by the Director to ensure that wages owed to aborigines by employers were paid into those accounts;~~

(b) ~~the requirements of the 1945 and the 1966 regulations which dealt with the establishment of the trust fund;~~

Particulars

A. ~~The Applicant repeats and relies on the facts pleaded in paragraph 252 herein.~~

(c) ~~Ministerial Statement by Hon J C Spence, Minister for Families and Minister for Aboriginal and Torres Strait Policy and Minister for Disability Services, made on 16 May 2002 at Hansard p 1717;~~

~~(d) Final Report prepared by the Consultancy Bureau dated March 1991 called “Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts”;~~

~~(e) in the case of some Group Members, the Respondent has acknowledged that such payments were made by the payment of reparation under the reparation scheme.~~

330. [blank] ~~The Respondent as trustee owed the same duties to the Group Members as set out in paragraph 256 herein.~~

331. [blank] ~~The Respondent also owed the same fiduciary duties as set out in paragraph 257 to the Group Members with regard to money paid into the trust fund.~~

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 earnt 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(1) 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] The unlawful discrimination alleged by the Applicant and on behalf of the Group Members is as follows:~~
- (a) ~~[blank]~~
 - (b) ~~[blank]~~
 - (c) ~~[blank] since the implementation of the RDA, a failure by the Respondent to act to repay or account for money held in trust by it under the 1939 Act and regulations or the 1965 Act and regulations, which act involved an exclusion based on race as only aboriginal people were the subject of a failure of the Respondent to repay or account for such money.~~
- 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 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. Y. 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 ~~has wrongly failed to give effect to the trust~~ 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 ~~a duty to act in the best interests of the Applicant with regard to the care and control of money paid to the Respondent on behalf of the Applicant;~~
- (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) [blank]
- (f) [blank]
- (g) ~~[blank] in the alternative to the relief sought in sub-paragraph (i), an order that an account be taken of all monies received and disbursed by the Respondent as trustee of the trust or as fiduciary for the Applicant;~~
- (h) ~~[blank] an order requiring the Respondent to restore the trust funds and to repay to the trust any money that has been depleted from that fund;~~
- (i) an order that the respondent make by way of equitable compensation restitution of the trust estates of the Applicant and each Group Member on account of those for 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) ~~an order pursuant to s. 46PO(4) of the *Australian Human Rights Commission Act 1986* (Cth) requiring the Respondent to:~~

- ~~(i) — open or reopen the offers of reparation made to the Applicant and Group Members under the reparation scheme;~~
- ~~(ii) — expand the persons who are capable of claiming under the reparations offers to include all Group Members;~~
- ~~(iii) — increase the level of compensation payable under the reparation scheme to reflect the amount which the Respondent received as wages earned by Group Members together with interest to bring such sums up to a present day value;~~
- ~~(iv) — advise each Group Member of:~~
 - ~~A. — the amount of money that was paid to the Respondent, its servants or agents, on account of wages earned by the Group Member;~~
 - ~~B. — where that money was paid;~~
 - ~~C. — how that money was used by the Respondent or any other party;~~
- ~~(v) — provide each Group Member with independent legal advice regarding the Respondent's liability to repay or otherwise account for such money and the quantum of any such amount;~~

- (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 matterspleaded in paragraphs ~~338~~ 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: 12 July 2018

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: 12 July 2018

Signed by John Bottoms
Lawyer for the Applicant