



## ***Senate Legal and Constitutional Affairs Committee: Inquiry into Stolen Wages***

### ***Supplementary information to submissions from the Aboriginal Legal Service Of WA Inc. (ALSWA), November 2006***

In ALSWA's second submission, the section relating to Jessie Argyle requires some correction (see pp 33-34). When Jessie was removed from her family at the age of five she was sent to Swan Native and Half-Caste Mission, not to Moore River Settlement. Swan Native and Half-Caste Mission was on the outskirts of Perth, south of Moore River Settlement, and was run by the Anglican Church. As at Moore River, the Aboriginal children at Swan Mission were given only the most rudimentary education and were trained to work. From Swan Mission, Jessie Argyle was sent to work as a domestic servant and then to Moore River Settlement after her first stint of employment. She was threatened several times by her employers and by the Department with forcible removal to Moore River Settlement as a way of controlling her behavior.

#### **'Making a quid out of pensioners'<sup>1</sup>**

Also in the second submission, I referred to the pensions and allowances to which Aboriginal people became entitled, as various racially discriminatory provisions in Commonwealth legislation were amended or repealed. Included in Attachment 1 to this supplementary

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<sup>1</sup> / Quote from a report by Native Welfare District Officer Kevin Johnson, 8 August 1966. For citation details see footnote 4 below.

submission are tables of allowance and pension rates, showing the changes to these rates over time. The information is copied from a paper cited in footnote 34 of the second submission, titled 'Developments in social security: A compendium of legislative changes since 1908'.<sup>2</sup> This information is included to provide the context for the practice in the 1960s in Western Australia whereby Commonwealth benefits for Aboriginal individuals were paid in the first place to appointed warrantees, such as pastoral station managers and mission superintendents, who were entrusted with the administration of these payments. In both ALSWA submissions to this Senate Inquiry, I referred to investigations in 1965 and 1966 by the Commonwealth and the Western Australian governments into allegations that station and mission warrantees misappropriated old age pension payments intended for Aboriginal people. From October 1965 the old age pension was £6 per week for a single person, or £5.10.0 each for people who were married. With the change to decimal currency in 1966, the rate was altered to \$13 per week for single pensioners and \$11.75 each for married pensioners.<sup>3</sup>

The allegations in relation to administration of pension payments were that some warrantees gave Aboriginal pensioners merely pocket money amounts of cash from the Commonwealth cheques and did not spend the balance of the payments on improving the pensioners' living conditions. Instead, warrantees retained most of the value of the pension payment in the station or mission account. The results of investigations by the Commonwealth Department of Social Services and the Western Australian Native Welfare Department showed that such abuses were widespread in the Kimberley region. One official report condemned the 'inadequate or carefully doctored records' in relation to expenditure of pension payments by

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<sup>2</sup> / Department of Social Security Research Paper No. 20 'Developments in social security: A compendium of legislative changes since 1908', Research and Statistics Branch, Development Division, © Commonwealth of Australia 1983. Reprinted 2006, Tables 1, 6, 11 – 15 on pp 115-129.

<sup>3</sup> / See Table 1 in Attachment 1.

station warrantees. This report, by Native Welfare officer Kevin Johnson in 1966, also included the general assessment that Aboriginal pensioners across the Kimberley were 'not receiving full benefit of their pensions', and that pastoral stations and missions in the region were 'making a quid out of pensioners.'<sup>4</sup>

In the first ALSWA submission, I referred to complaints by the Federal Director of Social Security (although the correct name for the Department at the time was Social Services) about the way Commonwealth payments were being administered by some warrantees. Here is an excerpt from the Director's correspondence with the Western Australian Commissioner of Native Affairs in 1965:

It seems that some warrantees regard the pension as a form of station subsidy and consider that they are entitled to restrict the value of the benefits flowing to the pensioners for various reasons. One being that wages paid to native station workers will not show adversely by comparison.

The effect is that instead of Commonwealth pension moneys benefiting the pensioners only, they are undeservedly and unnecessarily benefiting the station to the extent to which value is withheld from the pensioner.<sup>5</sup>

It seemed from other Departmental reports that some station warrantees openly resisted official scrutiny of their accounting practices in relation to pension payments for Aboriginal people. The published results of research into these reports in the archival records showed that in 1966,

... on Gogo station, where there were 200 Aboriginal people and fourteen age pensioners, the owners delayed and then refused to allow officers to see their books. This frustrated welfare officers, who wrote that 'the powerful Emanuel group are

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<sup>4</sup> / Jebb, Mary Anne, *Blood, Sweat and Welfare: A history of white bosses and Aboriginal pastoral workers*, University of Western Australia Press, Nedlands, 2002, p 269.

<sup>5</sup> / Director Humphreys to Commissioner of Native Welfare, quoted in Jebb, *Blood, Sweat and Welfare*, p 268.

almost a law unto themselves', setting a pattern in evidence at other stations not to fully disclose Social Security (sic) expenditure to Native Welfare officers.<sup>6</sup>

The above information is from the published work by historian Mary Ann Jebb titled 'Blood, Sweat and Welfare: A history of white bosses and Aboriginal pastoral workers.' As noted in the first ALSWA submission and detailed in the first footnote of the second ALSWA submission, the information referred to in this publication in relation to the 1965 and 1966 investigations has been drawn from archival files in the 'restricted access' category of the Department of Indigenous Affairs (DIA) collection. Dr Jebb relies to a considerable extent on one particular file titled, 'Social Services. Pensions – general', Consignment 3412, NDG 33/3/1a. This is one of the restricted archival files to which ALSWA has been refused access by DIA. Judging from the number of documents from this archival file referred to in Dr Jebb's footnotes, it contains a considerable amount of information about irregularities and financial abuses in relation to administration of Commonwealth benefits by station and mission warrantees, and the official investigations into those abuses. Attachment 2 to this supplementary ALSWA submission contains a filenote that details, footnote by footnote, the references in Dr Jebb's published work to documents from the archival file 'Social Services ... NDG 33/3/1a.' I have annotated these references in order to show the events and circumstances to which these documents refer. From Dr Jebb's publication we know that certain documents exist on an archival file to which ALSWA has been refused access by DIA. As I state in the filenote, I want to be able to review every document on this archival file uncensored. I believe it contains records directly relevant to the current Senate Committee inquiry.

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<sup>6</sup> / from Pensioner Survey Report, 4 June 1966, cited in *Ibid*, p 269.

## **Archival file request and subsequent FOI application**

The documents in Attachment 3 to this submission relate to ALSWA's efforts to access and review certain restricted archival files in the DIA collection housed in the State Records Office. ALSWA would like to thank again Corrs Chambers Westgarth, Perth office, for their considerable assistance in this matter and for their kind permission to submit copies of the correspondence to the Senate Committee.

### **'Old Age and Invalid Pensions for natives – general file'**

This is the title of one of the archival files I was given permission to access, but unfortunately I did not have the time to study it in detail for inclusion in the second ALSWA submission to the Senate Committee Inquiry into Stolen Wages. Although one archival file cannot provide a comprehensive account of Departmental policy and implementation, I have included excerpts from this file for a preliminary account of the administration of pension payments to Aboriginal people in Western Australia. To continue from evidence I gave in response to a question from Senator Webber at the hearings in Perth on 18 November, there appeared to be some conflict between the Commonwealth and State governments over the administration of Commonwealth benefits. I referred to correspondence on an archival file in which the Department of Native Welfare protested about the Commonwealth government practice of withdrawing pension payments to Aboriginal people if they were removed to 'native hospitals.' Most health and education facilities were racially segregated in Western Australia, and institutions for invalids and the elderly were no exception. Although under Commonwealth legislation Aboriginal people were deemed to be ineligible for the age pension, it seemed from Departmental correspondence in late 1939 through to 1940 that an increasing number of Aboriginal people overcame the eligibility restrictions and received pension payments, but these payments were discontinued if the pensioner moved to a 'native institution.' I have copied two documents from the archival file and these are included in Attachment 4 to this submission. I emphasise that presenting copies from the archival record is no substitute for historical analysis of the range of relevant documentary sources, but given the time constraints in this instance such analysis is not possible.

The 15 November 1939 letter from the Commissioner of Native Affairs to the Minister raises issues relevant to the terms of reference for this Senate Committee Inquiry. It seemed that ‘natives in law’ under Western Australian legislation were not necessarily the same as those deemed to be ‘Aboriginal natives’ for the purposes of Commonwealth legislation. The scope of the Native Affairs regime at a State level was not replicated at a Federal level, which is how an increasing number of Aboriginal people were eligible for Commonwealth benefits but still faced racial discrimination in the provision of services funded by the State government. The Commissioner referred to the ‘insuperable’ difficulties for an Aboriginal person to enter a ‘white institution’ where they would be able to keep receiving their pension. His careful language suggested that although the racial segregation of services was not legally enforceable the Department had no intention of challenging it. Rather, he wanted the Commonwealth government to change their policy. The response from the Prime Minister in February 1940 was that the welfare of Aboriginal people was a State responsibility. While the Commonwealth appeared to override State definitions of a ‘native in law’ in their criteria for Aboriginal eligibility for old age pensions, the Commonwealth government was not prepared to intervene in the State practice of segregated institutions. Once an elderly Aboriginal person was committed to such an institution that was where Commonwealth responsibility ended.<sup>7</sup> As I said in my evidence at the Senate Committee Inquiry hearings on 18 November, the argument was not about equity or fairness, but about which government – Commonwealth or State – was to fund the care of Aboriginal pensioners who were sent to ‘native institutions’.

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<sup>7</sup> / 15 November 1939, Commissioner of Native Affairs to Hon. Minister for the North-West; 29 February 1940, Prime Minister to Premier of Western Australia, in SROWA, ‘Old Age and Invalid Pensions for natives – general file’, Acc 993, 1939/1104.

Also on this particular archival file is Departmental correspondence in relation to the impact of amendments to Commonwealth legislation in 1960. As summarised in the second ALSWA submission to this inquiry, the extension of eligibility for age pensions and maternity allowance to all Aboriginal people other than those deemed to be 'nomadic and primitive' had a substantial impact in areas like the Kimberley. Prior to 1960 many Aboriginal people were ineligible to apply for age pensions and maternity allowances. A confidential circular from the Commissioner of Native Welfare in December 1959 outlined the procedures for payment of pensions and maternity allowance to these newly eligible Aboriginal recipients, and a copy of this document is included in Attachment 4. From the outset, there was no suggestion by either the Commonwealth or State authorities that Aboriginal people living at missions and pastoral station would get their pension payments direct, like other Western Australians. The memo from the Commissioner detailed the proposals from the Commonwealth Director General of Social Services for a system whereby mission and station warrantees would bank the pension cheques and distribute to the Aboriginal recipients a 'pocket money' component. The proportion of pension cheques paid as 'pocket money' was determined by discussions between the Director of Social Services, and mission superintendents and mission 'headquarters'. The decision about the level of pocket money to be distributed to Aboriginal pensioners living on pastoral stations seemed to be made by the Director himself.<sup>8</sup> There was no indication in this, or in previous or subsequent correspondence on the archival file that the Aboriginal recipients of Commonwealth benefits were consulted about the arrangements established by State and Federal government agencies for paying them their pensions.

On the eve of the legislative changes in 1960, the rate for the age pension was £4.15.0 per week. This was more than the weekly wages earned by many Aboriginal pastoral workers,

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<sup>8</sup> / 24 December 1959, Circular Memorandum 272 (Confidential) to all Field Officers from Commissioner of Native Welfare, in SROWA, Acc 993, 1939/1104.

and the Director General of Social Services proposed that pensioners resident on stations be paid 10/- (10 shillings) per week pocket money, which represented a little more than 10% of the total pension payment. The remainder was to be used by the station management for the 'maintenance and improvements in accommodation and general welfare' of pensioners. Subsequent investigations in 1965 and 1966, referred to in the paragraphs above, showed that in many instances the balance of pension payments was not used for the benefit of the intended Aboriginal recipients but instead was used for the benefit of the station owners. For Aboriginal pensioners resident on missions, the Director set the 'pocket money' component at between 10/- and 33/- per week. The money was administered by the mission superintendent, to whom the whole of the pension was paid direct. For instance, in 1960 the Superintendent of La Grange mission, south of Broome, received pension payments for all of the Aboriginal pensioners there, and paid them 15/- each per week as pocket money. The Superintendent had the responsibility for managing the remainder of the money on behalf of Aboriginal pensioners, which amounted to £4 per person per week. At Beagle Bay mission, on the Dampier Peninsula, pensioners received 33/- per week of their £4.15.0 pension payments, with the balance being administered by the Superintendent. At Cosmo Newbery in the Western Desert, pensioners were paid 10/- pocket money out of the £4.15.0. At four Western Australian missions – Jigalong in the Western Desert, Nullagine in the Pilbara, and Mowanjum and Forrest River in the Kimberley – the mission Superintendents received only the pocket money allowance amount (10/- to 15/- per week) and the balance was paid to the mission headquarters. In the case of Jigalong and Nullagine this was to the Apostolic Church of Australia in Richmond, Victoria, for Mowanjum it was the Australian Presbyterian Board of Missions, Sydney, and the Forrest River Mission Committee was based in Perth.<sup>9</sup>

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<sup>9</sup> / *Ibid.*



The potential for misappropriation under this system was acknowledged by the Federal Director General and by the State Commissioner of Native Welfare, who offered the services of Native Welfare Patrol Officers to 'report any apparent abuses of pension moneys.'<sup>10</sup> Some early reports, from the Native Welfare District Officers for the North Central region, showed that the system required monitoring from the outset. In December 1960 Native Welfare Officer Cornish toured sixteen pastoral stations near Meekatharra, in the Murchison region. Eleven of these stations administered payments to pensioners. Cornish commented that,

On most stations supervisors and warrantees were somewhat reluctant to spend money, apparently being of the idea that it should be saved. In every instance it was explained that the money was for the benefit of the pensioner and that they should be encouraged to purchase items which would be of assistance to them physically, clothing, bedding, etc, as well as recreationally, wireless, etc.<sup>11</sup>

In the individual station reports, Cornish noted that some pensioners had amounts of up to £80 in their accounts which he suggested should be spent on improved housing. On Mt Newman station the supervisor was warrantee for at least three Aboriginal pensioners, and the records she kept of their balances were in arrears. At Sylvania station the records were also in arrears, and 'surplus cash' from pension payments was held in the station account. At Mt Vernon station, one elderly Aboriginal man had repaid a debt to the station owners of £125 in the six months that he had been in receipt of the pension, and another Aboriginal pensioner had also repaid a substantial debt to the station. For the man who owed £125, this was a little less than half the total annual pension entitlement in late 1960 (the rate had increased to £5 per week in October 1960). Since he had only received the pension for six months it seemed that up to that point his entire pension went to the station owners as a form of debt repayment. The records did not indicate how these men may have incurred such debts, but it could not have been for

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<sup>10</sup> / *Ibid.*

<sup>11</sup> / 19 December 1960, Assistant District Welfare Officer G.E. Cornish to District Welfare Officer, Geraldton, in SROWA, Acc 993, 1939/1104.

accommodation since Aboriginal people at the station lived in makeshift dwellings described as 'bush shelters', and tents. Assistant District Officer Cornish summarised the accounting systems in place on the pastoral station he visited:

In all instances some form of record was kept, but these all differed, most were hard to follow, and a number were in arrears.<sup>12</sup>

The information on this archival file, and that which we know is on restricted file NDG 33/3/1a, suggests that inadequate record keeping by station warrantees in relation to their administration of pensions was the norm rather than the exception. The extent of warrantees' withholding of pension payments intended for Aboriginal people in Western Australia remains to be fully investigated; it is clear from the documentary records that payments were withheld. The references to station records permanently 'in arrears' and 'surplus cash' from individual pensioners' balances held in station accounts may be indicative of poor bookkeeping skills on the part of warrantees. They may also represent accounting practices designed to disguise warrantees' misuse of pension payments intended for Aboriginal people. In the first year after the 1960 amendments to the *Social Services Act* it was estimated that about 5,000 Aboriginal people in Western Australia became eligible for pensions. The total cost to the Commonwealth was 'in the vicinity of £1 million a year.'<sup>13</sup> If, as the preliminary research suggests, accounting anomalies under the warrantee system were widespread then this represents a considerable economic resource taken from the Aboriginal population in Western Australia. Like the appropriation from Aboriginal people of the value of their labour throughout much of the twentieth century, the monetary cost of financial abuses in relation to administration of Commonwealth benefits needs to be quantified.

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<sup>12</sup> / *Ibid.*

<sup>13</sup> / Press release, 13 January 1960 – Statement by the Minister for Social Services the Hon. Hugh S. Robertson, in SROWA, Acc 993, 1939/1104.

How and why did the idea that Aboriginal people should only receive ‘pocket money’ amounts of cash form the basis of Commonwealth and State government policy in relation to the administration of Commonwealth benefits? This policy did not apply to other Australians, so why was the policy developed for Aboriginal recipients who became eligible to apply for pensions in 1960? These questions are central to any further research into financial abuses against Aboriginal people in Western Australia. The 1959 memo copied at Attachment 4 indicated that the amendments to the legislation were not regarded by the Director General of Social Services as a chance for radical improvement in the economic circumstances of Aboriginal people. In many instances in 1960 the ‘pocket money’ payments to Aboriginal people on missions and pastoral stations amounted to little more than 10% of what other pensioners in Western Australia received. The documents on the archival file cited in this section indicate that the proposals for the pension and allowance payment system for Aboriginal people were devised without any consultation with Aboriginal recipients themselves. The Minister’s press release commended the ‘State Departments, Church Missions and other interested parties’ who cooperated with the Social Services Department in developing the payment arrangements.<sup>14</sup>

It seems extraordinary that the Federal government, with the endorsement of the Western Australian Native Welfare Department, would put in place a system of administration of pension payments which so clearly was open to abuse. Kimberley pastoral station owners, who ten years previously had objected to paying Aboriginal workers any money at all, were expected by the Commonwealth to spend the 80% to 90% of the value of the pension payments that was banked in the station account on ‘accommodation and general welfare’ of elderly Aboriginal people. Past experience implied that this was not likely to happen, and subsequent investigations showed that it rarely did. I suggest that the background of enforced

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<sup>14</sup> / *Ibid.*

low wages for Aboriginal workers is crucial to understanding the implementation of the 'pocket money' payment arrangements for Aboriginal pensioners. In 1960 the £4.15.0 weekly pension payment was more than what the majority of Aboriginal stockworkers and station hands were being paid for working full time. It was almost ten times the money paid to Aboriginal women working as domestic servants on some stations in the Kimberley. It was not until 1965 that the Director General of Social Services commented that station warrantees restricted the benefits flowing to pensioners because passing on their full value would illustrate how low Aboriginal wages were.<sup>15</sup> The development and implementation of State and Federal policy concerning the payment of allowances and pensions to Aboriginal people requires further investigation. The preliminary research presented in this submission suggests that financial abuses in relation to Commonwealth benefits intended for Aboriginal people comprise another factor in the historical origins of cross-generational poverty.

Fiona Skyring  
ALSWA, 2006

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<sup>15</sup> / See p 3 above.

**Attachment 1:** excerpts from 'Department of Social Security Research Paper No. 20  
'Developments in social security: A compendium of legislative changes since 1908',  
Research and Statistics Branch, Development Division, © Commonwealth of Australia 1983.  
Reprinted 2006, Tables 1, 6, 11 – 15 on pp 115-129.

From: 'Developments in social security:  
A compendium of legislative changes since 1908'

Tables

**Table 1: Age and invalid pension: Maximum rates**

DATE ON WHICH RATES WERE FIRST PAID	PENSION £. S .D PW	SUPPLEMENTARY ASSISTANCE £. S .D PW
1. 7.09 (a)	10.0	
12.10.16	12.6	
1. 1.20	15.0	
13. 9.23	17.6	
8.10.25	1. 0.0	
23. 7.31	17.6	
13.10.32 (b)	15.0	
26.10.33	17.6	
4. 7.35	18.0	
24. 9.36	19.0	
9. 9.37	0.0	
26.12.40	1.0	
3. 4.41	1.6	
11.12.41	3.6	
2. 4.42	5.0	
1.10.42	5.6	
7. 1.43	6.0	
1. 4.43	6.6	
5. 8.43	7.0	
5. 7.45	12.6	
3. 7.47	17.6	
21.10.48	2. 2.6	
2.11.50	2.10.0	
1.11.51	3. 0.0	
2.10.52	3. 7.6	
29.10.53	3.10.0	
27.10.55	4. 0.0	
24.10.57	4. 7.6	
23.10.58	4. 7.6	10.0
8.10.59	4.15.0	10.0
6.10.60	5. 0.0	10.0
5.10.61	5. 5.0	10.0

DATE ON WHICH RATES WERE FIRST PAID	STANDARD (c) £. S .D PW	MARRIED (EA) (c) £. S .D PW	SUPPLEMENTARY ASSISTANCE £. S .D PW
14.11.63	15.0	5. 5.0	10.0
1.10.64	6. 0.0	5.10.0	10.0
14.10.65	6. 0.0	5.10.0	1. 0.0

- (a) Payment of old-age pension commenced on 1.7.09 for males and females aged 65 and over. Payments of old-age pension for females aged 60-64 and of invalid pension commenced on 15.12.10. Until 1963 the amount of pension did not take marital status into account.
- (b) If income 2 shillings and sixpence per week or more, see page 10.
- (c) Standard and married rates of pension were introduced in 1963.

**Table 1:** Age and invalid pension: Maximum rates (continued)

DATE ON WHICH RATES WERE FIRST PAID	STANDARD (c) \$ PW	MARRIED (EA) (c) \$ PW	SUPPLEMENTARY ASSISTANCE \$ PW
13.10.66 (d)	13.00	11.75	2.00
10.10.68	14.00	12.50	2.00
9.10.69	15.00	13.25	2.00
8.10.70	15.50	13.75	2.00
8. 4.71	16.00	14.25	2.00
7.10.71	17.25	15.25	2.00
4. 5.72	18.25	16.00	2.00
5.10.72	20.00	17.25	4.00
14.12.72	21.50	18.75	4.00
4.10.73	23.00	20.25	4.00
4. 4.74	26.00	22.75	4.00
8. 8.74	31.00	25.75	4.00
14.11.74	31.00	25.75	5.00
1. 5.75	36.00	30.00	5.00
13.11.75	38.75	32.25	5.00
13. 5.76	41.25	34.25	5.00
11.11.76	43.50	36.25	5.00
12. 5.77	47.10	39.25	5.00
10.11.77	49.30	41.10	5.00
11. 5.78	51.45	42.90	5.00
9.11.78	53.20	44.35	5.00
8.11.79	57.90	48.25	5.00
8. 5.80	61.05	50.85	5.00
6.11.80	64.10	53.40	5.00
7. 5.81	66.65	55.55	5.00
5.11.81	69.70	58.10	5.00
11. 2.82	69.70	58.10	8.00
6. 5.82	74.15	61.80	8.00
4.11.82	77.25	64.40	10.00

(c) Standard and married rates of pension were introduced in 1963.

(d) Decimal currency was introduced in 1966.

**Table 6:** Child's allowance (a) and additional pension for children (b) and mother's/guardian's allowance

DATE ON WHICH RATES WERE FIRST PAID		CHILD'S ALLOWANCE/ADDITIONAL PENSION FOR CHILDREN		MOTHER'S/GUARDIAN'S ALLOWANCE	
AGE/INVALID	WIDOWS/SUPPORTING PARENTS	FIRST CHILD	SECOND AND OTHER CHILDREN		
		£. S. D PW	£. S. D PW	£. S. D PW	
8.7.43		5.0			
29.6.49		9.0			
1.11.51		11.6			
11.10.56		11.6	10.0		
	16.10.56	–	10.0		
5.10.61		15.0	10.0		
	10.10.61	–	15.0		
3.10.63		15.0	15.0		
	8.10.63	15.0 (c)	15.0	2. 0.0 (c)	
14.10.65		15.0	15.0	2. 0.0 (d)	
		\$ PW	\$ PW	\$ PW	
	1.10.68 (e)	2.50	2.50	4.00	
10.10.68		2.50	2.50	4.00	
				ONE CHILD UNDER 6 OR INVALID	NO CHILD UNDER 6 OR INVALID
	30.9.69	2.50	3.50	6.00	4.00
9.10.69		2.50	3.50	6.00	4.00
7.10.71		4.50	4.50	6.00	4.00
	12.10.71	4.50	4.50	6.00	4.00
4.10.73		5.00	5.00	6.00	4.00
	9.10.73	5.00	5.00	6.00	4.00
	5.11.74	5.50	5.50	6.00	4.00
14.11.74		5.50	5.50	6.00	4.00
1.5.75		7.00	7.00	6.00	4.00
	6.5.75	7.00	7.00	6.00	4.00
4.11.75		7.50	7.50	6.00	4.00
13.11.75		7.50	7.50	6.00	4.00
6.11. 80	6.11.80	10.00	10.00	8.00	6.00

(a) Until 1956 payment (called child's allowance and free of means test) was made for the first child of some categories of age and invalid pensioners. From 1956 payment (called additional pension for children, and means-tested) was made for each child after the first; this payment was brought to the same level as child's allowance in 1963. In 1965 eligibility for child's allowance and additional pension for children was extended to all age pensioners. In 1968 child's allowance was abolished and replaced by additional pension for children and this was means-tested.

(b) See Table 8 for rates of additional benefit for children.

(c) From 8.10.63 paid to widow pensioners.

(d) From 14.10.65 paid to unmarried age and invalid pensioners.

(e) Decimal currency was introduced in 1966.



**Table 11: Family allowance**

DATE ON WHICH RATES WERE FIRST PAID	FIRST CHILD S.D	SECOND CHILD S.D	THIRD CHILD S.D	FOURTH CHILD (a) S.D	FIFTH CHILD (a) S.D	CHILDREN IN INSTITUTIONS S.D	STUDENT CHILDREN S.D
<b>WEEKLY RATES</b>							
29.7.41	–	5.0	5.0	5.0	5.0	5.0 (b)	–
30.6.42	–	5.0	5.0	5.0	5.0	5.0	–
24.7.45	–	7.6	7.6	7.6	7.6	7.6	–
7.12.48	–	10.0	10.0	10.0	10.0	10.0	–
18.7.50	5.0	10.0	10.0	10.0	10.0	10.0	–
11.2.64	5.0	10.0	15.0	15.0	15.0	10.0	–
7.4.64	5.0	10.0	15.0	15.0	15.0	15.0	15.0
	\$	\$	\$	\$	\$	\$	\$
17.10.67 (c)	0.50	1.00	1.50	1.75	2.00	1.50	1.50
9.11.71	0.50	1.00	2.00	2.25	2.50	2.00 (d)	1.50
13.7.76	3.50	5.00	6.00	6.00	7.00	5.00 (e)	(f)
<b>MONTHLY RATES (g)</b>							
15.6.79	15.20	21.70	26.00	26.00	30.35	21.70	(f)
15.1.82	15.20	21.70	39.00	39.00	45.55	39.00	(f)
14.11.82	22.80	32.55	39.00	39.00	45.55	39.00	(f)

- (a) From September 1967 family allowance for the fourth child was increased by 25c to \$1.75, for the fifth child by 50c to \$2.00, and so on with cumulative increases of 25c for each subsequent child.
- (b) Endowment was payable in respect of children in non-government institutions from 29.7.41. The provision was extended to government institutions from 30.6.42.
- (c) Decimal currency was introduced in 1966.
- (d) Increase applied only in respect of children under 16 years. The rate for full-time students who had reached 16 but not 21 years remained at \$1.50 per week.
- (e) Students were included until their 25<sup>th</sup> birthday.
- (f) Students were included until their 25<sup>th</sup> birthday and payment was made according to their position in the family.
- (g) Family allowance became payable at a monthly rate from June 1979.

**Table 12: Double orphan's pension**

DATE FROM WHICH PAYABLE	\$ PER WEEK	\$ PER MONTH
9.10.73	10.00	
5.11.74	11.00	
15.5.79		47.70
15.11.80		55.70

**Table 13:** Handicapped child's allowance (a)

DATE FROM WHICH PAYABLE	UNDER 16 YEARS \$ PER WEEK	STUDENT 16-24 \$ PER WEEK
14.1.75	10.00	
15.11.76	15.00	
16.10.78	15.00	15.00
	\$ PER MONTH	\$ PER MONTH
15.5.79	65.00	65.00
15.11.80	73.00	73.00
14.11.82	85.00	85.00

(a) Rates shown are those payable in respect of a severely handicapped child. The rate payable in respect of a substantially handicapped child depends on the parents' financial circumstances but cannot exceed the amount payable in respect of a severely handicapped child.

**Table 14:** Maternity allowance: Rates

DATE FROM WHICH PAYABLE	EACH CONFINEMENT £. S.D	FIRST CHILD £. S.D	SECOND CHILD £. S.D	THIRD CHILD £. S.D	FOURTH CHILD £. S.D	OTHER CHILDREN £. S.D
10.10.12	5. 0.0					
20.7.31	4. 0.0					
1.8.34 (a)		4. 0.0	4. 5.0	4.10.0	4.15.0	5. 0.0
21.9.36	4.10.0	5. 0.0	5. 0.0	5. 0.0	5. 0.0	
1.1.38 (a)		4.10.0	5. 0.0	5. 0.0	7.10.0	7.10.0
1.7.43 (a)		15. 0.0	16. 0.0	16. 0.0	17.10.0	17.10.0
1.11.78	Abolished					

(a) The rate was determined by the number of children under 16 in the claimant's custody, care and control. From 5.4.44, £5 was added for each additional child born in twins or triplets, and from 1.7.47 this provision was extended to cover each additional child born in all multiple births.

**Table 15:** Maternity allowance: Income test

DATE OF EFFECT	UPPER LIMIT OF INCOME (a) £PA
20.7.31	260
12.10.32	208

	NO OTHER CHILDREN	ADDITIONAL ALLOWANCE FOR EACH OTHER CHILD	MAXIMUM ALLOWABLE INCOME
1.8.34 (b)	208	13	299
21.9.36	221	13	312
1.1.38	247	13	338
1.7.43	Income test abolished		

(a) For the 12 months preceding the birth, and in respect of the claimant and husband (or claimant only where single or widowed).

(b) The upper limit was £208 plus £13 for each other child under 14 years living with the mother, subject to a maximum of £299.

**Attachment 2:** filenote re references to restricted access file NDG 33/3/1a

# Filenote



**By:** Fiona Skyring

**Date:** 24 November 2006

**Re:** references to archival file NDG 33/3/1a in the published history, *Blood, Sweat and Welfare*

---

In the first footnote of the second ALSWA submission I detail the references to the restricted access file NDG 33/3/1a in the publication by historian Mary Ann Jebb, titled *Blood, Sweat and Welfare: A history of white bosses and Aboriginal pastoral workers*. Based on information already published in Mary Ann Jebb's book, I know that this particular file contains information about Department of Social Security and Native Welfare Department investigations in 1965 and 1966 into the way pastoral station managers and other warrantees misused pension money intended for elderly Aboriginal residents of the stations and missions in the Kimberley. The Department was called Social Services at the time, but I have not corrected the references in Dr Jebb's text as she refers to 'Social Security' throughout the chapter. Dr Jebb cites the file NDG 33/3/1a in the following footnotes in Chapter 7 of her publication. As is clear from this information already published, the file contains records directly relevant to the Senate Inquiry into Stolen Wages. These records detail abuses and financial mismanagement by pastoral station warrantees in relation to pension payments for Aboriginal people. I want to review every folio on the file uncensored:

Footnote 63, p 264 - reference to Departmental report that some station managers and missions 'did not improve pensioners' living conditions at all and were barely even keeping them alive'. This is from a document by Special Magistrate M.E. Davies to the Commissioner of Native Welfare, 19 May 1965.

Footnote 65, p 264 - re announcement of Social Security Dept investigation in 1965 – at the same time there were press reports that station managers at Wave Hill in the NT held £9,000 worth of pension monies and that WA stations may have been in a similar situation. From a report in the *Weekend News*, 13 March 1965.

Footnote 72, p 266 – that Aboriginal pensioners in the Kimberley had 'little understanding of pensions and no guidance', reported by Special Magistrate M.E. Davies to the Commissioner of Native Welfare, 19 May 1965.

Footnote 73, p 266 - Departmental investigation of the books at Tableland pastoral station showed that the accounting there for money for nine old age pensioners could not be faulted. From 'Pensioner Survey Report', 4 June 1966. Further investigations the following year, though, showed that \$9,840 was unaccounted for once the cost of food and pocket-money cash payments were deducted from the total amount of pension payments to the station. The owner claimed \$5,500 for 'transport and freight etc', and it seemed simply deposited a further \$2,000 of the pension money into the station account. There is no footnote reference for these results from the 1967 investigation but I assume it will be in a document on the same file NDG 33/3/1a.

Footnote 79, p 268 – the quote from the Director of Social Security (sic) that 'some warrantees regard the pension as a form of station subsidy' and that pension money was being used 'undeservedly and unnecessarily' to benefit stations rather than the pensioners themselves. From Director of Social Security, Humphries to Commissioner of Native Welfare, 2 July 1965.

Footnote 81, p 269 – that in instances where station manager or owners would not follow the guidelines for warrantees, the Dept would either cancel the pensions or assist

Aboriginal people to move, rather than prosecute warrantees. In correspondence from the Commissioner of Native Welfare to the Director of Social Security, 3 August 1965.

Footnote 82, p 269 – there was a further investigation in 1966 where Native Welfare officers went and spoke with Aboriginal pensioners in their camps and asked them how much cash they received. From the ‘Pensioner Survey Report’, 4 June 1966.

Footnote 83, p 269 – the reference to legal advice that station warrantees did not have to show their account books in relation to expenditure of Social Security payments to State or Federal government officers. One example was at Gogo station owned by the Emanuel Bros group, who simply refused to let Native Welfare officers look at their books. From the ‘Pensioner Survey Report’, 4 June 1966.

Footnote 84, p 269 – the quote that across the Kimberley stations had ‘very inadequate or carefully doctored’ records of expenditure of pension payments, and it was clear from their living conditions that elderly Aboriginal people on the station were not receiving the full value of their pensions. In a report by Kevin Johnson, Native Welfare Dept, 8 August 1966.

Footnote 85, p 269 – the comment that missions and stations were all ‘making a quid out of pensioners’. In a report by Kevin Johnson, Native Welfare Dept, 8 August 1966.

Footnote 86, p 270 – directive from the Department of Social Security that warrantees had to make cash payments of at least \$9 out of the \$23.50 fortnightly Social Security cheques to Aboriginal pensioners. In correspondence from L B Hamilton, Dept of Social Security to WA Social Security, 7 September 1966.

Footnote 87, p 270 – that the Dept of Social Security would start making direct payments of the entire pension to all eligible recipients in the near future. In correspondence from L B Hamilton, Dept of Social Security to WA Social Security, 7 September 1966.

### **Attachment 3: Archival file request and FOI application**

The documents are in chronological order:

23 August 2006, from Dennis Eggington, ALSWA, to Ms Ingrid Hebron, Assistant Director Heritage and Culture, Department of Indigenous Affairs (DIA).

12 September 2006 from Ingrid Hebron, DIA to Fiona Skyring, ALSWA.

13 September 2006 from Peter Collins, Director of Legal Services, ALSWA to Ms Amanda Cattermole, Acting Director-General, DIA.

18 October 2006 from Julian Sher, Partner, Corrs Chambers Westgarth to Ms Amanda Cattermole, Acting Director-General, DIA.

6 November 2006 from Andrew Pepper, Freedom of Information Coordinator, DIA to Amanda Dunne, Corrs Chambers Westgarth.

9 November 2006 from Julian Sher and Amanda Dunne, Corrs Chambers Westgarth to Ms Darryl Wookey, Office of the Information Commissioner.

13 November 2006 from Tim Kennedy, Senior Legal Officer, Office of the Information Commissioner to Amanda Dunne, Corrs Chambers Westgarth.

15 November 2006 from Julian Sher, Corrs Chambers Westgarth, to T. Kennedy, Office of the Information Commissioner.

16 November 2006 from Tim Kennedy to Julian Sher.



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of Western Australia, Inc

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Toll Free  
1800 019 900

Ms Ingrid Hebron  
Assistant Director  
Heritage and Culture  
Dept of Indigenous Affairs

CC: Ms Julie Hayden

23 August 2006

Dear Ms Hebron,

**Re: Stolen Wages Inquiry**

As you are aware, the Senate Legal and Constitutional Committee are conducting an Inquiry into Stolen Wages. ALSWA has made one submission to the Senate Inquiry, and this can be downloaded from the Committee website, at [http://www.aph.gov.au/senate/committee/legcon\\_ctte/stolen\\_wages/submissions/sub30.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_wages/submissions/sub30.pdf)

In our submission we stated that we hope to provide further information to the Inquiry if given the opportunity. The deadline for submissions has been extended to 29 September, so ALSWA is going to take advantage of this extension and undertake more research. For this, we request access to the following list of twenty-seven restricted access archival files held in the State Records Office of WA:

- |                                   |                                                          |                                                       |
|-----------------------------------|----------------------------------------------------------|-------------------------------------------------------|
| 1. ITEM-1939/1104<br>Acc 993      | 2030 FILES - ABORIGINES<br>DEPARTMENTS                   | Old Age and Invalid Pensions<br>for natives – general |
| 2. ITEM-NDG 33/3/1 a<br>Cons 3412 | 46 ADMINISTRATION<br>FILES - NORTHERN<br>DISTRICT OFFICE | Social Services. Pensions -<br>General                |
| 3. ITEM-NDG 33/3/1 b<br>Cons 3412 | 46 ADMINISTRATION<br>FILES - NORTHERN<br>DISTRICT OFFICE | Social Services. Pensions -<br>General                |



- |                                 |                                                                          |                                                                                                  |
|---------------------------------|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| 4. ITEM-1922/0647<br>Cons 1326  | 2031 FILES (ABORIGINAL MATTERS) - CHIEF SECRETARY'S DEPARTMENT           | Deputy Chief Protector of Aborigines - Trust account                                             |
| 5. ITEM-NDG 05/8<br>Cons 3412   | 46 ADMINISTRATION FILES - NORTHERN DISTRICT OFFICE                       | Accounts. Commissioners Special Trust Account (Section 35 of AAPA Act)                           |
| 6. ITEM-1909/0065<br>Cons 652   | 1644 FILES (ABORIGINAL MATTERS) - DEPARTMENT OF ABORIGINES AND FISHERIES | Geo. Gigup (Aboriginal Native) Claim for wages due - from Mr James Adams Farmer - East Kimberley |
| 7. ITEM-1950/0151<br>Cons 933   | 2030 FILES - ABORIGINES DEPARTMENTS                                      | Bank accounts with District Officer as Trustee for Natives.                                      |
| 8. ITEM-1959/0463<br>Cons 1724  | 2030 FILES - ABORIGINES DEPARTMENTS                                      | Natives in Possession of Cash and Investments in Trust Lists for Submission to District Officers |
| 9. ITEM-1962/0111<br>Cons 1724  | 2030 FILES - ABORIGINES DEPARTMENTS                                      | Native Trust Accounts - Bank Deposits                                                            |
| 10. ITEM-1965/0223<br>Cons 1733 | 2030 FILES - ABORIGINES DEPARTMENTS                                      | Native Trust Account - Record of                                                                 |
| 11. ITEM-10.10<br>Cons 2817     | 47 ADMINISTRATION FILES - SOUTH WEST DISTRICT OFFICE                     | Departments Public Trustee - estates of deceased natives                                         |
| 12. ITEM-1924/0278              | 2029 FILES -                                                             | Employment of native                                                                             |

Cons 653	DEPARTMENT OF THE NORTH WEST (1)	prisoners. Broome Gaol
13. ITEM-1924/0341 Cons 653	2029 FILES - DEPARTMENT OF THE NORTH WEST (1)	Employment of natives, Prairie Downs Station
14. ITEM-1924/0485 Cons 653	2029 FILES - DEPARTMENT OF THE NORTH WEST (1)	Aboriginal Native "Gladys" in employment of Mrs J Hamilton, Derby, Complaint re-removal to Sunday Island Mission
15. ITEM-1928/0040 Cons 993	2030 FILES - ABORIGINES DEPARTMENTS	Employment of Natives in sandalwood industry
16. ITEM-1936/0055 Cons 993	2030 FILES - ABORIGINES DEPARTMENTS	Yampi Sound Co. Employment of natives by. Supply of meat and vegetables from Munja Station.
17. ITEM-1939/0138 Cons 993	2030 FILES - ABORIGINES DEPARTMENTS	Natives in lawful employment - enticement to Missions by missionaries.
18. ITEM-1939/0877 Cons 993	2030 FILES - ABORIGINES DEPARTMENTS	Employment of native girls at Derby Leprosarium
19. ITEM-1941/1172 Cons 993	2030 FILES - ABORIGINES DEPARTMENTS	Employment of natives under Federal and State Award
20. ITEM-1921/0358 v1 Cons 1326	2031 FILES (ABORIGINAL MATTERS) - CHIEF SECRETARY'S DEPARTMENT	Aborigines - Moore River Native Settlement : employment of carpenters and casual labour

21. ITEM-1921/2090 Cons 1326	2031 FILES (ABORIGINAL MATTERS) - CHIEF SECRETARY'S DEPARTMENT	Moore River Native Settlement : Placing of inmates in private employment.
22. ITEM-1964/0300 Cons 1733	2030 FILES - ABORIGINES DEPARTMENTS	Employment of Natives Survey - Eastern Division
23. ITEM-1965/0244 Cons 1733	2030 FILES - ABORIGINES DEPARTMENTS	Employment of Natives - Pastoral Apprenticeships
24. ITEM-1967/0086 Cons 1733	2030 FILES - ABORIGINES DEPARTMENTS	Employment of Native Youths
25. ITEM-1967/0118 Cons 1733	2030 FILES - ABORIGINES DEPARTMENTS	Native Employment - Northam
26. ITEM-1968/0408 Cons 1733	2030 FILES - ABORIGINES DEPARTMENTS	Employment - Training of Natives in Mining Operations
27. ITEM-1909/0834 Cons 652	1644 FILES (ABORIGINAL MATTERS) - DEPARTMENT OF ABORIGINES AND FISHERIES	Ernest Wm Baston. Employment of Natives - wishes to obtain a half caste girl

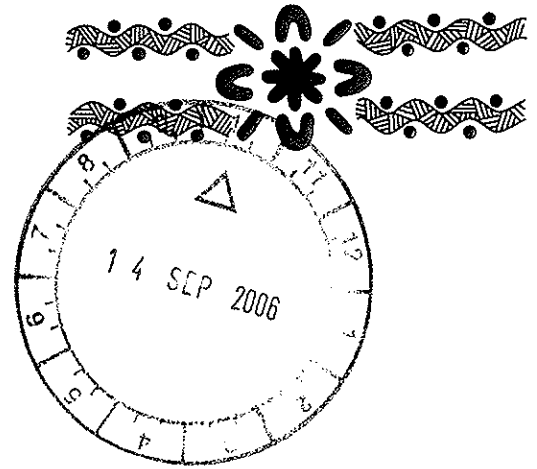
If you wish to discuss this request further, please contact me on 92656669, or email [fskyring@als.org.au](mailto:fskyring@als.org.au). Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dennis Eggington', written in a cursive style.

Dennis Eggington  
Chief Executive Officer

CC: Julie Hayden  
Fiona Skyring



ENQUIRIES Julie Hayden 92358075  
OUR REF: document1  
YOUR REF:

Ms Fiona Skyring  
Aboriginal Legal Service  
PO Box 8194  
Perth Business Centre WA 6849

Dear Ms Skyring

### ACCESS TO ARCHIVAL INFORMATION FOR GENERAL RESEARCH PURPOSES

Thank you for your application received on 22 June 2006, seeking access to archival records for general research purposes.

Your application for the following files has been approved and is valid for a period of 12 months commencing on the date received. If research has not been completed within the granted time frame, a new application will be required before research can recommence.

[652] 65/09; 834/09; [653] 278/24; [993] 40/28; 1172/41; [1326] 647/22;  
358/21 v 1; [1733] 300/1964; 118/1967; 408/1968; [3412] NDG 05/8.

You have also been given access to the following files classified as OWE "Open with Exception".

[653] 485/24; [993] 1104/39; 877/39; [1733] 111/62; [1326] 2090/1921.

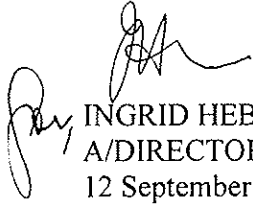
You may research these records only by arrangement with staff at the State Records Office. However, please be aware that permission to research archival documents should not be interpreted as conferring an automatic right to take copies from them. As a general rule and in the interest of preserving these unique records photocopying will only be allowed at the discretion of the State Archivist.

Unfortunately, under current DIA Policies and Guidelines the following files remain "Closed" and are not available to the public.

[653] 341/24; [993] 55/36; 151/50; 138/39; [1724] 463/59; [1733]  
223/65; 244/65; 86/67; [2817] Item 10.10; [3412] 33/3/1a & b.

If you need any further assistance with access to archives please contact Ms Julie Hayden on 92358075.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ingrid Hebron', written in a cursive style.

INGRID HEBRON  
A/DIRECTOR HERITAGE & CULTURE  
12 September 2006



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of Western Australia, Inc

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Toll Free  
1800 019 900

Ms Amanda Cattermole  
Acting Director General  
Dept of Indigenous Affairs

CC: Ms Julie Hayden

By fax: 9235 8011

13 September 2006

Dear Ms Cattermole,

**Re: Stolen Wages Inquiry**

As you are aware, the Senate Legal and Constitutional Committee are conducting an Inquiry into Stolen Wages. On 23 August the Aboriginal Legal Service of WA (ALSWA) sent a request to the Department of Indigenous Affairs (DIA) for access to restricted DIA archival files held at the State Records Office of WA. ALSWA has already made a submission to the Inquiry and we are in the process of preparing a further submission. This is due on 29 September 2006.

We have received a response from Ingrid Hebron, Acting Director Culture and Heritage, to our 23 August request, informing ALSWA that we have access to most of the files we sought, but that a number remained 'closed' under DIA Policies and Guidelines. I now seek your assistance to waive the restrictions on these files so that ALSWA historian, Dr Fiona Skyring, can review them for the submission to the Stolen Wages Inquiry. I cannot emphasise enough the importance of presenting this information to the Senate Inquiry, with the aim of encouraging the Senate to establish a national forum on the issue of mandatory controls over Indigenous labour and finances. As ALSWA stated in our first submission,

a national Inquiry into Stolen Wages ... is an important stage of the reconciliation process in Australia. It is essential that all Australians learn about the significant contribution Aboriginal workers made to our nation's economic wealth.

You may also be aware that the response to the Inquiry from Western Australia has been very limited, with ALSWA's submission being the only comprehensive submission lodged so far. This underlines the importance of enabling ALSWA to access as much relevant information as possible within the short period of time we have to prepare a further submission, since no other organisation in Western Australia has undertaken the task of responding to the Inquiry.

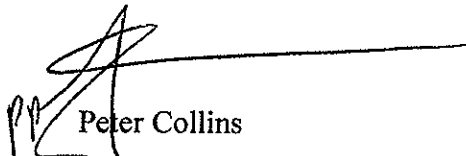
We request that the 'closed' status of the following files requested be waived for the specific purpose of research for the ALSWA submission to the Stolen Wages Inquiry:

[653] 341/24; [993] 55/36; 151/50; 138/39; [1724] 463/59; [1733] 223/65; 244/65; 86/67; [2817] Item 10.10; [3412] 33/3/1a & b.

ASLWA assures you that any personal financial information or personal medical information on these files will not be included in our submission to the Stolen Wages Inquiry. If Dr Skyring refers to particular circumstances in order to illustrate a more general point about, for instance, misappropriation of Social Security pension payments by pastoral station owners, then she will ensure that the Aboriginal individual/s named in the files will not be identified in the submission. Dr Skyring will treat with respect any information of a personal and sensitive nature contained in the archival files.

The urgent nature of this request has already been raised with your office, and I therefore look forward to your early response.

Yours sincerely

  
Peter Collins  
Director of Legal Services



**COPY**

Sydney  
Melbourne  
Brisbane  
Perth  
Canberra  
Gold Coast

18 October 2006

Ms Amanda Cattermole  
Acting Director General  
Department of Indigenous Affairs  
1st Floor 197 St George's Terrace  
Perth WA 6000

**Contact**  
Amanda Dunne (08) 9460 1624  
Email: amanda.dunne@corrs.com.au

**Partner**  
Julian Sher

Dear Ms Cattermole

## **Freedom of Information Request - Aboriginal Legal Service of Western Australia**

We act for the Aboriginal Legal Service of Western Australia (ALSWA).

We refer to your letter to the ALSWA dated 12 September 2006.

Pursuant to the *Freedom of Information Act 1992 (Act)* we are instructed to request access to the following documents:

- 1 Item NDG 33/3/1 a Consignment 3412 "Social Services, Pensions – General"
- 2 Item NDG 33/3/1 b Cons 312 "Social Services, Pensions – General"
- 3 Item 1950/0151 Cons 933 "Bank accounts with District Officer as Trustee for Natives"
- 4 Item 1959/0463 Cons 1724 "Natives in Possession of Cash and Investments in Trust Lists for Submission to District Officers"
- 5 Item 1965/0223 Cons 1733 "Native Trust Account – Record of"
- 6 Item 10.10 Cons 2817 "Departments Public Trustee – estates of deceased natives"
- 7 Item 1936/0055 Cons 993 "Yampi Sound Co. Employment of natives by. Supply of meat and vegetables from Munja Station"
- 8 Item 1939/0138 Cons 993 "Natives in lawful employment – enticement to Missions by missionaries"
- 9 Item 1965/0244 Cons 1733 "Employment of Natives – Pastoral Apprenticeships"
- 10 Item 1967/0086 Cons 1733 "Employment of Native Youths"
- 11 WAS 46, Cons 3412, NDG 36/57, Vol 2 "Mt. Hart Station"
- 12 WAS 46, Cons 3412, NDG 36/56, "Mt Elizabeth Station"
- 13 WAS 46, Cons 3412, NDG 36/58, Vol 2, "Mt. House Station"

18 October 2006

Department of Indigenous Affairs

**Freedom of Information Request - Aboriginal Legal Service  
of Western Australia**

**COPY**



ALSWA requires these documents as a matter of urgency for the purposes of completing its submissions to the Senate Legal and Constitutional Committee Inquiry into Stolen Wages. Accordingly, we are instructed to request your undertaking by **12 noon on Monday 23 October 2006** that you will process this application as a matter of urgency, failing which our instructions are to make an application to the Information Commissioner pursuant to ss 13(4) and (5) of the Act.

We **attach** a cheque in the sum of **\$30.00** being the application fee payable under the Act.

The address to which notices under the Act can be sent is:

Attention: Julian Sher  
Corrs Chambers Westgarth  
Level 15, Woodside Plaza  
240 St George's Terrace  
PERTH WA 6000

If you have any queries, please contact Amanda Dunne on (08) 9460 1624.

Yours faithfully  
**Corrs Chambers Westgarth**

**Julian Sher**  
Partner

copy: Ingrid Hebron, Acting Director Heritage and Culture  
Julie Heydon

ENQUIRIES: Andrew Pepper 9235 8132  
OUR REF: 06/0908  
YOUR REF:

Ms Amanda Dunne  
GPO Box 9925 WA 6001

Dear Amanda

### Acknowledgement of FOI Application

I refer to your letter dated 18 October 2006, which was received at this office on 23 October 2006. You have sought access to documents under the *Freedom of Information Act 1992* (FOI Act) on behalf of the Aboriginal Legal Service of WA ALSWA for the purposes of completing its submissions to the Senate Legal and Constitutional Committee inquiry into Stolen Wages.

You have requested access to documents listed below that are held by the State Archives at the State Records Office (SRO).

<b>DIA Reference</b>	<b>Consignment</b>	<b>Item</b>	<b>Description</b>	<b>SRO Access</b>
1	3412	NDG 33/3/1 a	Social Services Pensions General	
2	312	NDG 33/3/1 b	Social Services Pensions General	
3	933	1950/0151	Bank Accounts with District Officer as Trustee for Natives	
4	1724	1959/0463	Natives in Possession of Cash and Investments in Trust Lists for submission to District Officers	
5	1733	1965/0223	Native Trust Account – record of	
6	2817	10.10	Public Trustee estates of deceased natives	
7	993	1936/0055	Yampi sound Employment of Natives Munja Station	
8	1733	1965/0244	Pastoral apprentices	
9	1733	1967/0086	Employment of Native Youths	
10	3412	WAS 46 NDG 36/57	Vol 2 Mt Hart Station	
11	3412	WAS 46 NDG 36/56	Mt Elizabeth Station	
12	3412	WAS 46 NDG 36/58	Vol 2 Mt House Station	

I acknowledge receipt of the \$30.00 remittance order, which accompanied your letter. That remittance covers the mandatory fee required under section 12(1)(e) of the FOI Act. Your application has satisfied all conditions and is considered valid. Accordingly, we can commence progressing the application as quickly as possible.

Under Section 12, of the WA FOI Act of 1992, the normal 45 day processing period for FOI applications commences from the date of receipt of our \$30.00 FOI fee. In this instance, the 45-day processing period will end on 6 December 2006.

Please note I have endeavoured to access the referred documents from the State Records Archive Service to process access for this FOI application. I have been informed by SRO that documents with DIA reference 1, 2 & 6 cannot be retrieved and can only be viewed at SRO because of their age and fragility of the records.

To further this application under the provisions of the FOI Act I am obligated to view these documents prior to any decision on access.

I understand your client, after discussion with the Acting Director General of the Department, was offered access to these records on 20 September 2006 subject to it agreeing to sign a confidentiality agreement. On 21 September 2006, your client indicated it was unwilling to sign the agreement unless certain clauses were deleted including clauses which confined the use of the documents for the purposes of the Senate Inquiry. The Department remains willing to provide access to these documents subject to a confidentiality agreement and if your client wishes to pursue an agreement, please advise.

I stress for access to these documents to be progressed quickly the option of access being provided outside the FOI Act but subject to a confidentiality agreement may be a matter your client may wish to consider.

If you have any further queries, please don't hesitate to contact me on (08) 9235 8132

Yours sincerely



Andrew Pepper  
FREEDOM OF INFORMATION COORDINATOR  
6 November 2006

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**CORRS  
CHAMBERS  
WESTGARTH**  
lawyers

**Date** 9 November 2006  
**Pages** 10 (including this page)

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**To** Ms Darryl Wookey  
Office of the Information Commissioner  
Western Australia  
Tel (08) 9220 7888  
Fax (08) 9325 2152

---

**From** Julian Sher/Amanda Dunne  
Tel (08) 9460 1624  
Fax (08) 9460 1667  
Email amanda.dunne@corrs.com.au  
Our ref JLS/AD/PPPS12315-9033523/1

---

Sydney  
Melbourne  
Brisbane  
Perth  
Canberra  
Gold Coast

Dear Madam

## **Freedom of Information Request - Application to reduce compliance time**

Please refer to **attached**.

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**PLEASE NOTE:** If this fax transmission is received by other than the named addressee, you are requested immediately to notify us and return the original message to us at the postal address shown. The client entitled to the benefit of the solicitor/client/legal professional privilege attaching to this document is entitled to recover all copies of the document and to prevent its dissemination or use in any form by application to the courts.

**If this fax is illegible or incomplete please telephone (08) 9460 1840**

---

4230184/1

Our reference  
JLS/AD/PPPS12315-9033523/1

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**CORRS  
CHAMBERS  
WESTGARTH**  
lawyers

Sydney  
Melbourne  
Brisbane  
Perth  
Canberra  
Gold Coast

9 November 2006

**By fax:** (08) 9325 2152

Ms Darryl Wookey  
Acting Information Commissioner  
Office of the Information Commissioner  
Western Australia  
12<sup>th</sup> Floor St Martin's Tower  
44 St George's Terrace  
Perth WA 6000

**Contact**  
Amanda Dunne (08) 9460 1624  
Email: amanda.dunne@corrs.com.au

**Partner**  
Julian Sher

Dear Ms Wookey

## **Freedom of Information Request - Application to reduce compliance time**

We act for the Aboriginal Legal Service of Western Australia (**ALSWA**).

### **1 Freedom of Information Request**

- 1.1 Pursuant to the *Freedom of Information Act 1992 (Act)*, we made an application on behalf of the ALSWA to the Department of Indigenous Affairs (**DIA**) for access to the documents specified in Annexure A. A copy of the application is **attached**.
- 1.2 ALSWA requires these documents as a matter of urgency for the purposes of completing its submissions to the Senate Legal and Constitutional Committee Inquiry into Stolen Wages (**Inquiry**), which will be sitting in Perth on 16 November 2006.
- 1.3 We requested the DIA to give an undertaking to process this application by 12 noon on Monday 23 October 2006 as a matter of urgency. The DIA did not, and still has not, complied with this request. Please refer to the DIA's response dated 8 November 2006 (**attached**).

### **2 Request for reduction in time**

- 2.1 Pursuant to s 13(4) of the *Freedom of Information Act 1992 (Act)* we are instructed to request a reduction in the time allowed to the DIA to deal with the ALSWA's access application.
- 2.2 Given the urgent nature of the application, we request that the DIA be required to make a decision with respect to access by no later than **12 noon on Monday 13 November 2006**.

- 2.3 The documents are urgently required for a hearing to be held in Perth on 16 November 2006 as part of the Inquiry. The Inquiry is a matter of national significance and public interest.
- 2.4 Information in restricted Item NDG 33/3/1a has already been published in work by historian Mary Ann Jebb entitled "*Blood, Sweat and Welfare: A History of White Bosses and Aboriginal Pastoral Workers*, University of Western Australia Press, Nedlands, 2002". It is unreasonable that the DIA are restricting access to a file which has already been reviewed by another historian and published.
- 2.5 The ALSWA has given assurances that personal financial information or personal medical information would not be included in the submissions to the Stolen Wages Inquiry. These assurances were contained in a letter (**attached**) requesting access to the documents prior to the Freedom of Information request being made.

If you have any queries, please contact Amanda Dunne on (08) 9460 1624.

Yours faithfully  
**Corrs Chambers Westgarth**



**Julian Sher**  
Partner

copy: Andrew Pepper, Freedom of Information Coordinator, DIA  
Peter Collins, Director of Legal Services, ALSWA

## Annexure A

### Documents for which access was requested by ALSWA

- 1 Item NDG 33/3/1 a Consignment 3412 "Social Services, Pensions – General"
- 2 Item NDG 33/3/1 b Cons 312 "Social Services, Pensions – General"
- 3 Item 1950/0151 Cons 933 "Bank accounts with District Officer as Trustee for Natives"
- 4 Item 1959/0463 Cons 1724 "Natives in Possession of Cash and Investments in Trust Lists for Submission to District Officers"
- 5 Item 1965/0223 Cons 1733 "Native Trust Account – Record of"
- 6 Item 10.10 Cons 2817 "Departments Public Trustee – estates of deceased natives"
- 7 Item 1936/0055 Cons 993 "Yampi Sound Co. Employment of natives by. Supply of meat and vegetables from Munja Station"
- 8 Item 1939/0138 Cons 993 "Natives in lawful employment – enticement to Missions by missionaries"
- 9 Item 1965/0244 Cons 1733 "Employment of Natives – Pastoral Apprenticeships"
- 10 Item 1967/0086 Cons 1733 "Employment of Native Youths"
- 11 WAS 46, Cons 3412, NDG 36/57, Vol 2 "Mt. Hart Station"
- 12 WAS 46, Cons 3412, NDG 36/56, "Mt Elizabeth Station"
- 13 WAS 46, Cons 3412, NDG 36/58, Vol 2, "Mt. House Station"



18 October 2006

Ms Amanda Cattermole  
Acting Director General  
Department of Indigenous Affairs  
1st Floor 197 St George's Terrace  
Perth WA 6000

**Contact**  
Amanda Dunne (08) 9460 1624  
Email: amanda.dunne@corr.com.au

**Partner**  
Julian Sher

Dear Ms Cattermole

## **Freedom of Information Request - Aboriginal Legal Service of Western Australia**

We act for the Aboriginal Legal Service of Western Australia (ALSWA).

We refer to your letter to the ALSWA dated 12 September 2006.

Pursuant to the *Freedom of Information Act 1992 (Act)* we are instructed to request access to the following documents:

- 1 Item NDG 33/3/1 a Consignment 3412 "Social Services, Pensions – General"
- 2 Item NDG 33/3/1 b Cons 312 "Social Services, Pensions – General"
- 3 Item 1950/0151 Cons 933 "Bank accounts with District Officer as Trustee for Natives"
- 4 Item 1959/0463 Cons 1724 "Natives in Possession of Cash and Investments in Trust Lists for Submission to District Officers"
- 5 Item 1965/0223 Cons 1733 "Native Trust Account – Record of"
- 6 Item 10.10 Cons 2817 "Departments Public Trustee – estates of deceased natives"
- 7 Item 1936/0055 Cons 993 "Yampi Sound Co. Employment of natives by. Supply of meat and vegetables from Munja Station"
- 8 Item 1939/0138 Cons 993 "Natives in lawful employment – enticement to Missions by missionaries"
- 9 Item 1965/0244 Cons 1733 "Employment of Natives – Pastoral Apprenticeships"
- 10 Item 1967/0086 Cons 1733 "Employment of Native Youths"
- 11 WAS 46, Cons 3412, NDG 36/57, Vol 2 "Mt. Hart Station"
- 12 WAS 46, Cons 3412, NDG 36/56, "Mt Elizabeth Station"
- 13 WAS 46, Cons 3412, NDG 36/58, Vol 2, "Mt. House Station"

ALSWA requires these documents as a matter of urgency for the purposes of completing its submissions to the Senate Legal and Constitutional Committee Inquiry into Stolen Wages. Accordingly, we are instructed to request your undertaking by **12 noon on Monday 23 October 2006** that you will process this application as a matter of urgency, failing which our instructions are to make an application to the Information Commissioner pursuant to ss 13(4) and (5) of the Act.

We **attach** a cheque in the sum of **\$30.00** being the application fee payable under the Act.

The address to which notices under the Act can be sent is:

Attention: Julian Sher  
Corrs Chambers Westgarth  
Level 15, Woodside Plaza  
240 St George's Terrace  
PERTH WA 6000

If you have any queries, please contact Amanda Dunne on (08) 9460 1624.

Yours faithfully  
**Corrs Chambers Westgarth**

**Julian Sher**  
Partner

**copy:** Ingrid Hebron, Acting Director Heritage and Culture  
Julie Heydon

ENQUIRIES: Andrew Pepper 9235 8132

OUR REF: 06/0908

YOUR REF:

Ms Amanda Dunne  
GPO Box 9925 WA 6001

Dear Amanda

### Acknowledgement of FOI Application

I refer to your letter dated 18 October 2006, which was received at this office on 23 October 2006. You have sought access to documents under the *Freedom of Information Act 1992* (FOI Act) on behalf of the Aboriginal Legal Service of WA ALSWA for the purposes of completing its submissions to the Senate Legal and Constitutional Committee inquiry into Stolen Wages.

You have requested access to documents listed below that are held by the State Archives at the State Records Office (SRO).

<b>DIA Reference</b>	<b>Consignment</b>	<b>Item</b>	<b>Description</b>	<b>SRO Access</b>
1	3412	NDG 33/3/1 a	Social Services Pensions General	
2	312	NDG 33/3/1 b	Social Services Pensions General	
3	933	1950/0151	Bank Accounts with District Officer as Trustee for Natives	
4	1724	1959/0463	Natives in Possession of Cash and Investments in Trust Lists for submission to District Officers	
5	1733	1965/0223	Native Trust Account – record of	
6	2817	10.10	Public Trustee estates of deceased natives	
7	993	1936/0055	Yampi sound Employment of Natives Munja Station	
8	1733	1965/0244	Pastoral apprentices	
9	1733	1967/0086	Employment of Native Youths	
10	3412	WAS 46 NDG 36/57	Vol 2 Mt Hart Station	
11	3412	WAS 46 NDG 36/56	Mt Elizabeth Station	
12	3412	WAS 46 NDG 36/58	Vol 2 Mt House Station	

I acknowledge receipt of the \$30.00 remittance order, which accompanied your letter. That remittance covers the mandatory fee required under section 12(1)(e) of the FOI Act. Your application has satisfied all conditions and is considered valid. Accordingly, we can commence progressing the application as quickly as possible.

Under Section 12, of the WA FOI Act of 1992, the normal 45 day processing period for FOI applications commences from the date of receipt of our \$30.00 FOI fee. In this instance, the 45-day processing period will end on 6 December 2006.

Please note I have endeavoured to access the referred documents from the State Records Archive Service to process access for this FOI application. I have been informed by SRO that documents with DIA reference 1, 2 & 6 cannot be retrieved and can only be viewed at SRO because of their age and fragility of the records.

To further this application under the provisions of the FOI Act I am obligated to view these documents prior to any decision on access.

I understand your client, after discussion with the Acting Director General of the Department, was offered access to these records on 20 September 2006 subject to it agreeing to sign a confidentiality agreement. On 21 September 2006, your client indicated it was unwilling to sign the agreement unless certain clauses were deleted including clauses which confined the use of the documents for the purposes of the Senate Inquiry. The Department remains willing to provide access to these documents subject to a confidentiality agreement and if your client wishes to pursue an agreement, please advise.

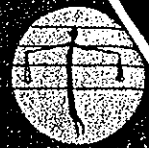
I stress for access to these documents to be progressed quickly the option of access being provided outside the FOI Act but subject to a confidentiality agreement may be a matter your client may wish to consider.

If you have any further queries, please don't hesitate to contact me on (08) 9235 8132

Yours sincerely



Andrew Pepper  
FREEDOM OF INFORMATION COORDINATOR  
6 November 2006



Ms Amanda Cattermole  
Acting Director General  
Dept of Indigenous Affairs

CC: Ms Julie Hayden

By fax: 9235 8011

13 September 2006

Aboriginal Legal Service  
of Western Australia, Inc

Perth Head Office  
Piccadilly Square  
7 Aberdeen Street  
Perth WA 6000  
ABN 61 532 930 441

PO Box 8194  
Perth Bus Ctr WA 6849

T 08 9265 6666  
F 08 9221 1767

Toll Free  
1800 019 900

Dear Ms Cattermole,

**Re: Stolen Wages Inquiry**

As you are aware, the Senate Legal and Constitutional Committee are conducting an Inquiry into Stolen Wages. On 23 August the Aboriginal Legal Service of WA (ALSWA) sent a request to the Department of Indigenous Affairs (DIA) for access to restricted DIA archival files held at the State Records Office of WA. ALSWA has already made a submission to the Inquiry and we are in the process of preparing a further submission. This is due on 29 September 2006.

We have received a response from Ingrid Hebron, Acting Director Culture and Heritage, to our 23 August request, informing ALSWA that we have access to most of the files we sought, but that a number remained 'closed' under DIA Policies and Guidelines. I now seek your assistance to waive the restrictions on these files so that ALSWA historian, Dr Fiona Skyring, can review them for the submission to the Stolen Wages Inquiry. I cannot emphasise enough the importance of presenting this information to the Senate Inquiry, with the aim of encouraging the Senate to establish a national forum on the issue of mandatory controls over Indigenous labour and finances. As ALSWA stated in our first submission,

a national Inquiry into Stolen Wages ... is an important stage of the reconciliation process in Australia. It is essential that all Australians learn about the significant contribution Aboriginal workers made to our nation's economic wealth.

You may also be aware that the response to the Inquiry from Western Australia has been very limited, with ALSWA's submission being the only comprehensive submission lodged so far. This underlines the importance of enabling ALSWA to access as much relevant information as possible within the short period of time we have to prepare a further submission, since no other organisation in Western Australia has undertaken the task of responding to the Inquiry.

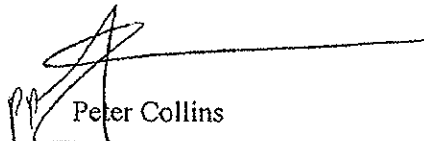
We request that the 'closed' status of the following files requested be waived for the specific purpose of research for the ALSWA submission to the Stolen Wages Inquiry:

[653] 341/24; [993] 55/36; 151/50; 138/39; [1724] 463/59; [1733] 223/65; 244/65; 86/67; [2817] Item 10.10; [3412] 33/3/1a & b.

ASLWA assures you that any personal financial information or personal medical information on these files will not be included in our submission to the Stolen Wages Inquiry. If Dr Skyring refers to particular circumstances in order to illustrate a more general point about, for instance, misappropriation of Social Security pension payments by pastoral station owners, then she will ensure that the Aboriginal individual/s named in the files will not be identified in the submission. Dr Skyring will treat with respect any information of a personal and sensitive nature contained in the archival files.

The urgent nature of this request has already been raised with your office, and I therefore look forward to your early response.

Yours sincerely

  
Peter Collins  
Director of Legal Services



**OFFICE OF THE  
INFORMATION COMMISSIONER**

PO Box Z5386  
St George's Terrace  
PERTH WA 6831

12<sup>th</sup> Floor, St Martin's Tower  
44 St George's Terrace  
PERTH WA 6000

# Facsimile Cover Sheet

<b>To:</b>	Ms Amanda Dunne
<b>Organisation:</b>	CORRS CHAMBERS WESTGARTH, LAWYERS
<b>Phone:</b>	9460-1624
<b>Fax:</b>	9460-1667
<b>From:</b>	Tim Kennedy
<b>Position:</b>	Senior Legal Officer
<b>Phone:</b>	9220-7805
<b>Fax:</b>	9325-2152
<b>E-mail:</b>	Tim.kennedy@foi.wa.gov.au

<b>Date:</b>	13 November 2006
<b>Pages inc. cover page:</b>	Six (6)

**Comments:**

**RE APPLICATION UNDER s.13(4) FREEDOM OF  
INFORMATION ACT 1992**

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**OFFICE OF THE  
INFORMATION COMMISSIONER**

Our Ref: F2006376  
Your Ref: JLS/AD/PPPS/12315-9033523/1

Corrs Chambers Westgarth  
Lawyers  
Woodside Plaza  
240 St Georges Terrace  
PERTH WA 6001

*Attention: Mr J Sher*

Dear Sirs

**FREEDOM OF INFORMATION ACT 1992  
APPLICATION FOR A REDUCTION OF TIME – ABORIGINAL LEGAL  
SERVICE OF WESTERN AUSTRALIA (ALSWA)**

I refer to your facsimile letter dated 9 November 2006, addressed to the A/Information Commissioner ('the A/Commissioner'), which was received at this office on that date by facsimile transmission}

In that letter, you have applied, on behalf of your client, the Aboriginal Legal Service of Western Australia ('the ALSWA'), under s.13(4) of the *Freedom of Information Act 1992* ('the FOI Act'), for a reduction of the time allowed to the Department of Indigenous Affairs ('the DIA') to deal with an access application which your firm made to the DIA on behalf of the ALSWA on 18 October 2006.

In accordance with my delegated authority under the FOI Act, I have considered the ALSWA's application and, for the reasons set out below, I am not presently persuaded that there are compelling reasons why I should exercise my delegated authority and grant this application.

***Background***

Briefly, my understanding of the background events leading to this application is as follows.

I understand that on 13 September 2006, the Director of Legal Services of the ALSWA wrote to the A/Director General of the DIA, seeking permission for the ALSWA's historian, Dr F Skyring, to review certain DIA restricted access files. The purpose of that examination was to enable Dr Skyring to assisting the ALSWA to prepare a further written submission to the Senate Legal and Constitutional Committee Inquiry in Stolen Wages ('the Stolen Wages Inquiry'). The ALSWA advised the DIA that an urgent response was requested, as it had only a short period of



time within which to prepare a further written submission to the Stolen Wages Inquiry.

I understand that the ALSWA gave the DIA assurances that any personal financial information and any personal medical information recorded in the relevant files would not be included in the proposed submission to the Stolen Wages Inquiry and that Dr Skyring would treat with respect any information of a personal and sensitive nature contained in the requested files.

In response to the foregoing request, I understand that, on 20 September 2006, the DIA offered the ALSWA access to the requested records, subject to the ALSWA signing of a confidentiality agreement but the ALSWA was unwilling to sign that confidentiality agreement unless certain clauses were deleted, including clauses which confined the use of the requested material for the purposes of the Stolen Wages Inquiry.

#### *The access application*

By letter dated 18 October 2006, which was received at the DIA on 23 October 2006, you applied to the DIA under the FOI Act, on behalf of the ALSWA, for access to thirteen (13) kinds of documents described in that access application. I understand that that access application was received at the DIA on 23 October 2006. By letter dated 6 November 2006, the DIA's FOI Co-ordinator, Mr A Pepper, acknowledged receipt of that access application. Amongst other things, Mr Pepper advised the ALSWA that he was then endeavouring to access to the requested documents from the State Records Office ('the SRO') but that he had been advised by the SRO that Documents 1, 2 and 6, as described in the access application, could not be retrieved and could only be viewed at the SRO because of the age and fragility of those documents.

At the conclusion of his letter, Mr Pepper confirmed that the DIA remained willing to provide the ALSWA with access to the requested documents, subject to the ALSWA signing the confidentiality agreement. Mr Pepper further advised the ALSWA that, for access to the requested documents to be progressed quickly, the option of access being provided outside the FOI process, but subject to a confidentiality agreement, may have been an option which the ALSWA wished to consider. However, it seems that the ALSWA is not interested that option, as it made this application to the A/Commissioner under s.13(4) of the FOI Act.

#### *Applications under s.13(4) of the FOI Act*

Section 13(4) of the FOI Act provides that, on the application of the applicant, the Information Commissioner (or her authorised delegate) may reduce the time allowed to the agency to comply with s.13(1) of the FOI Act. Section 13(1) of the FOI Act provides that an agency has to deal with an access application as soon as is practicable (and, in any event, before the end of the permitted period) by considering the application and deciding whether or not to give or refuse access to the requested document and by giving the applicant a written notice of decision in the form required by s.30 of the FOI Act.

Where an applicant seeks a reduction of time under s.13(4) of the FOI Act (as the ALSWA does in this instance) it is the A/Commissioner's policy that such applications will not be considered, unless the applicant first clearly demonstrates that genuine efforts have been made by the applicant to negotiate directly with the agency, in the first instance, in order to reach agreement on an acceptable date for decision-making.

An applicant must also show good reason why the A/Commissioner's discretion under s.13(4) should be exercised in the applicant's favour, by clearly explaining why it is important to receive a decision on access by a specified date; what reasons the applicant has for believing that the agency is able to adequately deal with the applicant's access application by that date; the adverse consequences (if any) of not receiving a decision on access by the date requested and any other relevant factors. The A/Commissioner will only intervene between an access applicant and an agency where there are compelling reasons why she should do so and where it is not practicable for the applicant to negotiate directly with the agency concerned.

### Consideration

At this point, based upon my consideration of the correspondence attached to the ALSWA's application, I am not satisfied that the ALSWA has made genuine efforts to negotiate directly with the DIA, in an endeavour to reach agreement with the DIA about a mutually acceptable date by which the decision on access could be made.

I note that, in its access application to the DIA dated 18 October 2006, the ALSWA advised the DIA that it required access to the requested documents, as a matter of urgency, in order to make submissions to the Stolen Wages Inquiry. The ALSWA sought an undertaking from the DIA, by 12 noon on 23 October 2006, that the DIA would process the access application as a matter of urgency failing which, the ALSWA would make an application to the A/Commissioner under s.13(4) of the FOI Act. However, the information presently before me indicates that the DIA did not receive that access application until sometime on 23 October 2006 and there is nothing before me to establish that the ALSWA's application was sent directly to the DIA's FOI Co-ordinator, by facsimile transmission or by email, on 18 October 2006, in order to assist him to give immediate consideration to that request.

I do not consider that an access application which includes a request for an almost immediate undertaking of the kind set out in the ALSWA's application, coupled with a statement that if the requested undertaking was not given, then an application would be made to the A/Commissioner under s.13(4) of the FOI Act, to be either a reasonable or genuine effort on the part of the ALSWA to negotiate directly with the DIA in an endeavour to reach agreement an acceptable date by which the decision on access could be made. I note also that, although the ALSWA's access application claimed that the matter is urgent, there were no dates specified or referred to in the ALSWA's access application by which it requested the decision on access should be made.

In addition, although the ALSWA considers the matter urgent, there is nothing presently before me to evidence what further steps, if any, the ALSWA took between 20 September 2006 and 18 October 2006 to discuss its request with the DIA nor is there any explanation provided to the A/Commissioner as to the reasons why the ALSWA did not lodge an FOI access application with the DIA, immediately after the ALSWA's decision to decline the DIA's offer of access, subject to the execution of a confidentiality agreement.

#### *Further consideration*

In any event, even if I was persuaded that the ALSWA had made reasonable and genuine attempts to negotiate directly with the DIA about the matter (and at this stage, I am not) then it would not be possible for the ALSWA to obtain access to the requested documents for a minimum period of thirty days, that is, until at least 13 December 2006.

In the event that the DIA made an "*in principle*" decision to give the ALSWA access to complete and unedited copies of all of the requested documents then, in accordance with the provisions of s.32(2) and s.33(2) of the FOI Act, the DIA expressly prohibited from giving access to the requested documents until it has taken reasonable steps to consult any third parties identified in the requested documents, in order to seek their views as to whether the requested documents contain any matter that is exempt under clause 3 (personal information) and clause 4 (commercial or business information). That consultation process of necessity, takes a little time, as the DIA is required to take reasonable steps to obtain the views of the third parties.

If, having consulted with the third parties and considered their responses, the DIA still decided to give the ALSWA access to complete and unedited copies of the requested documents, contrary to the views expressed by one or more third parties, then the DIA is obliged by the provisions of s.34 of the FOI Act to:

- notify the third parties of its decision on access;
- defer giving the ALSWA access to the requested documents until the decision on access becomes final; and
- give the third parties full details of their rights of review and appeal under the FOI Act and the process to be followed in exercising those rights.

Any third party affected by the DIA's decision on access would be entitled to seek internal review of that decision from the DIA and, thereafter, external review of by the A/Commissioner decision on access. Each third party would have thirty (30) days within which to apply to the DIA for internal review of the initial decision on access and another thirty (30) within which to apply to the A/Commissioner for external review of the decision on access. As I have said, the DIA is expressly prohibited from giving access to documents of the requested kind until the third party consultation process described above has been completed.

*Conclusion*

I am not presently persuaded that there information or evidence that there are compelling reasons why I should consider exercising my delegated authority under s.13(4) of the FOI Act and granting the ALSWA's application for a reduction of time under s.13(4) of the FOI Act. However, I am prepared to reconsider this application if the ALSWA provides me with further information, including copies of any correspondence, facsimiles or emails exchanged between your firm and the DIA or between the ALSWA and the DIA, which clearly demonstrate that genuine efforts have been made by the ALSWA to negotiate directly with the DIA as to a mutually acceptable date by which a decision on could be made, without success. Please provide that additional material to me, as soon as practicable.

Finally, given the apparent urgency of this matter, would you please also advise me of the reasons why the ALSWA delayed submitting its access application to the DIA for a period of approximately one month, between 20 September 2006 and 18 October 2006, and of the reasons why the ALSWA considers that it is either inappropriate or unacceptable for it to sign a confidentiality agreement with the DIA, thereby enabling it to immediately obtain access to the requested documents, albeit outside the FOI process.

At this stage, I have suspended consideration of the ALSWA's application, pending receipt of the abovementioned information. I will then consider the ALSWA's application, pursuant to my delegated authority under s.13(4) of the FOI Act and determine whether there are any compelling reasons why the amount of time allowed to the DIA to comply with the requirements of s.13(1)(a) of FOI Act should be reduced. As I am dealing with this application pursuant to my delegated authority under the FOI Act, please call me on 9220 7805 or contact me by email to [tim.kennedy@foi.wa.gov.au](mailto:tim.kennedy@foi.wa.gov.au) if you have any questions in relation to the foregoing.

Yours faithfully



T P Kennedy  
SENIOR LEGAL OFFICER

13 November 2006

Cc: Mr A Pepper, FOI Coordinator, Department of Indigenous Affairs

Our reference  
JLS/AD/PPPS12315-9033523/1

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**CORRS  
CHAMBERS  
WESTGARTH**  
lawyers

Sydney  
Melbourne  
Brisbane  
Perth  
Canberra  
Gold Coast

15 November 2006

By email: [tim.kennedy@foi.wa.gov.au](mailto:tim.kennedy@foi.wa.gov.au)

T P Kennedy  
Senior Legal Officer  
Office of the Information Commissioner  
Western Australia  
12<sup>th</sup> Floor St Martin's Tower  
44 St George's Terrace  
Perth WA 6000

Contact  
Amanda Dunne (08) 9460 1624  
Email: [amanda.dunne@corrs.com.au](mailto:amanda.dunne@corrs.com.au)

Partner  
Julian Sher

Dear Mr Kennedy

## Freedom of Information Request - Application to reduce compliance time

We refer to your letter dated 13 November 2006.

### 1 Suspension of the ALSWA's application

- 1.1 As the Perth hearings of the Senate Committee's Stolen Wages Inquiry are scheduled for tomorrow morning, 16 November, it is now too late for ALSWA to research any archival files before the hearings.
- 1.2 The ALSWA still want to obtain access to the files to research in December. It will, however, be too late for any information from the files to be included in the Senate Committee's final report, which is also due in December.
- 1.3 The ALSWA will be explaining to the Senate Committee of the problems encountered in their efforts to present to the Committee archival information directly relevant to the Inquiry's terms of reference.

### 2 The access application

- 2.1 We emphasize that the DIA first received a copy of the application on the 20<sup>th</sup> October 2006, not the 23<sup>rd</sup> October as suggested.
- 2.2 We sent the applications to the people previously involved in the requests by ALSWA to access the documents.
- 2.3 We sent three copies to the DIA at the same time, with the letter addressed to Amanda Cattermole, Acting Director General of DIA, enclosing the cheque. Andrew Pepper called to advise Corrs Chambers Westgarth (**Corrs**) on 20<sup>th</sup> October that he had received a copy of the application, but no cheque. He was

advised that three letters were sent at the same time, and that the letter addressed to Amanda Cattermole contained the cheque.

- 2.4 Mr. Pepper was therefore aware by 20<sup>th</sup> October at the latest that an application had been made.

### **3 Reasonable and genuine attempts**

- 3.1 ALSWA made 'reasonable and genuine' attempts to negotiate directly with the DIA after receipt of the DIA's confidentiality agreement. There were several phone calls and email exchanges between DIA and ALSWA staff from 19 to 21 September 2006. The central issues discussed were the conditions DIA sought to impose on the use of the material in the restricted files.
- 3.2 At the time the FOI request was sent to the DIA on 18 October, no hearings were scheduled to be held in Perth. Once ALSWA became aware that hearings would be held in Perth on 16 November, it then became a matter of renewed urgency to obtain the documents in time for the hearing.
- 3.3 This renewed urgency was communicated to Andrew Pepper by telephone on 31 October 2006. Mr. Pepper advised that he would reply with a decision the following day, but failed to do so. It was not until Mr. Pepper was contacted on 6 November that any response was given.
- 3.4 On behalf of ALSWA, this firm contacted DIA on several occasions from the time the request was first made in an attempt to find out the status of the request.

### **4 Confidentiality Agreement**

- 4.1 The ALSWA negotiated with the DIA in relation to the use of the confidentiality agreement. ALSWA had already assured DIA in writing that it would not misuse personal information discovered on the archival files, and were unwilling to agree to restrict the use of material from the files in the manner set out in the confidentiality agreement.
- 4.2 The confidentiality agreement sought to restrict ALSWA's use of material from the files to the submissions for this particular Senate Committee Inquiry. However, there remains the possibility that there will be another national inquiry conducted into Stolen Wages, and litigation that may arise from further investigation. ALSWA was not prepared to waive the right to use the same information from the files in these contexts in the future.
- 4.3 The ALSWA wanted certain clauses deleted from the agreement and the DIA refused. The ALSWA could see that further negotiation would be fruitless and so brought the FOI application.
- 4.4 ALSWA was justified in this approach, as evidenced by subsequent events. At the time the negotiation of the confidentiality agreement took place, no hearings were scheduled for Perth. If the confidentiality agreement had been signed at the earlier stage, the information would not have been able to be used in the hearings later scheduled, as this would have fallen outside of the scope of the agreement

15 November 2006  
Department of Indigenous Affairs  
**Freedom of Information Request - Application to reduce  
compliance time**

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**CORRS  
CHAMBERS  
WESTGARTH**  
lawyers

which was restricted to the making of submissions. This is just an example of how the confidentiality agreement may have adversely affected the ability to use the information for the complete purposes of the Stolen Wages issue.

If you have any queries, please contact Amanda Dunne on (08) 9460 1624.

Yours faithfully  
**Corrs Chambers Westgarth**

  
**Julian Sher**  
Partner

**copy:** Andrew Pepper, Freedom of Information Coordinator, DIA  
Peter Collins, Director of Legal Services, ALSWA



**OFFICE OF THE  
INFORMATION COMMISSIONER**

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Our Ref: F2006376  
Your Ref: JLS/AD/PPPS/12315-9033523/1

Mr J Sher  
Partner  
Corrs Chambers Westgarth  
Lawyers  
Woodside Plaza  
240 St Georges Terrace  
PERTH WA 6001

Dear Mr Sher

**FREEDOM OF INFORMATION ACT 1992  
APPLICATION FOR A REDUCTION OF TIME – ABORIGINAL LEGAL  
SERVICE OF WESTERN AUSTRALIA (ALSWA)**

Thank you for your email letter dated 15 November 2006, in relation to the application for a reduction of time made on behalf of your client, the Aboriginal Legal Service of Western Australia ('the ALSWA'), under s.13(4) of the *Freedom of Information Act 1992* ('the FOI Act').

I note your advice that it is now too late for the ALSWA to research any archival files before the hearings of the Senate Standing Committee on Legal and Constitutional Affairs take place in Perth but that the ALSWA still wishes to obtain access to those files to research in December. As the ALSWA wishes to proceed with its access application, the Department of Indigenous Affairs ('the DIA') is required to deal with and make a decision on access with respect to that access application, in accordance with its statutory obligations under the FOI Act.

Finally, I understand from the information set out in your letter that the ALSWA no longer wishes to pursue its application for a reduction of time. Accordingly, I have now stopped dealing with the application.

Yours faithfully

A handwritten signature in cursive script that reads 'Tim Kennedy'.

Tim Kennedy  
SENIOR LEGAL OFFICER  
16 November 2006



**Attachment 4:** documents from archival file 'Old Age and Invalid Pensions for natives – general file', Acc 993, 1939/1104

1. 15 November 1939, from A.O. Neville, Commissioner of Native Affairs to Hon Minister for the North -West.
2. 29 February 1940, from the Prime Minister to Hon Premier of Western Australia.
3. 24 December 1959, Circular Memorandum 272 (Confidential) from Commissioner of Native Welfare to all Field Officers.

THE HON. MINISTER FOR THE NORTH-WEST.

It seems to me there is something anomalous in the Commonwealth Government's treatment of Old Age and Invalid Pensioners who are natives in law. In the last few years two or three cases of such pensioners becoming incapacitated and requiring to be sent to an institution have come under notice, and invariably the Commonwealth Pension Authorities have declined to continue the pension or any part of the pension when such natives are sent to a native institution.

Another similar case has just come before me. The patient is paralysed and practically incurable, but may linger in a bed-ridden state for an indefinite period. The only place for her is a native settlement, and because of her condition naturally the cost of institutional treatment is greater than in the case of a person who is not bed-ridden. Nevertheless, I am certain that our request for the continuance of the payment of the pension or part of it will be declined as in other cases.

A curious feature of the position is that in the case of a Military Pensioner payment in full was made until the woman died at the Moore River Settlement.

It may be claimed that native pensioners who have no friends or relatives to care for them should be permitted to enter a white institution, but I need hardly say that difficulties in that regard are almost insuperable, in spite of the fact that the pension would continue in that institution.

I suggest that the Prime Minister be communicated with in order that it may be arranged for pensions, or part pensions, to be continued when native pensioners are obliged to enter native institutions. I might add the number of pensioners is increasing, and there seems to be no sense in the State having to bear the burden of the upkeep of a person who is already provided for by the Commonwealth in another direction.

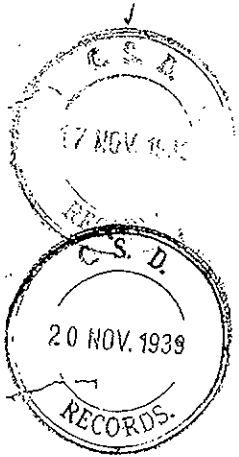
15th November, 1939.  
N/S.

*Rogheville*  
COMMISSIONER OF NATIVE AFFAIRS.

*C. N. A.*

*Please put up a letter  
on this subject for transmission  
to the Prime Minister*

*[Signature]*





COMMONWEALTH OF AUSTRALIA.

PRIME MINISTER,

Canberra, F.C.T. 29th February, 1940.  
C.382/1/1

Dear Sir,

With reference to your letter of 24th November, 1939, regarding the eligibility for invalid and old-age pensions of persons of aboriginal blood who reside in native institutions, I desire to inform you that consideration has been given to the matter.

The Invalid and Old-age Pensions Act specifically debar aboriginal natives of Australia from the grant of pensions. This provision has been in force since the inception of Commonwealth Invalid and Old-age Pensions in 1908 and a similar provision was contained in those State Acts which were in operation prior to 1908.

The Commonwealth Legal Authorities have advised that a person in whom aboriginal blood predominates must be regarded as an aboriginal within the meaning of the Invalid and Old-age Pensions Act and is therefore ineligible to receive pension benefits. With regard to persons in whom aboriginal blood does not predominate, however, the position is different. A half-caste, or a person with less than 50% aboriginal blood is not, by reason only of his descent, disqualified from benefiting under the Act and there are many such persons in receipt of pension.

The welfare of aboriginals has always been regarded as a responsibility of the States. Special aboriginal stations and reserves have been established throughout Australia by the States for the benefit of these people and special officials have been appointed to deal with their affairs. Where a person with 50% or less aboriginal blood elects to reside on such a State reserve it is the policy of the Pensions Authorities to refuse pension benefits, the view being held that such persons should not be permitted to benefit from the State on the same basis as aboriginals and at the same time receive a Commonwealth invalid or old-age pension which is denied to aboriginals.

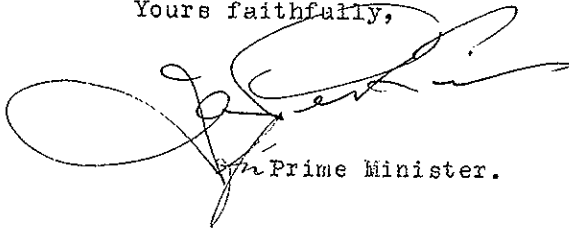
The Invalid and Old-age Pensions Act provides that where a pensioner enters a hospital or benevolent asylum the maximum pension payable to him is 6/- per week. As an act of grace an amount equal to the difference between 0/- per week and the pension payable prior to admission to the institution is paid to the institution authorities for his maintenance. Under the Act a hospital or benevolent asylum means a hospital or benevolent asylum which is wholly or partly maintained by contributions from the Commonwealth or a State and which is proclaimed by the Governor-General to be a hospital or benevolent asylum for the purposes of the Act.

It is considered that there is no analogy between the hospitals and benevolent asylums which have been proclaimed under the Invalid and Old-age Pensions Act and the Stations and reserves which have been established by the States for the benefit of aboriginals. In these circumstances it is not thought desirable

The Honourable  
the Premier of Western Australia,  
P E R T H.

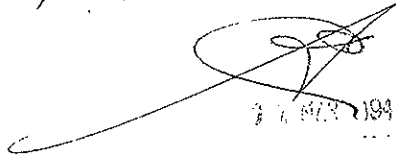
to depart from the policy which has been followed since the inception of invalid and old-age pensions of refusing pension benefits to persons with 50% or less aboriginal blood who reside on aboriginal reserves.

Yours faithfully,

  
Prime Minister.

Hon. Minister for Native Affairs  
7/3/40

Com: for Native affairs  
for your Perusal

  
7 MAR 1940

17 MAR 1939



DEPARTMENT OF NATIVE WELFARE,  
176 WELLINGTON STREET,  
BOX R 1268, G.P.O., PERTH,

24 DEC 1959

CIRCULAR MEMORANDUM 272 (CONFIDENTIAL)

TO ALL FIELD OFFICERS.

PAYMENT OF PENSIONS & MATERNITY ALLOWANCES  
TO NATIVES.

The Director General of Social Services  
has written this Department as follows :-

"Subject to such adjustments as may be desirable in the light of experience, the following procedures are proposed for your State in regard to the payment of pensions and maternity allowances to aboriginal natives who will qualify for the first time under the Commonwealth's new policy.

In general where a native is living in a controlled community such as a Church Mission or pastoral station the pension will be split into two parts - a pocket money component and a maintenance component. Payment will be made by means of a group cheque each fortnight to the Superintendent of the Mission or manager of the pastoral station who will pay the pocket money portion to the pensioner and apply the balance to the maintenance of the pensioner and the general welfare of the natives concerned. There will be some cases set out below where the maintenance portion of the pension will be paid to the Headquarters of the Mission and not to the Superintendent.

For convenience the natives may be grouped into four categories and the method of payment for each category will be as follows:-

Church Missions

Pensions for natives on Church Missions will be paid fortnightly in one of two ways, namely :-

- (i) The whole of the pension will be paid direct to the Mission Superintendent; or
- (ii) The pocket money portion of the pension will be paid direct to the Mission Superintendent and the balance (maintenance portion) of the pension will be paid to the Mission Headquarters.

The Missions in your State and the method to be used in each case are as follows:-

- (a) Missions where the whole of the pension will be paid to the Superintendent.

<u>Name of Mission</u>	<u>Controlling Authority</u>	<u>Pocket money component.</u>
Beagle Bay	The Pious Society of Missions, Broome.	33/- per week
La Grange	"	15/- " "
Lombadina	"	15/- " "

<u>Name of Mission</u>	<u>Controlling Authority</u>	<u>Pocket money component.</u>
Balgo	The Pious Society of Missions, Broome	10/- per week
Kalumburu	The Benedictine Community of New Norcia	To be left to the discretion of the Superintendent
Fitzroy Crossing	The United Aborigines Mission, 262 Flinders Lane, Melbourne.	10/- per week
Hall's Creek	"	10/- per week
Sunday Island	"	33/- per week
Cosmo Newbery	"	10/- per week
Warburton Ranges	"	10/- per week
Mount Margaret	"	10/- per week
Wiluna	The W.A. Conference of Seventh Day Adventists, 48 Havelock Street, Perth.	10/- per week
Gundeelee	The Australian Evangelical Mission, Box 5019, G.P.O., Sydney.	10/- per week
Kurrawang	The Kurrawang Native Mission, Kalgoorlie	10/- per week

(b) Missions where the pocket money portion will be paid to the Superintendent and the maintenance portion to the Mission Headquarters.

<u>Name of Mission</u>	<u>Controlling Authority</u>	<u>Pocket money component</u>
Aborigines Rescue Mission, Jigalong	Apostolic Church of Australia, 233 Punt Road, Richmond, Vic.	15/- per wk.
Nullagine	"	15/- " "
Mowanjum	Australian Presbyterian Board of Missions, Assembly Buildings, 44 Margaret Street, Sydney	10/- " "
Forrest River	Forrest River Mission Committee, Church Office, Cathedral Avenue, Perth.	15/- " "

The amount of pocket money set out above was arrived at after on the spot discussions with Mission Superintendents, the Mission Headquarters and having regard to the situation on Missions in the northern part of Queensland and the Northern Territory. The amounts quoted are subject to review at any time and the Missions have been informed that the Commonwealth's objective is that in the course of time it will be possible to pay a uniform amount of 33/- as pocket money on all the Missions in the Commonwealth.

Maternity Allowances will be paid direct to the Mission Superintendents in all cases and they will exercise control in the disbursement of the allowance either in cash or in kind to the mother.

#### Pastoral Properties

Pensions for natives on pastoral properties will be paid by means of a group cheque each fortnight to the station manager of owner as agent for this Department. The managers

will be asked to hand the pensioner 10/- a week and to use the balance of the pension for the pensioner's maintenance and improvements in accommodation and general welfare. The offer of assistance made by you for your Patrol Officers to report any apparent abuses of pension moneys is appreciated.

Maternity Allowances for natives on pastoral stations will be paid direct to the mother or through the station manager as agent for this Department according to the circumstances of the case, i.e., where the information suggests that the mother is able to handle the money herself she will be paid direct and in any other case it will be paid to the station manager (or perhaps in some cases to the station manager's wife) as agent for this Department.

Tringe Natives

(Natives in or around the outskirts of country towns)

This group will include natives living on Government "reserves" and they will be paid their pensions direct or through a suitable warrantee or agent as is considered necessary in individual cases. The Director of Social Services, Perth, is being asked to maintain a liaison with your Department and to be guided by your officers as to whether the appointment of a warrantee is considered necessary or otherwise. The same procedure will apply to maternity allowances. In many cases these natives are already eligible for pensions and maternity allowances under existing policy.

Natives of Pindan Pty. Ltd., Port Hedland.

It is proposed that these natives be paid through the agency of your Port Hedland Office on the same basis as existing pensioners in the Port Hedland area and I thank you for your offer of assistance. The Director of Social Services, Perth, will be pleased to discuss the details with you.

Proof of Age.

It is realised that in many cases it will be impossible to establish the natives' precise age and some latitude in the degree of proof will have to be permitted. This Department appreciates the offer of assistance made by your Department in this regard.

Medical Examinations for Invalid Pension purposes.

This should present no difficulty in the more closely settled areas and the normal procedures for examination by Commonwealth Medical Referees will apply. In some remote areas it may be necessary to use the facilities of the Royal Flying Doctor Service or to appoint additional Commonwealth Medical Referees but this is a matter which will be handled by the Department of Social Services. On some of the more remote pastoral properties this Department may get a lay opinion from your Department's Patrol Officer pending medical examination at a later date. This will apply to cases where invalidity is manifest.

Verification of Births- Maternity Allowance.

Where the certificate of birth on the claim form for maternity allowance has been completed by a person other than a doctor or qualified nursing sister the Director of Social Services will take steps to verify the birth by inquiries from your Department and your offer of assistance in this regard is also appreciated.

Nomadic or Primitive

The following is an extract from a memorandum which has been sent to the Director of Social Services, Perth :-

'It is not proposed to lay down a precise definition of nomadic or primitive and you will have to be guided by the advice of the Native Welfare patrol Officers. As a general proposition it may be said that where a native is, in fact, residing on a Mission, Station or Government Settlement in a remote area and that Church Mission or Government Settlement accepts full responsibility for his maintenance and welfare and that so long as the native remains within the sphere of influence of that Mission or Settlement he should not be regarded as nomadic or primitive - notwithstanding that his life may be to a large extent governed by tribal laws and customs and that for a certain period of the year he is absent on annual walkabout.'

Allowances for Dependents

Where a wife's allowance is payable to a native on a Church Mission or pastoral property, the amount of the allowance paid to the wife in cash should be the same amount as is paid to her husband as pocket money and the balance of the allowance will be paid to the authority controlling the Settlement, etc., for the maintenance of the wife. The procedure for payment of wife's allowance will be the same as that for pensions.

Funeral Benefit

Funeral benefit will be payable in respect of the death of a native age or invalid pensioner where there is some "cost" involved either to an individual, Church Mission or Government Settlement. Where there is no "cost" there will be no entitlement to funeral benefit.

Date of Commencement

The Minister for Social Services has advised your Premier that arrangements are being made for the new provisions to commence on 2nd February, 1960.

General

A copy of this letter is being forwarded to the Director of Social Services, Perth, and he will be prepared to discuss any points with you."

This information is to be treated as confidential. IT IS NOT TO BE DISCUSSED WITH MISSION SUPERINTENDENTS.

Further Circulars will be forwarded in due course for the information of Missions, Station Managers and Warantees.

*A. J. ...*  
*...*  
COMMISSIONER OF NATIVE WELFARE.