CHAPTER 3

ACCESS TO COMMONWEALTH ENTITLEMENTS

3.1 The Commonwealth Government also played a role in controlling the finances of Indigenous people through its regulation of, access to, and payment of social security payments. This part of the report outlines some of the restrictions on various social security payments.

3.2 For the most part, Aboriginal people were prohibited from receiving allowances, such as the child endowment payment, maternity allowance and old-age pension, when they were first introduced. Subsequent amendments to legislation meant that, although an Aboriginal person may have been entitled to a payment, there was provision for the allowance to be paid 'indirectly' to a third party, such as a mission or a government authority, on their behalf.

3.3 In some cases, evidence suggests that social security entitlements were re-directed into trust accounts administered by state government Aboriginal welfare authorities. In relation to other social security benefits, relevant legislation consisted of provisions containing at least the legal potential to intercept and divert Commonwealth pensions and benefits (whether by specific reference to race or not).[1]

Child endowment

3.4 In 1941, the Commonwealth Government introduced the child endowment payment, a non-means tested benefit of five shillings per week, paid directly to mothers for each child under 16 years (excluding the first child).

3.5 The *Child Endowment Act 1941* (Cth) (the Child Endowment Act) provided that the child endowment payment would not be made to 'Aboriginal natives of Australia' who were nomadic, or where the child was wholly or mainly dependent on the Commonwealth or a state for support.[2] Payment of child endowment to a third party was authorised where it was 'expedient' having regard to the 'age, infirmity, ill-health, insanity, or improvidence or other reasonable case of disqualification…or any special circumstances' of the applicant or the child.[3]

3.6 Amendments to the Child Endowment Act in 1942 provided that Aboriginal missions that were an 'institution'[4] could directly receive the child endowment payment of five shillings a week for the children of an 'Aboriginal native of Australia'

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1 ILC, *Submission 98*, Attachment A, p. 14.

2 Section 15.

3 Subsection 22(1).

4 An 'institution' was defined as a charitable institution approved by the Minister.

who were supervised or assisted, although not mainly maintained, by the mission for six months or more in any year.[5]

3.7 The *Social Services Consolidation Act 1947* (Cth) (the 1947 Act) provided for the child endowment payment where the child was not nomadic and not wholly or mainly dependent on the Commonwealth or a state for support.[6] The 1947 Act also provided that the child endowment payment could be paid directly to an institution which supervised or assisted children, one or both of whose parents were Aboriginal.[7]

3.8 Although there were some technical changes to the wording of the legislation in 1959, being deemed 'nomadic' remained a bar to entitlement for child endowment. The provision denying child endowment where the child was wholly or mainly dependent on the Commonwealth or a state for support was also maintained but both these restrictions were removed in 1966.[8]

3.9 The submission from the Indigenous Law Centre (ILC) provided the committee with a comprehensive analysis of the main social security benefits available from either the Commonwealth Government or the NSW Government up until 1969. With respect to child endowment payments, and in the context of NSW, the ILC provided evidence suggesting that the Commonwealth was willing to divert child endowment payments away from Aboriginal parents towards state Aboriginal welfare authorities, and to defer to the judgement of state authorities in relation to this issue.[9]

3.10 The ILC noted that this continued 'well beyond the first few months of Commonwealth administration in the early 1940s'; it provided evidence of correspondence from 1956 (obtained from the National Archives of Australia) showing that the Commonwealth at that time was still instructing staff to deal with applications for child endowment from Aboriginal mothers in this way.[10] By the mid- to late 1950s, the number of endowment payments diverted to the Aboriginal Welfare Board had diminished, '(p)resumably because of a shift to direct payment of endowees'.[11]

3.11 Dr Ros Kidd also provided a detailed analysis of Commonwealth entitlements and the ways in which they were intercepted and diverted in different states and territories. Dr Kidd suggested that Commonwealth child endowment was diverted to revenue in Queensland, NSW, Western Australia and the Northern Territory: 'in part

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5 Subsection 6(b) of the *Child Endowment Act 1942*.

6 Section 97.

7 Subsection 95(4).

8 ILC, *Submission 98*, Attachment A, p. 31.

9 *Submission 98*, Attachment A, p. 36.

10 *Submission 98*, Attachment A, p. 36.

11 *Submission 98*, Attachment A, p. 36.

by distributing only a small amount to endowees, and also by cutting state outlays on rations and support'.[12] Further:

> Records for Queensland and Western Australia suggest Commonwealth authorities knew of the misapplication of endowment and pensions but did not introduce procedures to prevent misuse nor to ensure endowees and pensioners received their entitlement as mandated under federal legislation.[13]

3.12 In relation to Queensland, Dr Kidd submitted that by 1942 the Queensland Government had successfully applied to have its settlements defined as 'institutions' so it could receive bulk quarterly endowment payments on behalf of settlement mothers. Dr Kidd also stated that the government 'profited by immediately cutting grants to missions by the same amount as incoming endowment revenue'.[14] According to Dr Kidd, by early 1949, the government held over £7,000 ($239,600)[15] in child endowment for mothers on the three government settlements and was using it as general revenue:

> Superintendents were directed to use the endowment for fruit, milk and better clothing, but also for books and equipment for indoor and out door games, which allegedly remained 'the property of the endowed child'. No child or adult was ever informed of such possession. According to the deputy director of Native Affairs endowment was used for radios and refrigerators for dormitories, and he anticipated spending it on playgrounds, recreation halls, parks and swimming pools; in 1951 Cabinet approved £2000 ($51,280) be used from the child endowment of Cherbourg mothers for construction of a child welfare clinic. In 1952 the director admitted reduced government grants placed missions in such a 'desperate position' they were using child endowment to feed and maintain inmates.[16]

3.13 Dr Kidd also noted that individual accounts operated for mothers not living on reserves; these were controlled through head office or by rural protectors. Knowledge of endowment balances and access to withdrawals from accounts by individuals 'depended on the discretion of protectors'. Dr Kidd also explained that:

> By 1950 rural endowment accounts totalled almost £18,500 (almost $564,000), with many individual balances over £100 ($3350). At no time did the department implement any checks of the thumb-printing or signing of withdrawals from Brisbane-based child endowment accounts. Contrary

12 *Submission 49*, p. 34.

13 *Submission 49*, p. 34.

14 *Submission 49*, p. 26.

15 The figure in brackets is Dr Kidd's calculation of the current value of this amount.

16 *Submission 49*, p. 26. The figure in brackets is Dr Kidd's calculation of the current value of this amount.

> to 'the expressed policy of the Commonwealth government' the Queensland government withheld bank interest due on private endowment accounts.[17]

3.14 The Aboriginal Legal Service of Western Australia (ALSWA) provided the committee with evidence pertinent to Western Australia, particularly in relation to missions, stations and reserves in the Kimberley region:

> For eligible Aboriginal recipients, these various Commonwealth benefits could be paid to an approved authority or 'approved institution', and in the case of child endowment it seemed that individuals such as station managers could be appointed as trustees for the payments…(T)here is every possibility that abuses were perpetrated by trustees. Aboriginal people at Kimberley Downs station in 1968 complained of not receiving their age pension or child endowment payments. On the Emanuel Bros stations in the Kimberley, it was the practice to receive child endowment payments on behalf of their Aboriginal employee's children 'on a group basis', presumably going into the company account, before being distributed to Aboriginal families. The Emanuel Bros' policy changed in 1968 so that child endowment payments were 'made direct'. More research needs to be undertaken to assess what actually happened with child endowment payments for Aboriginal people on pastoral stations, and to what extent these Commonwealth entitlements were regarded, like age pension payments for Aboriginal people, as a 'form of station subsidy' by some stations warrantees.[18]

3.15 ALSWA noted that church-run missions and government institutions to which children were forcibly removed were also recipients of child endowment payments.[19] Professor Anna Haebich noted that the payment of child endowment to institutions caring for Aboriginal children 'greatly assisted the expansion of such facilities during this period, often to the detriment of the children's diet, schooling, and living conditions that should have been vastly improved by this new source of funding.[20]

3.16 Dr Cameron Raynes gave the committee some insight into the situation in South Australia with respect to child endowment entitlements. While acknowledging that the South Australian Government 'had only a very small role in withholding Commonwealth payments to Aboriginal people, they turned a blind eye when certain religious organisations did the same'.[21] For example, the Koonibba Mission, operated by the Lutherans on the west coast of South Australia, 'was very pro-active in separating Aboriginal parents from their child endowment money in the 1940s at

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17 *Submission 49*, pp 26-27. The figures in brackets are Dr Kidd's calculation of the current value of these amounts.

18 *Submission 30B*, p. 46.

19 *Submission 30B*, p. 46.

20 *Submission 19*, p. 4.

21 *Submission 8*, p. 5.

least'.[22] Dr Raynes presented evidence of the mission withholding such money from residents, even after those residents left to live in nearby towns.[23] Dr Raynes asserted that the South Australian Government knew that this was occurring but did not put a stop to it.[24]

3.17 Dr Raynes provided examples of the South Australian Aborigines Department using child endowment money as a means of 'controlling' the behaviour of Aboriginal people:

> …the missioner-in-charge of the Finnis Springs Mission suggested to [Mr WR] Penhall [the head of the Aborigines Department] that he intervene in the case of a young Aboriginal woman who refused to do domestic chores. He suggested to Penhall that he withhold her £2 monthly payment. Penhall did as he asked. He had no authority to do so.
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> In fact, in 1941, Penhall requested that officers-in-charge of police stations throughout South Australia send all applications from Aboriginal people for child endowment to him, so that he could vet them before sending them to the Commonwealth Department of Social Security. Penhall made arrangements with them for his department to 'receive payment on the endowee's behalf' in certain cases.[25]

3.18 Dr Raynes was also critical of the United Aborigines Mission (UAM) in South Australia:

> [It]…had a very cavalier attitude towards Commonwealth entitlements payable to the Aboriginal residents of their Finnis Springs, Nepabunna, Swan Reach, Gerard and Oodnadatta Missions. At one point the UAM had an arrangement with the Commonwealth which allowed them to collect the child endowment money for all of the residents of these missions. The money 'raised' by each mission was supposed to be spent at the mission in question, but instead the money was pooled, and appears to have been spent as the UAM hierarchy saw fit. The missionary at Oodnadatta in particular was very concerned that *none* of the child endowment money raised on behalf of the children at that mission was ever spent on them. The South Australian government almost certainly knew that this was happening, but did nothing to stop it.[26]

Maternity allowance

3.19 From 1912, a maternity allowance of five pounds was paid to mothers on the birth of a child. Subsection 6(2) of the *Maternity Allowance Act 1912* (Cth)

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22 *Submission 8*, p. 5.

23 See *Submission 8A*, p. 4.

24 *Submission 8*, p. 5.

25 *Submission 8A*, p. 4.

26 *Submission 8*, p. 5.

specifically excluded the payment of the maternity allowance to 'women who are Asiatics, Aboriginal natives of Australia, Papua or the Islands of the Pacific'. The exclusion of 'Aboriginal natives' did not apply, on the basis of Commonwealth legal advice, to 'half-castes and persons with less than half aboriginal blood'; indeed, mothers living on state reserves and stations were paid maternity allowances.[27]

3.20 The *Maternity Allowance Act 1942* (Cth) (the 1942 Act) provided that an Aboriginal woman could receive the maternity allowance where she was:

- exempt from state or territory legislation for the control of Aboriginal persons; or
- in the absence of such state and territory legislation, by reason of the woman's character, standard of intelligence and development, the prohibition on receiving the maternity allowance should not apply.[28]

3.21 The maternity allowance in 1942 was four pounds, 10 shillings for the first child; five pounds where there were one or two other children; and seven pounds, 10 shillings where there were three or more other children.[29] Where an Aboriginal person was entitled to receive the maternity allowance, section 4 of the 1942 Act provided that payment could be made to someone else for the benefit of the person to whom the allowance was payable.

3.22 The 1947 Act had similar requirements to the 1942 Act, namely that an Aboriginal woman could only receive the maternity allowance if she was either exempt from state or territory legislation for the control of Aboriginal people; or if the Director-General of the Department of Social Services was satisfied that the allowance should be granted.[30] The 1947 Act also provided that 'where desirable to do so' the maternity allowance for a woman residing on an Aboriginal reserve, station or settlement, shall be made to an authority of a state or territory controlling Aboriginal affairs, or to some other authority considered suitable for the purpose.[31]

3.23 Further restrictions on Aboriginal women receiving the maternity allowance were removed in 1960, however those deemed 'nomadic or primitive' were still excluded. The capacity for indirect payment was also retained in 1960. The last

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27 ILC, *Submission 98*, Attachment A, p. 25.

28 Section 3.

29 Section 3 of the *Maternity Allowance Act 1942*. See also Parliamentary Library, Social security payments for people caring for children, 1912–2004, July 2006, at http://www.aph.gov.au/library/pubs/online/children_parta.htm#maternity.htm (accessed 28 November 2006).

30 Subsection 86(3).

31 Section 91.

discriminatory exclusion – the reference to 'nomadic or primitive' mothers – was repealed in 1966.[32]

3.24 Dr Ros Kidd submitted that, from at least 1928, it was department policy in Queensland to take 80 per cent of maternity allowances from mothers living in settlement dormitories and 50 per cent from those in settlement camps. She also asserted that mothers who received 'limited provisions for their new babies were told it was a gift from the government; they were not told it was an entitlement'.[33]

3.25 Dr Kidd also informed the committee that, after 1942:

> State governments could now also claim the allowance for mothers controlled on missions and reserves, receiving bulk payments for these 'institutions' to be distributed at their discretion. The Queensland government was warned in 1943 that no ministerial authority could be found authorising the confiscation of most of the allowance to meet state liabilities to maintain mothers confined on reserves; it continued the practice regardless. Investigation in other states and the territory will likely uncover similar practices.[34]

3.26 Dr Kidd also noted evidence showing both the Queensland and NSW Governments consistently lobbied for pensions and the maternity allowance to be paid to all Aboriginal people. However, in 1953, Federal Treasury claimed 'lack of finance' for this anomaly. After 1959 all Aboriginal mothers were due the payment, although the allowance was repealed nationally between 1978 and 1996.[35]

3.27 Dr Cameron Raynes submitted that there was a standing arrangement in the 1940s, and later, between the Aborigines Department and the major hospitals in South Australia, such that Aboriginal women who received the maternity allowance were required to pay some of that money directly to the hospitals in which their babies were delivered.[36]

Other benefits and pensions

3.28 In a general sense, Dr Kidd submitted that pensions were intercepted for Aboriginal people under state control in Queensland, the Northern Territory, Western Australia and New South Wales and that these governments reduced state spending to reflect the Commonwealth income. According to Dr Kidd, the Queensland Government declared its intention to 'divert' pensions to revenue when it learned in 1959 that criteria would be widened to include many Aboriginal people who had

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32 ILC, *Submission 98*, Attachment A, p. 26.

33 *Submission 49*, p. 25.

34 *Submission 49*, pp 25-26.

35 *Submission 49*, p. 25.

36 *Submission 8A*, p. 3.

previously been denied pensions.[37] Commonwealth pensions became more readily available to Aboriginal persons in 1960.

3.29 Dr Kidd also advised that:

> Governments knew intercepted Commonwealth endowment and pensions were used as revenue by missions (Queensland, Northern Territory, Western Australia) and by pastoral stations (Northern Territory, Western Australia) thus replacing rather than augmenting current outlays.[38]

Invalid and old-age pensions

3.30 The *Invalid and Old Age Pension Act 1908* (Cth) specifically excluded 'Aboriginal natives of Australia' from receiving the old-age or invalid pensions.[39] However, Aboriginal people who were living 'under civilised conditions' were eligible for the pensions.[40] Later, the 1947 Act provided that Aboriginal people could receive the old-age pension or invalid pension in two circumstances:

- if they were exempt from state or territory legislation for the control of Aboriginal people; or
- where state or territory legislation did not provide for an exempt status, the Director-General of the Department was satisfied that 'by reason of the character and the standard of intelligence and social development of the native, it is desirable that a pension should be granted to him'.[41]

3.31 Even after the granting of Commonwealth pensions to Aboriginal people in 1960, these pensions often did not end up in the hands of the rightful recipients. In relation to Western Australia, Mr Craig Muller told the committee that:

> Most recipients lived part of their time near missions, and the pensions were paid to the missions, which then had the discretion in how much was passed on to the intended recipients. I am not certain whether the individual Indigenous people ever provided permission for their moneys to be withheld.
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> As another example, at Cundeelee mission again, the mission kept two-thirds of the 1960 pension rate—in other words, 65 of the 100 shillings. The initial legislative change saw two dozen of Cundeelee mission's inmates granted age pensions. When the mission was inspected 15 months after the pensions were granted, it was noted there had been an initial issue of tents to the pensioners but they had received no further benefits in the 15 months.

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37 *Submission 49*, p. 34.

38 *Submission 49*, p. 34.

39 Subsection 16(1) and paragraph 21(1)(b).

40 PIAC submission to the Panel on the Aboriginal Trust Fund Reparation Scheme in September 2004.

41 See subsection 19(2).

> In addition, the pensions had continued to be paid to the missions during the sometimes extended periods when the pensioners were away on ceremonial and other business. That is particularly relevant to the goldfields missions, which are on the edge of the settled frontier.[42]

3.32 The ALSWA also provided evidence in relation to pensions being withheld in Western Australia:

> [Archival] information…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.[43]

3.33 The ALSWA posed some pertinent questions:

> 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?[44]

3.34 Furthermore, evidence was presented to the committee that in 1959 the Commonwealth Government instructed the Western Australian Department of Native Welfare to divert pension and maternity payments from beneficiaries to missions and station managers.[45]

3.35 The ALSWA argued further that the system of administration of pension payments was fundamentally flawed:

> 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.[46]

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42 *Committee Hansard*, Perth, 16 November 2006, p. 27.

43 *Submission 30C*, p. 10.

44 *Submission 30C*, p. 11.

45 *Submission 30C*, Item 3, Attachment 4, *Circular Memorandum 272 (Confidential) from Commissioner for Native Welfare to all Field Officers*, 24 December 1959.

46 *Submission 30C*, p. 11.

Widows' pension

3.36 Similarly, the *Widows' Pensions Act 1942* (Cth) provided for the payment of the widows pension to Aboriginal women who: were exempt from the operation of state or territory legislation for the control of Aboriginal persons and held an exemption certificate under state legislation; or who could demonstrate 'character, standard and intelligence and social development'.[47]

3.37 The disqualification criteria were narrowed further to those who were 'nomadic or primitive' from February 1960; and the disqualification of Aboriginal women was eliminated altogether in 1966.[48] From the outset, the legislation authorised the payment of widows' pensions to another person on a widow's behalf, due to infirmity or other special circumstances. Between 1942 and 1960, the legislation also specifically authorised indirect payment of the pensions of Aboriginal widows to state Aboriginal welfare authorities.[49]

Unemployment and sickness benefits

3.38 The Commonwealth scheme for unemployment and sickness benefits came into operation in July 1945. At the outset, under the *Unemployment and Sickness Benefits Act 1944* (Cth), an 'aboriginal native of Australia' was disqualified unless the Department was satisfied that by reason of their 'character, standard of intelligence and development' it was reasonable that they receive the benefit. The provision disqualifying 'aboriginal natives of Australia' was repealed in 1960 but those deemed 'nomadic or primitive' remained ineligible until 1966.[50]

3.39 There was no statutory provision (general or specific) for indirect payments of the unemployment or sickness benefit to a third party such as a state Aboriginal welfare authority.[51] Further:

> A discretionary payment, known as the special benefit, was available where the Department was satisfied that someone, who did not qualify for sickness or unemployment benefits or a pension, was unable to earn 'a sufficient livelihood for himself and his dependants (if any)' for any reason including 'age, physical or mental disability or domestic circumstances'. There was nothing in the Act to exclude Aboriginal people from the special benefit.[52]

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47 Paragraph 14(1)(g) and subsection 14(5).

48 ILC, *Submission 98*, Attachment A, p. 24.

49 ILC, *Submission 98*, Attachment A, pp 24-25.

50 ILC, *Submission 98*, Attachment A, p. 39.

51 ILC, *Submission 98*, Attachment A, p. 39.

52 ILC, *Submission 98*, Attachment A, pp 39-40.

War and service pensions

3.40 Indigenous people served in every major war in which Australia participated in the twentieth century.[53]

3.41 Aborigines were entitled to war and service pensions and there was never a provision in the repatriation legislation for indirect payments (either generally, or specific to Aboriginal recipients). However, the ILC informed that committee that:

> William Ferguson, President of the Aborigines Progressive Association alleged in correspondence in 1942 that the Board 'also takes widows Pensions and Invalid pensions. Also Soldiers pensions, and soldiers wives pay and dole it out as they think fit'.[54]

3.42 Further:

> In October 2004 the Panel investigating the design of a repayment scheme for Aboriginal people adversely affected by government administration of Board trust accounts reported that, as a result of its inquiries, it is possible that some 'returned soldiers may have had pension entitlements paid into the Trust Fund, although this was clearly contrary to the Aboriginal Welfare Board's written policy'.[55]

3.43 The committee also received evidence suggesting that, even though Aboriginal returned soldiers received pensions, they were not paid the same amounts as non-Aboriginal soldiers. Mrs Beryl Gambrill from the Cherbourg Historical Precinct Group stated that:

> The returned soldiers from the First World War were not paid the same as the European soldiers. They received a pittance in wages. It was not even half of what the white soldiers got. That money is still owing to them. Most of them have passed on now. My father was one of them.[56]

3.44 Mrs Lesley Williams made a similar point:

> I would also like to mention the Aboriginal soldiers who fought in the First World War, the Second World War, the Korean War and the Vietnam War. They were paid less than the white soldiers and, when they returned from the war and the government was cutting up blocks of land for settlements—for the ballot—Aboriginal people did not have access to those blocks of land. Therefore, without having land to farm, there was nothing they could hand over to their descendants.[57]

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53 ILC, *Submission 98*, Attachment A, p. 40.

54 *Submission 98*, Attachment A, p. 41.

55 *Submission 98*, Attachment A, p. 41.

56 *Committee Hansard*, Brisbane, 25 October 2006, p. 45.

57 *Committee Hansard*, Brisbane, 25 October 2006, p. 63.

3.45 Wampan Wages (Victorian Stolen Wages Working Group) noted that returned servicemen and women 'generally received a dowry for their services'; however, 'there is anecdotal evidence that dowries were never paid to many Indigenous returned service men and women from Victoria'.[58]

58 *Submission 84*, p. 4.