

# **“EVENTUALLY THEY GET IT ALL...”**

*Government Management of Aboriginal Trust Money in New South Wales*

*From 1970 until now the unwritten policy of DoCS and Treasury appears to have been to resist reimbursement of these funds.*

Leaked draft of a Cabinet minute from the Department of Community Services, 2001

*Aboriginal people in many circumstances were required to place their money in trusts... Scandalously some money disappeared. It wasn't returned to Aboriginal people or their heirs... Money was stolen from Aboriginal people.*

Premier Bob Carr, media conference, 5 May 2004

**WARNING:** Aboriginal and Torres Strait Islander readers are warned that this document contains material that may be sensitive or offensive. All care has been taken to confidentialise references to individuals. The document contains no photographic representation of any person, living or deceased.



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The **Indigenous Law Centre** was established in 1981 and is affiliated with the Faculty of Law at the University of New South Wales. The Centre publishes the *Indigenous Law Bulletin* and the *Australian Indigenous Law Reporter*. Staff and associates of the Centre conduct research, publish widely and teach in the School of Law, other parts of the University and elsewhere. The Centre presents occasional seminars and conferences on issues relating to Indigenous peoples and the law.

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## **Contents**

<b>Background.....</b>	<b>1</b>
A long campaign finally leads to government action .....	1
The Indigenous Law Centre and this research.....	4
Advice to readers about the research report.....	5
<b>Introduction .....</b>	<b>7</b>
<b>Apprentice Wages .....</b>	<b>9</b>
<b>Social Security Entitlements.....</b>	<b>14</b>
Introduction.....	14
Age Pensions.....	15
State: Old Age Pensions Act 1900 (NSW).....	15
Federal: Invalid and Old-age Pensions Act 1908 (Cth).....	16
Invalid Pensions .....	21
State: Invalidity and Accident Pensions Act 1907 (NSW).....	21
Federal: Invalid and Old-age Pensions Act 1908 (Cth).....	21
Widows’ Pensions.....	22
State: Widows’ Pensions Act 1925 (NSW).....	22
Federal: Widows’ Pensions Act 1942 (Cth) .....	23
Maternity Allowances.....	25
Federal: Maternity Allowance Act 1912 (Cth).....	25
Child Endowment .....	27
State: Family Endowment Act 1927 (NSW) .....	27
Federal: Child Endowment Act 1941 (Cth).....	30
Unemployment, Sickness and Special Benefits.....	38
State: Relief Work and Payments .....	38
Federal: Unemployment and Sickness Benefits Act 1944 (Cth).....	38
War Pensions and Service Pensions .....	40
Federal: Australian Soldiers Repatriation Act 1920 (Cth) .....	40
Funeral Benefits .....	41
Federal: Invalid and Old-age Pensions Act 1943 (Cth).....	41
Tuberculosis Allowance .....	42
Federal: Tuberculosis Act 1948 (Cth) .....	42
<b>Lump Sum Entitlements.....</b>	<b>43</b>
<b>Adult Wages.....</b>	<b>44</b>

*continued over...*



**INDIGENOUS LAW CENTRE**

***Contents continued...***

<b>Working for Rations .....</b>	<b>47</b>
<b>Accounting and Accountability Obligations on the Government .....</b>	<b>50</b>
Aborigines Protection Act 1909 (NSW) .....	50
Audit Act 1902 (NSW) .....	50
<b>Records and Record-Keeping .....</b>	<b>57</b>
The legal and administrative basis for record-keeping in NSW .....	57
Government record-keeping in NSW .....	60
<b>Bibliography .....</b>	<b>62</b>

# **“EVENTUALLY THEY GET IT ALL...”**

*Government Management of Aboriginal Trust Money in New South Wales*

Sean Brennan and Zoe Craven  
Research Report September 2006



## ***Background***

For much of the 20<sup>th</sup> Century the NSW Government took money belonging to Aboriginal people and placed it in trust accounts for which it was legally responsible. It then resisted people who sought to have their own money returned to them, knowing that official records were poor and that significant amounts had gone astray within the bureaucracy.

Legislation in NSW gave State officials the capacity to control wages earned by children who were forced to work as ‘apprentices’, as well as control over some early welfare payments made to Aboriginal adults. As the 20<sup>th</sup> Century advanced, Commonwealth laws gave the same officials power over a broader range of social security entitlements, such as child endowment and maternity allowances. This was part of a wider set of controls that could be, and often were, exercised over Aboriginal people’s movement, labour and land. These controls were mainly exercised through the Aborigines Protection Board (later the Aborigines Welfare Board). Most Aboriginal people lived their lives independently of the Board, but many were caught in its net. When that happened, these controls often had lasting consequences in terms of health and poverty.

This research report focuses on the laws that made government control of Aboriginal people’s money possible. In that sense, it tells only a small and technical part of the story. It is the voices of Aboriginal people – those who experienced these controls over their labour and money, those who resisted them and those who lived independently of the Board – that convey what these times were really like for those who lived through them.

### ***A long campaign finally leads to government action***

In February 2004 a story in the *National Indigenous Times* (NIT) revealed the existence of a draft Cabinet Minute from the NSW Department of Community Services (DoCS). The minute was called ‘Aboriginal Trust Funds Payback Scheme Proposal’ and was dated April 2001. Reportedly it urged the NSW Government to adopt a scheme for repaying wages and entitlements owing to Aboriginal people that had been placed in government trust accounts between 1900 and 1969.<sup>1</sup> It appears the draft minute was headed off within the bureaucracy before it reached Cabinet. The NIT story appeared in 2004, but the story of Aboriginal people in NSW and their experiences with the Board had begun decades earlier.

From the early 20<sup>th</sup> Century, apprentices had fought to have their money released from Board trust accounts, to spend it on things that other people were free to purchase at their own discretion. Community leaders had campaigned against Board maladministration on stations and reserves, and against workplace discrimination and abuse. After the Board was abolished in 1969, Aboriginal people had lobbied successive State governments for money held in

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<sup>1</sup> ‘NSW Government’s shame over stolen wages payback’, *National Indigenous Times*, Issue 48, 4 February 2004.

government trust accounts to be returned to its rightful owners. Across the border in Queensland, through the 1990s and into the new century, the campaign against missing, unpaid and underpaid wages had increasingly gained statewide and national attention.

Some within the NSW bureaucracy had felt compelled to respond to the countless letters from Aboriginal campaigners like Marjorie Woodrow, Les Ridgeway and many others. By the late 1990s, the Department of Community Services (DoCS) – in many respects the bureaucratic successor to the Board – had developed to an advanced stage a proposed repayment scheme.

Other parts of the NSW Government, however, maintained a hardline stance, resisting calls for repayment. In the leaked draft Cabinet Minute from 2001, the DoCS Minister, Faye Lo Po, reportedly wrote that '[f]rom 1970 until now, the unwritten policy of DoCS and Treasury appears to have been to resist reimbursement of these funds'.<sup>2</sup> As late as May 2003, the then Treasurer Michael Egan, a senior member of the Carr Government, wrote to Les Ridgeway in the following terms:

Searches of Treasury records have failed to reveal the existence of these funds being transferred to NSW Treasury... It can only be assumed that the monies involved were paid to the rightful owners. Therefore, unless you or others can show that the rightful owners were not paid, there is little more that Treasury can do to assist with this claim.<sup>3</sup>

At the end of a long Aboriginal campaign, the publication of the draft Cabinet Minute by the NIT may have finally tipped the political balance. Or perhaps DoCS had already won the internal battle within government. In any case, a month after the NIT story, the NSW Premier himself moved to end the decades of official resistance to repayment. On 11 March 2004 in Parliament, Bob Carr acknowledged that Aboriginal people had been forced to pay money into trust accounts and that successive NSW governments had 'failed that trust'. The reluctance to give people access to their money before 1969 and the failure to make any repayments since 1969 was 'another legacy of misguided paternalism'. He apologised to the Aboriginal people affected and gave an assurance that those owed money would be repaid. He committed the government to community consultation on a repayment scheme.<sup>4</sup>

On 5 May 2004 at a media conference with his Minister for DoCS, Carmel Tebbutt, and Indigenous lawyer Terri Janke, Premier Carr announced the formation of a panel to finalise design of the repayment scheme. The panel had two Indigenous members – Ms Janke and Sam Jeffries, chair of the Murdi Paaki Regional Council in western NSW – and it was chaired by Brian Gilligan, former Director-General of the National Parks and Wildlife Service.

At the media conference the Premier gave several commitments. He said that where there are 'pressing claims' they will be settled immediately. He said that the panel would report by October 2004 on appropriate criteria and a scheme for repayment, after consulting Aboriginal

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<sup>2</sup> Debra Jopson, 'Where are the stolen wages?', *Sydney Morning Herald*, 1 March 2004.

<sup>3</sup> 'They're still misleading us today', *National Indigenous Times*, Issue 48, 4 February 2004.

people. There would be no capping of payments and people need not surrender the right to take individual legal action, in order to participate in the repayment scheme. He gave an assurance that 'where people are owed money they will be paid'.<sup>5</sup>

Minister Tebbutt admitted that the money transferred in 1969 to the predecessor of DoCS 'was far less than...the money that should have been collected and remained in trusts'. She also acknowledged that the Government's own records of how the trust funds had been managed were 'patchy'.<sup>6</sup>

In December 2004 the NSW Government released the panel's report. It recommended the establishment of the NSW Aboriginal Trust Fund Repayment Scheme (ATFRS), administratively linked to the Premier's Department, with dedicated support from archivists to assist with record searches. It also called for a new three-person ATFRS Panel to be formed, comprised entirely of respected Aboriginal people or at least with an Aboriginal majority and chair. The report said that the scheme should:

- use a streamlined and culturally appropriate process to repay money that went into trust funds between 1900 and 1968 and was never repaid
- operate for five years, with a review after three years
- treat the descendants of deceased claimants as eligible for repayment, as well as direct claimants themselves
- authorise the Panel to review determinations by the ATFRS Unit, when requested by claimants, and preserve normal legal avenues of appeal
- emphasise practical assistance to claimants, including support, free record searching and counselling services
- not require indemnities from claimants regarding any further government liability
- require either certainty, strong evidence or strong circumstantial evidence that money was paid into government trust accounts, in a situation of no evidence or weak circumstantial evidence that money was repaid, with the benefit of the doubt favouring the claimant
- include scope for oral evidence.<sup>7</sup>

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<sup>4</sup> Legislative Assembly of NSW, *Hansard*, 11 March 2004, p.7163.

<sup>5</sup> Edited transcript of media conference held on 5 May 2004, available at [www.eniar.org/news/stolen-nsw.html](http://www.eniar.org/news/stolen-nsw.html) (viewed 23 May 2006).

<sup>6</sup> *Ibid.*

<sup>7</sup> Brian Gilligan, Terri Janke and Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, Aboriginal Trust Fund Repayment Scheme, October 2004, s.1.2.

### ***The Indigenous Law Centre and this research***

The *Indigenous Law Centre* (ILC) has a long track record of bridging the gap between community and academia in the area of Indigenous legal issues. It was established in 1981 and is affiliated with the Faculty of Law at the University of New South Wales. The Centre publishes the *Indigenous Law Bulletin* and the *Australian Indigenous Law Reporter*. Staff and associates of the Centre teach in the School of Law and other parts of the University, publish widely and have conducted research under both funded and commercial arrangements.

Discussions in January 2004, involving Aboriginal people and community organisations interested in the trust money issue, identified the need for more information to support the public campaign for repayment of those to whom money was owed. The ILC decided to conduct research into the legal framework that allowed government officials in NSW to take control of many Aboriginal people's money.

The first social justice intern at the ILC to work on the trust money issue, Zoe Craven, laid the platform for this report. She located most of the primary and secondary sources on which it is based. Her analysis of that material became the initial draft for this report and also enabled the ILC to produce a fact sheet in August 2004 (a second edition of which was published in October 2004). Several thousand copies of that fact sheet, entitled '*Stolen Wages' and Entitlements: Aboriginal Trust Funds in New South Wales*, were distributed to community organisations. That work also fed into the research and advocacy of others, such as the Public Interest Advocacy Centre and ANTaR, and the panel appointed by the NSW Government in May 2004.

The project has been supervised by Sean Brennan, a Lecturer in the UNSW Law School and project director in the Gilbert + Tobin Centre of Public Law. He conducted additional research to that carried out by Zoe Craven and completed the final version of the report. A number of other people have contributed research, assistance or comments. Thanks are due to a large number of people including Robin Banks, Larissa Behrendt, Megan Davis, Sally Fitzpatrick, Ben Golder, Heather Goodall, Alexis Goodstone, Susan Greer, Victoria Haskins, Christine Howes, Cathy Hunter, Ros Kidd, Norman Laing, Lara Kostakidis-Lianos, Wansi Leung, John Maynard, Sanushka Mudaliar, Garth Nettheim, Stephanie Patterson, Elizabeth Rice, Shaz Rind, Charmaine Smith, Kate Temby, Aileen Teo, Phoebe van Bentum, George Williams and Kath Wilson. The project has been patiently shepherded throughout by the ILC Coordinator Tony Westmore. Amongst his many roles on the project, he has managed the involvement of successive social justice interns, discussions with other agencies and publication of the project outcomes.

This report is based on research into both primary and secondary sources. The primary research began with a detailed examination of the *Aborigines Protection Act 1909* (NSW), the various amendments made by the NSW Parliament between 1915 and the Act's repeal in 1969 and the

regulations made under the Act. The research extended to include other legislation as well as records held in various archives dealing with the law, policy and administration of trust accounts and related issues in NSW and, in some instances, across the nation. It also included the *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board* established by the NSW Legislative Assembly in 1937 (an inquiry which lapsed in 1938 before the committee reported) and *Aborigines Protection: Report and Recommendations of the Public Service Board of New South Wales*, a report written in 1938 and published in 1940 (Public Service Board report). The secondary research has involved review of a number of articles, books, chapters and websites on government administration in the area of Aboriginal affairs in NSW.

### ***Advice to readers about the research report***

The title of this research report is taken from the complacent assurance given by the long-term Secretary of the Aborigines Protection Board, Arthur Pettitt, to the parliamentary Select Committee in 1937.<sup>8</sup> He was being pressed on the return of wages to children who were indentured as apprentices by the Board, most of whose earnings were paid into trust accounts controlled by the Board. The belated decision by the NSW Government almost 70 years later to establish a scheme for repayment of trust account money shows that whatever reassurance Pettitt's words gave listeners at the time was, at least in part, misplaced.

We are aware that reference to old legislation involves the use of categories and terms that today are considered offensive by many. That consideration has had to be balanced with the importance of providing accurate information as to the state of law, policy and practices at the time. No offence is intended by the use of such terminology.

In researching this report the authors have sought information from files kept in various publicly available archives. This raises some issues which we have attempted to resolve in an appropriate and balanced way. On the one hand, one problem some Aboriginal people have had in NSW in recovering their money from government trust accounts has been the inadequacy of the documentary record and a lack of knowledge in the non-Aboriginal community that money was controlled in this way. In that respect the research report is intended to fill some of that information gap and also provide a resource for those seeking repayment of money owed to them and their families, in NSW and possibly other jurisdictions. On the other hand, Aboriginal people have an understandable concern about the dissemination of personal information about them or their forebears.

The report does include reference to archival material that is available to the general public. The information we have sought, however, relates to matters of law and policy, not the treatment of

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<sup>8</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.45.

particular individuals. In writing this research report we have not included reference to individuals mentioned in government files. At the same time the report emphasises that the government management of Aboriginal people's money and its consequences can only be properly understood when Aboriginal people have the opportunity, of their volition, to put forward the experiences of themselves and their families. That includes having appropriate access to relevant records.

Readers should be aware that some of the files referred to by footnote in this report and held in particular archives that are available to the public include references to the circumstances of particular individuals.

## *Introduction*

Controls over the wages and entitlements of many Aboriginal people in NSW were largely exercised through a government-appointed authority, the Aborigines Protection Board (re-named in 1940 the Aborigines Welfare Board). In 1883, the NSW Government established the Aborigines Protection Board (referred to here as the APB, later the AWB, or generically as the Board). Its powers were secured and extended with the *Aborigines Protection Act 1909* (NSW). The Board was given a number of statutory duties by the 1909 Act, including to ‘exercise a general supervision and care over all matters affecting the interests and welfare of aborigines’, to manage and regulate reserves and Stations upon which Aboriginal people resided and to provide for the custody, maintenance and education of Aboriginal children. Additionally, and ironically, the Board was ‘to protect [aborigines] against injustice, imposition, and fraud’.<sup>9</sup>

It was through the Board that the wages and entitlements of Aboriginal people were diverted into government trust accounts and in an unknown number of cases, never returned to their legal owners. Although legislation gave the Board extensive powers, the NSW Government did not fund it in a way that matched its statutory duties and obligations, particularly in outlying areas on Stations and reserves.

Reserves were areas of land set aside from sale or lease, often ‘because Aborigines already used them as camping or ceremonial sites’.<sup>10</sup> In legal terms, they were held by the government for the benefit of Aboriginal people in the area. From the government’s point of view, control of the reserve was in the hands of the local police officer.<sup>11</sup> Typically the Board might supply rations and blankets to Aboriginal people on a reserve, through local police, but government administration of the land was otherwise minimal. Aboriginal Stations were reserves actively supervised by the Board. As well as rations, there was, at least officially, some schooling and provision of health services on Aboriginal Stations. Usually the Board put a married non-Aboriginal couple in charge as manager-teacher and matron respectively, but the NSW Public Service Board reported in 1938 that the appointment of properly qualified people to the job was a ‘rare occurrence’.<sup>12</sup>

Aboriginal reserve lands peaked in the first decade of the 20<sup>th</sup> Century but by 1927, under pressure from non-Aboriginal farming interests, the estate had been halved by government revocations to about 13 000 acres. Historian Heather Goodall says that in these early decades of the 20<sup>th</sup> Century no more than 15% of the Aboriginal population was under the managerial

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<sup>9</sup> Section 7, *Aborigines Protection Act 1909* (NSW). The general duty of supervision and care was extended ‘over all aborigines’ by the amendment to section 7(e) inserted by section 2(1)(b) of the *Aborigines Protection (Amendment) Act 1936* (NSW).

<sup>10</sup> Heather Goodall, ‘New South Wales’ in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.67.

<sup>11</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.21: ‘In this capacity they issue food relief, blankets and clothing; they furnish reports regularly on the state of the reserves and the conditions existent therein; they report to the Aborigines Protection Board on the individual circumstances of apprentices.’

<sup>12</sup> *Ibid*, p.22.

control of the Board – the rest were leading independent lives.<sup>13</sup> With the Great Depression the proportion under direct Board supervision increased to over 30 per cent and ‘many more were on reserves under the surveillance of the police’.<sup>14</sup> In 1938 the Public Service Board said there were 3115 people resident on 21 Stations and another 5333 on 50 reserves, while admitting that the figures were only estimates to the point sometimes of being ‘largely guess work’ because the Board’s records were ‘so meagre’.<sup>15</sup> By the mid-1960s there were still 14 Stations and 29 reserves with an estimated Aboriginal population of about 6000 people, as well as 13 ‘town settlements under the control of the Aborigines Welfare Board’, altogether covering a total area of about 6000 acres.<sup>16</sup>

The Board was abolished and the Aborigines Protection Act 1909 (NSW) repealed in 1969.<sup>17</sup>

During its life, the Board diverted a wide range of moneys owing to Aboriginal people into trust accounts. This report begins with the Board’s control over the wages of children forced to work as apprentices, mainly in domestic or agricultural labour. It then looks at a variety of social security entitlements that were introduced and then amended over the course of the 20<sup>th</sup> Century. In a number of instances, the evidence discussed here shows these entitlements actually being diverted into Board accounts. For the sake of completeness, we have described all the major social security benefits available in the period 1900-1969 and noted, where relevant, the legal *potential* for diversion of these moneys to the Board. This is because our own research in NSW does not purport to be exhaustive and therefore actual diversion may have occurred in respect of benefits not revealed by our research. In addition, from a national point of view, the information may be useful to researchers in other jurisdictions, in the event that practices varied from State to State regarding diversion of particular benefits. Three other issues relating to Aboriginal labour and monetary entitlements are then briefly dealt with, before the report turns to the Board’s accounting and accountability obligations and the question of record-keeping.

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<sup>13</sup> Heather Goodall, ‘New South Wales’ in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.80.

<sup>14</sup> *Ibid*, p.85.

<sup>15</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, pp.11, 12, 22, 26.

<sup>16</sup> Parliament of NSW, *Report from the Joint Committee of the Legislative Council and Legislative Assembly upon Aborigines Welfare – Part 1: Report and Minutes of the Proceedings*, Government Printer, 1967, p.19, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/30.

<sup>17</sup> Sections 3 and 4 and Schedule, *Aborigines Act 1969* (NSW).

## *Apprentice Wages*

In NSW the practice of apprenticing children, including Aboriginal children, to employers began in the 19<sup>th</sup> Century. So too did the holding of their wages in trust accounts controlled by government officials, initially on a purely administrative basis.<sup>18</sup> A *statutory* system for government control of Aboriginal apprentice wages and labour came with the enactment of the *Aborigines Protection Act 1909* (NSW).

Under the 1909 Act, the APB had the power to force Aboriginal children into labour, or to use the language of the statute, it could ‘by indenture bind or cause to be bound the child of any aborigine or the neglected child of any person apparently having an admixture of aboriginal blood’.<sup>19</sup> The government could set working conditions by regulation and the Board was authorised to collect the wages earned by the apprentice and spend them in the interest of the child as the Board saw fit.<sup>20</sup> The wages payable to Aboriginal apprentices were set by regulations made under the Act, which also directed employers to pay a small percentage (typically around 20%) to the apprentice on a weekly basis as ‘pocket money’. The remainder was to go directly to the APB on a quarterly basis, to be placed in a trust account until the apprentice was paid out at the completion of their apprenticeship or such other time as may be approved by the Board. An employer could contract out of these obligations to pay specified amounts by making their own agreements regarding pocket money and wages.<sup>21</sup>

Although the Act and regulations were amended a number of times, most notably in the period 1940-1944, the essential features of this legal framework remained in place until repeal of the Act in 1969:

- the Board’s power to indenture children as apprentices was maintained throughout<sup>22</sup>
- the ability for the Board to collect wages in trust accounts was retained, albeit transformed after 1940 into a legal obligation on the part of the employer to forward wages, less pocket money, to the Board<sup>23</sup>

<sup>18</sup> Victoria Haskins, ‘& so we are “Slave Owners”!’: Employers and the NSW Aborigines Protection Board Trust Funds’, *Labour History*, No.88, May 2005, p.151; Victoria Haskins, ‘Servants in Suburban Sydney: The New South Wales Aborigines Protection Board and the Policy of Sending Aboriginal Girls to Sydney 1883-1940’ in George Morgan (ed), *Urban Life, Urban Culture: Aboriginal/Indigenous Experiences*, University of Western Sydney, 1998, pp.167-169. The State Children’s Relief Board gained powers of removal in 1881 and these powers were extended with the enactment of the *Apprentices Act 1901* (NSW). These powers were exercised over non-Aboriginal children and Walden also says they were extended to Aboriginal children: Inara Walden, ‘That Was Slavery Days’: Aboriginal Domestic Servants in NSW in the Twentieth Century’, *Labour History*, No. 69, November 1995, p.207 n.2. See also Heather Goodall, ‘Saving the Children’: Gender and the Colonization of Aboriginal Children in NSW 1788 to 1990’, *Aboriginal Law Bulletin*, Vol. 2 No. 44, June 1990, p.6.

<sup>19</sup> Section 11(1), *Aborigines Protection Act 1909* (NSW).

<sup>20</sup> Sections 11(1) and 20(1)(f), *Aborigines Protection Act 1909* (NSW). The indenture was subject to the *Apprentices Act 1901* (NSW) until section 2 of the *Aborigines Protection Amending Act 1915* (NSW) replaced that requirement with a provision allowing the Board to determine such terms and conditions as it thought desirable in the circumstances.

<sup>21</sup> Regulation 41 made on 8 June 1910 under the *Aborigines Protection Act 1909* (NSW). Subject to variation by agreement, apprentices were to be paid 1s 6d per week in the first year, of which only 3d was payable as pocket money. By the fourth year their pay rose to 5s per week of which 1s was payable as pocket money. These rates were increased periodically by subsequent regulations. After regulations made in 1941, it was no longer possible for employers to contract out of the pay rates prescribed by regulation.

<sup>22</sup> Section 11(1), *Aborigines Protection Act 1909* (NSW) and then, after 1940, section 11A, inserted by section 3(3) of the *Aborigines Protection (Amendment) Act 1940* (NSW).

- working conditions were set by regulation<sup>24</sup>
- and the Board's power to spend a person's money, and the obligation to return it to them, largely persisted, though it underwent some modification.<sup>25</sup>

By the time the 1909 Act took effect, the policy of removing Aboriginal children, especially girls of mixed descent, from their community and placing them in institutions was well underway. In 1893 the Board had opened a dormitory for girls on Warangesda Station and later in 1911 it established the Cootamundra Training Home for girls. In institutions like this, children not yet old enough to be indentured were 'trained' for domestic or other work as future child apprentices.<sup>26</sup> On some Stations, dormitories were also established as separate residences where children would be 'clothed and fed' and, as the manager of Brewarrina Aborigines Station told the parliamentary inquiry into the APB in 1938, 'when a nice position is available for them, they are able to accept it'.<sup>27</sup> Fourteen appeared to be the age at which apprentices were seen as fit to commence work, but the legislation was ambiguous and Walden says that '20% of girls were actually sent out younger at 11 or 12 years'.<sup>28</sup>

There are a number of personal and academic accounts of the child apprenticeship system in NSW and its adverse consequences for many of the Aboriginal children and young adults who experienced it.<sup>29</sup> Some of the many problems included:

- non-payment of pocket money by employers
- obstacles to apprentices accessing the balance of their earnings, kept by the Board in trust accounts under its control

<sup>23</sup> Section 11A(3), *Aborigines Protection Act 1909* (NSW) inserted by section 3 of the *Aborigines Protection (Amendment) Act 1940* (NSW).

<sup>24</sup> Section 20(1)(f) *Aborigines Protection Act 1909* (NSW) as amended over time. See for example, Regulations 21 and 22 of the regulations made under the Act on 12 September 1941.

<sup>25</sup> After 1944, trust account moneys could be applied by the Board 'towards the maintenance, advancement, education or benefit of such ward or ex-ward' at any time before they attained the age of 21 years, while any balance remaining 'should be paid to the ex-ward upon his attaining the age of 21 years': Regulation 23A inserted by regulations made on 21 April 1944 under the *Aborigines Protection Act 1909* (NSW).

<sup>26</sup> Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, p.196.

<sup>27</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.116.

<sup>28</sup> Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, p.209 n.68. In 1940 the Board said that most apprentices sent out in the recent past had reached the age of 14½ to 15: Aborigines Welfare Board, *Report of the Aborigines Welfare Board for the year ended 30 June 1940*, Parliament of NSW, 1940, p.3, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/25.

<sup>29</sup> See, for example, Margaret Tucker, *If Everyone Cared*, Ure Smith, 1977; Marjorie Woodrow (with Diane Decker), *Long Time Coming Home*, 2001; Heather Goodall, 'Prenticed out for 6d a week', Chapter 3A in *A History of Aboriginal Communities in NSW 1909-1939*, Unpublished PhD thesis, University of Sydney; Inara Walden, 'To Send Her to Service': Aboriginal Domestic Servants', *Aboriginal Law Bulletin*, Vol.3 No.76, October 1995, pp.12-14; Heather Goodall, 'Saving the Children': Gender and the Colonization of Aboriginal Children in NSW 1788 to 1990', *Aboriginal Law Bulletin*, Vol. 2 No. 44, June 1990, pp.6-9; Victoria Haskins, 'Servants in Suburban Sydney: The New South Wales Aborigines Protection Board and the Policy of Sending Aboriginal Girls to Sydney 1883-1940' in George Morgan (ed), *Urban Life, Urban Culture: Aboriginal/Indigenous Experiences*, University of Western Sydney, 1998, pp.166-179; Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, 1997, particularly Chapter 10 'Children's Experiences' including first hand accounts at eg pp.164-165, 171-172; Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, pp.196-209; Jack Horner, 'Pearl Gibbs: A Biographical Tribute', *Aboriginal History*, Vol. 17 No. 1, 1983, pp.10-20; Victoria Haskins, '& so we are "Slave Owners"!': Employers and the NSW Aborigines Protection Board Trust Funds', *Labour History*, No. 88, May 2005, pp.147-164; Alec Morgan and Gerry Bostock (Producers), *Lousy Little Sixpence* (motion picture), Sixpence Productions, 1983. See also Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, for example at p.61.

- poor wages
- mistreatment, including physical and sexual abuse, as well as poor working conditions
- lax or non-existent supervision of employment conditions by the Board, despite its legal obligations to children under its control.

The payment of pocket money was the responsibility of the employer and the Board's procedures for verifying its receipt provided scope for abuse.<sup>30</sup> Walden says that most girls considered the pocket money too small to buy anything useful and many simply never received it.<sup>31</sup> The Board itself made it difficult for children to access the balance of their wages.<sup>32</sup> Haskins says that the money was 'held on behalf of the individual workers within one large interest-bearing "Trust Account" (opened in 1897) that was transferred from the Savings Bank department to the Rural Bank department of the Government Savings Bank in 1923'. Under the trust fund system, says Haskins, 'not even the apprentices themselves could access their money without their employer's written support or, if their apprenticeship was over, the support of their local reserve manager or police, and a detailed explanation of what they intended to purchase'.<sup>33</sup> Walden said that some were simply unaware of their right to leave their employer at the age of 21<sup>34</sup> and so stayed on, sometimes for years.<sup>35</sup> There were also disputes with the Board over individual records and apprenticeships.

Many children also suffered harsh, demeaning and abusive working conditions under the apprenticeship scheme.<sup>36</sup> Several authors point to high rates of sexual abuse and pregnancy.<sup>37</sup> Haskins says those who reported abuse were treated suspiciously, even punitively, and some

<sup>30</sup> Regulations made under the *Aborigines Protection Act 1909* (NSW) did not provide for any formal system of acknowledging receipt of pocket money until 1941. Regulation 21(b) made under the Act on 12 September 1941 provided that pocket money was to be paid to the ward and that receipt of payment was to be recorded in the 'Pocket Money Book provided'. The regulation further stipulated that up until their 17<sup>th</sup> birthday, clothing for wards was to be paid for out of the trust accounts held by the Board (ie and not deducted from pocket money). Before 1941 it was presumably left to the discretion of employers to administer pocket money as they saw fit, or the Board's requirements were administrative rather than legal - the earlier regulations clearly implied an obligation that pocket money be paid directly, stating an amount that 'shall be paid weekly to the apprentice as pocket money'. Employers could vary the statutory rates of pay, by contract, before 1941.

<sup>31</sup> Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, p.200.

<sup>32</sup> The Board's instructions to its field staff confirmed that '[i]n general, withdrawals are not permitted until the ward has completed the term of employment' but said that 'exceptions are made where a ward has left his or her employment before the completion of the employment term and is destitute or in need of clothing'. The instructions said that interest 'at the ruling bank rate is allowed on the accounts of wards and is added at the 30<sup>th</sup> June of each year and when the account is closed'. *Aborigines Welfare Board, Manual of Instructions to Managers and Matrons of Aboriginal Stations and other Field Officers*, 1941, pp.52-53. Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/44.

<sup>33</sup> Victoria Haskins, '& so we are "Slave Owners"!': Employers and the NSW Aborigines Protection Board Trust Funds', *Labour History*, No. 88, May 2005, p.149. See also Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.49.

<sup>34</sup> Originally the age for completion of apprenticeships was 21. This was changed to 18 in 1940 with the passage of the *Aborigines Protection (Amendment) Act 1940* (NSW) – see section 3(a)(ii).

<sup>35</sup> Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, p.205. See also Victoria Haskins, 'A Better Chance?': Sexual Abuse and the Apprenticeship of Aboriginal Girls under the NSW Aborigines Protection Board', *Aboriginal History*, Vol.28, 2004, p.40.

<sup>36</sup> See for example Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, pp.197-199, which includes a number of first-hand recollections.

<sup>37</sup> See Victoria Haskins, 'A Better Chance?': Sexual Abuse and the Apprenticeship of Aboriginal Girls under the NSW Aborigines Protection Board', *Aboriginal History*, Vol.28, 2004, pp.41-43; Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, p.203; Heather Goodall, 'New South Wales' in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.80 and p.116 n.42; Heather Goodall, 'Saving the Children': Gender and the Colonization of Aboriginal Children in NSW 1788 to 1990', *Aboriginal Law Bulletin*, Vol. 2 No. 44, June 1990, p.8; Victoria Haskins, 'Servants in Suburban Sydney: The New South Wales

were sent to institutions, including mental asylums.<sup>38</sup> While many successfully adjusted to life after apprenticeship, for others the long-term impact was reflected in addiction, mental health problems and increased levels of institutionalisation.<sup>39</sup>

The APB did not exercise supervision over the conditions of employment. At a national conference of officials in 1937, Arthur Pettitt, the long-term secretary of the APB, noted that in NSW ‘we throw the responsibility on the employer for the physical and moral well being of apprentices’.<sup>40</sup> Evidence to the 1937 Select Committee revealed the extent of the APB’s failure to meet its legal responsibilities of general supervision and care<sup>41</sup> and specific supervision and monitoring of employment conditions.<sup>42</sup> One witness, a former APB manager at Angledool and Brewarrina Stations, agreed that girls who were apprenticed could be regarded as ‘easy marks’. When asked whether managers on Stations exercised protection over girl apprentices once they were placed with an employer, he indicated that ‘no manager, if he is doing his job on the station, is able to visit the girls to see for himself... We had no staff to visit and look after the welfare of the apprentices’.<sup>43</sup>

Despite these and other worrying allegations, when the Public Service Board reviewed the apprenticeship system in 1938, it recommended continuation. While it noted that departmental records in respect of apprentices were not ‘as complete as they should be’, that ‘follow up...as to the suitability of intending employers, leaves something to be desired’<sup>44</sup> and that ‘there is no sufficient follow-up of the cases of children after they have completed their apprenticeship’,<sup>45</sup> the conclusion of the Public Service Board report was that apprenticeships ‘must continue to constitute a substantial part of the training of children’.<sup>46</sup> The training homes and the apprenticeship scheme operated until 1969 when the APB, reconstituted in 1940 as the Aborigines Welfare Board (AWB), was finally abolished.

The numbers of persons affected by the training and apprenticeship scheme cannot be stated with certainty as many records of the APB and AWB have apparently disappeared. For

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Aborigines Protection Board and the Policy of Sending Aboriginal Girls to Sydney 1883-1940’ in George Morgan (ed), *Urban Life, Urban Culture: Aboriginal/Indigenous Experiences*, University of Western Sydney, 1998, pp.167, 171, 173-177.

<sup>38</sup> Victoria Haskins, ‘Servants in Suburban Sydney: The New South Wales Aborigines Protection Board and the Policy of Sending Aboriginal Girls to Sydney 1883-1940’ in George Morgan (ed), *Urban Life, Urban Culture: Aboriginal/Indigenous Experiences*, University of Western Sydney, 1998, p.173; Victoria Haskins, ‘‘A Better Chance’?: Sexual Abuse and the Apprenticeship of Aboriginal Girls under the NSW Aborigines Protection Board’, *Aboriginal History*, Vol.28, 2004, pp.45, 52.

<sup>39</sup> Inara Walden, ‘‘To Send Her to Service’: Aboriginal Domestic Servants’, *Aboriginal Law Bulletin*, Vol.3 No.76, October 1995, p.14. See also Heather Goodall, ‘‘Saving the Children’: Gender and the Colonization of Aboriginal Children in NSW 1788 to 1990’, *Aboriginal Law Bulletin*, Vol. 2 No. 44, June 1990, p.8.

<sup>40</sup> National Archives of Australia, *Aboriginal Welfare. Initial conference of Commonwealth and State Aboriginal authorities held at Canberra 21-23 April 1937*, (1937) item barcode 53238, series number A52, control symbol 572/99429/912, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.26 (viewed 14 November 2005).

<sup>41</sup> Section 7(e), *Aborigines Protection Act 1909* (NSW), which said that the duties of the Board included ‘to exercise a general supervision and care over all matters affecting the interests and welfare of aborigines, and to protect them against injustice, imposition, and fraud’.

<sup>42</sup> For example, section 11(1), *Aborigines Protection Act 1909* (NSW), which said that ‘[e]very child so apprenticed shall be under the supervision of the board, or of such persons as may be authorised in that behalf by the regulations’.

<sup>43</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, pp.10, 17.

<sup>44</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.19.

<sup>45</sup> *Ibid*, p.29.

<sup>46</sup> *Ibid*, p.34.

example, State Records NSW reports an unexplained gap in documentation of the Board between 1938 and 1948. In addition, many of the records that have survived are incomplete.<sup>47</sup>

Clearly many hundreds, and perhaps thousands, of children were caught up in the apprenticeship scheme in NSW. Already by 1915 substantial amounts were beginning to accumulate in the Board's trust accounts.<sup>48</sup> Goodall says that more than 1500 Aboriginal children were taken from their families between 1912 and 1938 and the 70%-80% who were girls were apprenticed as indentured domestic servants.<sup>49</sup> According to historian Victoria Haskins, ward registers of the APB indicate that between 1916 and 1928, 514 girls and 192 boys were apprenticed under the scheme.<sup>50</sup> Although during the earlier years, young women were over-represented in the apprenticeship scheme, by the 1950s this emphasis appears to have shifted to boys.<sup>51</sup> Goodall also says that after 1940 there was a decline in demand for domestics and rural labourers and a progressive reduction in the use of apprenticeships or similar arrangements, in favour of fostering, but that employment as domestics continued into the 1960s.<sup>52</sup> Aboriginal children placed in the care of mainstream child welfare authorities rather than the Board, either before or after its establishment in 1883,<sup>53</sup> and children from the ACT may also need to be included in this estimate.<sup>54</sup> The number of apprentices who never received their money will only become clear through an investigation and claims process that wins the confidence of Aboriginal people in NSW.

<sup>47</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, 1997, p.325. Goodall calls the Board's statistics 'erratic': Heather Goodall, 'Saving the Children': Gender and the Colonization of Aboriginal Children in NSW 1788 to 1990', *Aboriginal Law Bulletin*, Vol. 2 No. 44, June 1990, p.9. Historian Victoria Haskins has written, 'I have personally uncovered numerous cases of girls working in 'apprenticeships' whose removal and indentures even in this time period were not registered: sometimes, even when their trust fund records have been made. There are apparently no surviving files relating to employer correspondence, and many correspondence files on individual wards removed in other periods are simply missing.' Victoria Haskins, '& so we are "Slave Owners"!': Employers and the NSW Aborigines Protection Board Trust Funds', *Labour History*, No.88, May 2005, p.162 n.6.

<sup>48</sup> 'At the end of the year 1915, there were 80 girls in situations, all enjoying the comfort of good homes and wages paid regularly. In the case of those girls who were apprenticed, their pocket money is signed for weekly, and the balance paid to their credit with the Board's Trust Account, which had a balance of 1,071 pounds 2s at the end of the year': Legislative Assembly of New South Wales, *Aborigines, report of Board for the Protection of, for year 1915*, 1916, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/24.

<sup>49</sup> Heather Goodall, 'New South Wales' in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.80.

<sup>50</sup> Victoria Haskins, 'A Better Chance?': Sexual Abuse and the Apprenticeship of Aboriginal Girls under the NSW Aborigines Protection Board', *Aboriginal History*, Vol.28, 2004, p.43. Haskins says (at p.42) that these statistics do not include all the girls apprenticed by the Board in the period 1912-1928. Inara Walden has written that during 'any one year in the 1920s there would have been between 300 and 400 Aboriginal girls apprenticed to white homes': Inara Walden, 'To Send Her to Service': Aboriginal Domestic Servants', *Aboriginal Law Bulletin*, Vol.3 No.76, October 1995, p.12.

<sup>51</sup> Up to 1921, 81% of children removed were female: Heather Goodall, 'Saving the Children': Gender and the Colonization of Aboriginal Children in NSW 1788 to 1990', *Aboriginal Law Bulletin*, Vol. 2 No. 44, June 1990, p.7.

<sup>52</sup> *Ibid*, p.9 and Heather Goodall, 'New South Wales' in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.90. The Board reported on the employment of child apprentices in the mid-1950s as follows: 'Placement of wards at the end of the year In employment under Reg. conditions: 1952-53: 18, 1953-54: 23, 1954-55: 29'. Aborigines Welfare Board, *Report of the Aborigines Welfare Board for the year ended 30 June 1955*, Parliament of NSW, 1955, Appendix A, p.10, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/25.

<sup>53</sup> Inara Walden, 'That Was Slavery Days': Aboriginal Domestic Servants in NSW in the Twentieth Century', *Labour History*, No. 69, November 1995, p.207 nn.2 and 6.

<sup>54</sup> Until 1968 Aboriginal children in the ACT removed under the Child Welfare Ordinance 1954 (Cth) were placed in foster homes or NSW institutions under the supervision of the Aborigines Welfare Board. In 1968, responsibility for placing Aboriginal children in the ACT was transferred to the Commonwealth Department of Interior: Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, 1997, pp.44, 49.

## ***Social Security Entitlements***

### ***Introduction***

This section examines each of the main social security benefits available from either the NSW or Commonwealth Government during the period 1900-1969. In each case it identifies the relevant Act and provides the basic statutory features of the benefit, such as the eligibility criteria, payment rates, take-up of the benefit within the general population, and its specific availability to Aboriginal people. State and Commonwealth Parliaments passed laws that explicitly discriminated against Aboriginal people for much of the 20<sup>th</sup> Century and social security legislation was no exception. This meant that for decades, some benefits were simply unavailable to significant proportions of the Aboriginal population.

This section of the research report pays particular attention to provisions which authorised 'indirect' payment of entitlements, that is the diversion of pensions and other benefits to third parties. In some situations our archival research has confirmed that social security entitlements were re-directed into trust accounts administered by the NSW Aborigines Protection Board. In relation to other benefits, we have noted at least the legal potential for that to occur, by identifying two kinds of statutory provisions.

The first type were specific provisions that authorised 'indirect payments' of *Aboriginal people's* entitlements, that is, the diversion of social security payments to State Aboriginal welfare authorities. The second type permitted indirect payments without reference to race. The extent to which this potential for diversion of social security entitlements to the Board was realised in NSW, by either method, depends on the facts of people's individual circumstances. The statutory potential for Aboriginal welfare authorities *in other States* to intercept Commonwealth pensions and benefits is an additional reason for covering all the main social security entitlements in the research report, as that information together with references to material held in the National Archives may assist those researching these issues outside NSW.

This survey is primarily a legal one, that is, it is based on the law that was on the books in NSW at the time. We have also included information on policy and administration located during our research, where that affected Aboriginal people in particular. Law, policy and administration changed during those seven decades and the significant changes noted during our research are discussed.

The research is not exhaustive and there is no doubt much more information to be found in archives, but this survey offers some details on how social security administration intersected with the powers of control over lives and finances exercised by the Board in NSW. We emphasise that, in depicting the way benefits were administered, this account is mostly reliant on government documents, both public and internal. This is the 'official' version of how things were done. As with the experience of child apprentices, some of the secondary sources referred

to here suggest that, in practice, Board conduct could depart substantially from what the law required. The full story requires the first-hand experience of Aboriginal people themselves to be heard and taken on board.

Several references are made below to ‘exemption certificates’. Exemptions for Aboriginal people from the provisions of the *Aborigines Protection Act 1909* (NSW) were introduced in 1943. A certificate was issued upon application to ‘any aborigine or person apparently having an admixture of aboriginal blood, who, in the opinion of the board, ought no longer be subject’ to the Act. The certificate meant that the person ‘shall be deemed not to be an aborigine’ within the meaning of the Act.<sup>55</sup>

The government’s claim was that exempted Aboriginal people became entitled to the same citizenship benefits as those enjoyed by non-Indigenous Australians, in areas like housing, social security, education and various other services. The Board’s power to grant exemptions was discretionary and Goodall says this gave its District Welfare Officers the ability to obtain commitments that an applicant was ‘willing to live separately from other Aboriginal people, to work in approved “regular” jobs and save for “approved” purchases’. She says that despite ‘the high cost of not participating in the “exemption” process, many Aborigines refused to be humiliated into applying for what they called a “Dog Licence”. Between 1943 and 1964, when the system lapsed, there were only 1500 applications for exemption certificates out of a vulnerable population of 14 000’.<sup>56</sup>

## ***Age Pensions***

### ***State: Old Age Pensions Act 1900 (NSW)***

The NSW Government introduced one of the first non-contributory age pension schemes in the world.<sup>57</sup> It commenced on 1 July 1901 and operated with one minor amendment until it was superseded eight years later by a nation-wide scheme.<sup>58</sup> In general it was available to applicants over 65 years of age<sup>59</sup> who satisfied residency, means and character requirements.<sup>60</sup> The maximum rate applicable to both men and women was £26 per year for individuals and £19 10s for each member of a married couple.<sup>61</sup> A net assets test of £390 applied and the rate tapered off once applicants earned above a certain income threshold.

<sup>55</sup> Section 18C, *Aborigines Protection Act 1909* (NSW) inserted by section 3(b) of the *Aborigines Protection (Amendment) Act 1943* (NSW).

<sup>56</sup> Heather Goodall, ‘New South Wales’ in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.90.

<sup>57</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.48-49.

<sup>58</sup> The *Old Age Pensions Act 1900* (NSW) was repealed in 1911.

<sup>59</sup> It was possible for people over 60 years of age to apply on the grounds that they were physically incapable of work: section 10, *Old Age Pensions Act 1900* (NSW).

<sup>60</sup> See generally section 9, *Old Age Pensions Act 1900* (NSW). For example, applicants had to be of ‘good moral character’ and to have led a ‘sober and reputable life’: section 9(1)(f).

<sup>61</sup> Section 11, *Old Age Pensions Act 1900* (NSW).

In a pattern to be repeated in social security legislation for decades to come, however, Aboriginal ‘natives’ were excluded from the scheme.<sup>62</sup>

### ***Federal: Invalid and Old-age Pensions Act 1908 (Cth)***

*Basic features:* At Federation in 1901, the Constitution gave the Commonwealth Parliament power to legislate for ‘invalid and old-age pensions’.<sup>63</sup> In 1908 Parliament exercised this power and from 1 July 1909, fortnightly age pensions were paid under a national scheme, similar to the NSW one it superseded.<sup>64</sup> In these early years, age pensions (and the invalid pensions introduced by the same legislation) were administered by the Commissioner for Pensions within the Department of the Treasury.<sup>65</sup>

At its inception the age pension paid a maximum of 10s per week (£26 per year) to men and women over 65 (or those over 60 physically incapable of work).<sup>66</sup> By 1925 the maximum rate had increased to £1 per week and, after cuts during the Great Depression, it was restored to that rate in 1937. Automatic cost-of-living adjustments were made from 1933, apart from three years at the end of the 1930s.<sup>67</sup> By 1964 the maximum rate was £5 15s per week and in 1969 it was \$15 per week.<sup>68</sup>

Under the Menzies Government additional benefits were made available to pensioners. In 1958 ‘supplementary assistance’ was introduced for people paying rent and almost entirely financially dependent on the pension. By 1965 the rate for supplementary assistance had doubled and was worth the pre-decimal equivalent of \$2 per week.<sup>69</sup> In 1965 the so-called ‘wife’s allowance’ of \$6 per week (in its pre-decimal equivalent) was extended to the wives of aged pensioners who had one or more children under 16 years of age. In the same year the child allowance (the pre-decimal equivalent of \$1.50 per week) was also extended to aged pensioners with dependent children.<sup>70</sup>

From the commencement of the legislation in 1909, applicants for the pension had to be of ‘good character’<sup>71</sup> and satisfy residency requirements and an income and asset test.<sup>72</sup> About one-

<sup>62</sup> Section 51, *Old Age Pensions Act 1900* (NSW).

<sup>63</sup> Section 51(xxiii), *Constitution*.

<sup>64</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.74. State pensioners could convert to the Commonwealth scheme under section 35 of the *Invalid and Old-age Pensions Act 1908* (Cth).

<sup>65</sup> Department of Family and Community Services, *A short genealogy of income support payments*, Fact sheet 11, March 2001 available at [www.facs.gov.au](http://www.facs.gov.au) (viewed 17 September 2005), p.1. In 1941 the Department of Social Services, which had been established two years earlier, took over from Treasury the administration of invalid and old age pensions as well as maternity allowances: TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.176 n.12.

<sup>66</sup> After 1910 it was payable to women who qualified, from the age of 60. See section 15(2), *Invalid and Old-age Pensions Act 1908* (Cth) and TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.74-75.

<sup>67</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.218 and Department of Social Security, *History of Pensions and Other Benefits in Australia* (reproduced from *Year Book Australia 1971*) at [www.abs.gov.au](http://www.abs.gov.au) (viewed 17 September 2005).

<sup>68</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.307 and 396. A table showing the rates and real value of pensions between 1911 and 1972 can be found at pp.556-557.

<sup>69</sup> *Ibid*, p.402.

<sup>70</sup> These fringe benefits had applied to the wives and children of invalid pensioners from an earlier period: *ibid*, pp.402-405. The child allowance was abolished in 1968.

<sup>71</sup> Section 17(c), *Invalid and Old-age Pensions Act 1908* (Cth), a requirement which was maintained when the Act was superseded by the *Social Services Consolidation Act 1947* (Cth) (see section 22(a)).

third of Australian men over 65 and women over 60 were estimated to be on the pension from 1911 through to the early 1930s, but the proportion of pensioners to people of pensionable age steadily increased to 50 per cent by 1960.<sup>73</sup>

Aboriginal people were not subject to the same blanket disqualification that operated under the earlier NSW age pension legislation. In its original form, the Commonwealth legislation denied eligibility to ‘aboriginal natives of Australia’.<sup>74</sup> In 1942 the law was changed to widen the entitlement, so that, for example, Aboriginal people in NSW who held certificates of exemption from control under the *Aborigines Protection Act 1909* (NSW) also qualified.<sup>75</sup> A later amendment that came into force in February 1960 meant that all Aboriginal people except the ‘nomadic or primitive’ were eligible for a pension.<sup>76</sup> The Commonwealth Minister estimated that this change, as it applied to age, invalid and widows’ pensions, would benefit around 4000 Aboriginal people across Australia.<sup>77</sup> The exclusion of those who were deemed to be ‘nomadic or primitive’ was eliminated in 1966 – removing the last of the discriminatory references to Aboriginal people.<sup>78</sup>

*Administration:* In its original form the Act disqualified ‘aboriginal natives’, but files in the National Archives indicate that on legal advice only certain categories of Aboriginal people were thereby actually excluded. The ‘Commonwealth law authorities’ advised that ‘half-castes and persons with less than half aboriginal blood’ were not disqualified by this provision because ‘aboriginal blood does not predominate’.<sup>79</sup>

<sup>72</sup> Sections 17 and 24, *Invalid and Old-age Pensions Act 1908* (Cth). From 1923 to 1946, for example, the maximum earnable income was £32 10s per year and the maximum value for assets (apart from the family home) was £400: TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.121.

<sup>73</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.122 and 308.

<sup>74</sup> Section 16(1)(c), *Invalid and Old-age Pensions Act 1908* (Cth).

<sup>75</sup> Section 16(1A), *Invalid and Old-age Pensions Act 1908* (Cth) inserted by section 4 of the *Invalid and Old-age Pensions Act 1942* (Cth): ‘Nothing in the last preceding sub-section shall apply to – (a) an aboriginal native of Australia – (i) who is for the time being exempt from the provisions of the law of the State or Territory of the Commonwealth in which he resides relating to the control of aboriginal natives; or (ii) who resides in a State or Territory of the Commonwealth the law of which does not make provision for such exemption, and with respect to whom the Commissioner is satisfied that, by reason of the character, standard of intelligence and development of the aboriginal native, it is desirable that the last preceding sub-section should not apply to him’. This was maintained by section 19 of the *Social Services Consolidation Act 1947* (Cth). The same provision in respect of invalid pensions (section 21(1A)) was inserted by section 6 of the *Invalid and Old-age Pensions Act 1942* (Cth).

<sup>76</sup> Section 6 of the *Social Services Act 1959* (Cth) repealed section 19(2) of the *Social Services Act 1947* (Cth) making Aboriginal people generally eligible for the pension. However those deemed ‘nomadic or primitive’ were disqualified by section 137A of the *Social Services Act 1947* (Cth), inserted by section 24 of the *Social Services Act 1959* (Cth).

<sup>77</sup> See John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship*, Cambridge University Press, 1997, p.165.

<sup>78</sup> Section 29 of the *Social Services Act 1966* (Cth) repealed section 137A of the *Social Services Act 1947* (Cth). Between 1942 and 1946 the Commissioner of Pensions could, where ‘it is desirable to do so’, determine that the rate of pension payable to an Aboriginal person was ‘less than the maximum rate’: section 44A(1), *Invalid and Old-age Pensions Act 1908* (Cth) inserted by section 13, *Invalid and Old-age Pensions Act 1942* (Cth).

<sup>79</sup> This applied to age pensions and invalid pensions as well as maternity allowances paid under the *Maternity Allowance Act 1912* (Cth): National Archives of Australia, *Payment of Maternity Allowances to Aborigines*, (1938) item barcode 457465, series number A6006, control symbol 1938/06/09, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.2 (viewed 27 September 2005). In a letter to the Premier of South Australia on behalf of the Prime Minister dated 30 December 1936 the Treasurer RG Casey wrote: ‘In a case of mixed descent a person is considered to be an aboriginal native or not according as the aboriginal descent does or does not predominate. For example, in the case of a half-caste, that is, a person one of whose parents only was an aboriginal and the other a white person, aboriginal blood would not predominate and such person would, therefore, not be disqualified, by reason of his descent, from receiving a pension. In the case of more than half aboriginal descent, however, a pension would not be payable.’ National Archives of Australia, *Invalid and old age pensions for Aborigines*, (1936-1947) item barcode 96546, series number A461, control symbol N382/1/1 available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.137 (viewed 20 September 2005). Chesterman and Galligan said that Victorian administrators first employed this administrative distinction between an ‘aboriginal native of Australia’ and a ‘half-caste’ in the late 19<sup>th</sup> Century. The idea that an ‘aboriginal native’ was someone ‘in whom aboriginal blood predominates’ was adopted by Alfred Deakin as the first Commonwealth Attorney-General and was endorsed by his successor Isaac Isaacs and also by the Secretary of the Attorney-General’s Department Robert Garran, all in the first few years after

Despite that legal advice, as a matter of policy for a long time the Commonwealth would not ‘pay pensions to half castes or persons with less than 50% aboriginal blood *if they are residing on State aboriginal reserves or stations*’. The view taken was ‘that such persons should not be permitted to benefit from the State on the same basis as aborigines and at the same time receive Commonwealth pensions from which aborigines are debarred’.<sup>80</sup> The counter-view put by State protection authorities was that ‘a half-caste living in a settlement is as much entitled to a pension as is a white man living in an institution practically at the expense of a State’.<sup>81</sup> The policy was further justified by the Commonwealth on the grounds that ‘discontent and difficulties would arise if one section of people living on such reserves or stations were paid pensions whilst the other section were denied them’ – adverting to the discriminatory exclusion of so-called ‘full-bloods’.<sup>82</sup>

Aboriginal people, as they reached the eligibility age for a pension, faced an invidious choice. William Ferguson, the then President of the Aborigines Progressive Association told the Chairman of the Committee for Aboriginal Citizenship, a community organisation active in the 1940s, that in the ‘exceptional cases where people have been granted a pension, the people have had to leave their homes on the Reserve, and live in tin shacks on the outskirts of country towns only to be again shifted by the Municipal or Shire Councils’.<sup>83</sup> Ferguson denounced the policy – the elderly on reserves and Stations were ‘starved to death because the [4s 1d] worth of rations now supplied to them is not enough and does not allow for extra food required for aged or sick people’.<sup>84</sup>

Others shared similar concerns. In the 1930s and 1940s State Premiers, federal parliamentarians such as Eddie Ward, returned soldiers’ organisations and other Aboriginal activists like William Cooper from the Australian Aborigines’ League questioned, lobbied and criticised the Commonwealth over its refusal to pay pensions or maternity allowances to Aboriginal people. In particular, they criticised the exclusion of ‘natives, irrespective of the degree of aboriginal blood, who reside on aboriginal reserves, stations and settlements’ and ‘unexempted natives in whom aboriginal blood predominates in the slightest degree’.<sup>85</sup> Thomas Playford, Premier of South Australia, wrote in 1944 to Prime Minister John Curtin that the situation meant someone

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Federation: John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship*, Cambridge University Press, 1997, p.92.

<sup>80</sup> National Archives of Australia, Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations, (1941-1944) [emphasis added] item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.341 (viewed 24 September 2005).

<sup>81</sup> National Archives of Australia, *Aboriginal Welfare. Initial conference of Commonwealth and State Aboriginal authorities held at Canberra 21-23 April 1937*, (1937) item barcode 53238, series number A52, control symbol 572/99429/912, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.26 (viewed 14 November 2005).

<sup>82</sup> National Archives of Australia, Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.341 (viewed 24 September 2005).

<sup>83</sup> Correspondence 1941-42 (letter of 6 April 1942), Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/131.

<sup>84</sup> Ibid.

<sup>85</sup> For the examples mentioned in the text, see generally National Archives of Australia, *Invalid and old age pensions for Aborigines*, (1936-1947) item barcode 96546, series number A461, control symbol N382/1/1 available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.137 (viewed 20 September 2005).

who had lived and worked their entire life on a reserve had to move away ‘from the place where all his interests lie’ in order to gain an exemption and qualify for a pension.<sup>86</sup> Playford called for reform especially, he said, given that the Commonwealth had recently legislated to impose liability for income tax on all Aboriginal people, ‘irrespective of the degree of aboriginal blood’.<sup>87</sup>

The AWB itself publicly criticised the exclusion of reserve residents:

This distinction, in the Board’s view, is illogical and unjust, but despite repeated representations, the Commonwealth Authorities adhere to this rule. As a result of this discrimination, aborigines are frequently obliged to move off the Board’s Stations in order to qualify for a pension, some even taking up residence immediately outside the Station boundary.<sup>88</sup>

It appears that pensions *were* paid to unexempted Aboriginal people living on a reserve which was not under the supervision of a Board-appointed manager.<sup>89</sup>

As part of its lobbying of the Commonwealth, the AWB was keen also to press for automatic diversion of pension and maternity payments to authorities such as itself, so that it could garnishee an amount reflecting ‘fair value for benefits already received at the hands of the [NSW] Government’, and make available the balance to the pensioner ‘either in cash or kind’.<sup>90</sup>

When pressure was later applied to the Commonwealth in the 1950s to again broaden Aboriginal people’s eligibility for social security benefits, the Commonwealth still maintained that ‘the care of unexempt Aborigines is a State responsibility’.<sup>91</sup> Because Commonwealth law made exemption under State protection laws the trigger for eligibility for social security, William McMahon, the federal Minister for Social Services, said that it was up to the States themselves to widen the exemption and, therefore, eligibility for social security. In doing so he used a misleading or at least erroneous<sup>92</sup> constitutional justification, arguing that the power to make laws affecting Aboriginal people was reserved to the States.<sup>93</sup>

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Aborigines Welfare Board, *Report of the Aborigines Welfare Board for the year ended 30 June 1956*, Parliament of NSW, 1956, p.5, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/25.

<sup>89</sup> Aborigines Welfare Board, *Report of the Aborigines Welfare Board for the year ended 30 June 1955*, Parliament of NSW, 1955, p.6, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/25. This appears to have been Elkin’s own understanding back in 1942 when corresponding with William Ferguson: Correspondence 1941-42 (letter of 14 July 1942), Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/131.

<sup>90</sup> Letter from Chair of Aborigines Welfare Board to Commonwealth Director-General of Social Services dated 25 March 1942, National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.341 (viewed 24 September 2005).

<sup>91</sup> National Archives of Australia, *Aboriginal natives – Application of Commonwealth laws – Marriage*, (1955-1956) item barcode 1111839, series number A432, control symbol 1955/3765 available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.10-11 (viewed 27 September 2005).

<sup>92</sup> See John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship*, Cambridge University Press, 1997, p.163. On McMahon’s reasoning there would be a question mark over the constitutionality of the social security provisions that disqualified Aboriginal people in the first place.

<sup>93</sup> National Archives of Australia, *Aboriginal natives – Application of Commonwealth laws – Marriage*, (1955-1956) item barcode 1111839, series number A432, control symbol 1955/3765 available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.10-11 (viewed 27 September 2005).

*Diversion of payments:* Commonwealth law between 1942 and 1960 specifically authorised payments for Aboriginal pensioners to be re-directed to ‘an authority of a State or Territory...controlling the affairs of aboriginal natives, or to some other authority or person whom the Commissioner considers to be suitable for the purpose, for the benefit of the pensioner’.<sup>94</sup> Even before that, the Act had provided for the possibility of ‘indirect payments’ without reference to race: the government could issue a warrant authorising a third party to receive pension payments where it was ‘expedient’ having regard to the ‘age, infirmity, or improvidence of a pensioner, or any other special circumstances’.<sup>95</sup>

As noted above, in 1942 the Board wrote to the Director-General of Social Services in Canberra lobbying against direct payments to Aboriginal pensioners and for payments to be made instead to ‘the local Controlling Authority’, on the basis that ‘the Authority shall make available to the Pensioner the balance, either in cash or kind, after deducting fair value for benefits already received at the hand of the Government’.<sup>96</sup> An internal Board memo indicates that the Commonwealth had mostly accepted the Board’s recommendations regarding the payment of pensions.<sup>97</sup>

The same memo gives an indication of the Board’s view of Aboriginal pensioner numbers within its knowledge:

An examination of returns received from the Police and Managers of Stations show that the position in relation to Invalid and Old-Age Pensioners to be as follows:

(a)	Not living on Stations or Reserves	57
(b)	Living on Aboriginal Reserves	13
(c)	Living on Aboriginal Stations	28
(d)	Living in close proximity to Aboriginal Stations	9
(e)	Cases definitely rejected on residential grounds	8
(f)	Cases not yet finalized, but living on Stations or Reserves and therefore to be rejected	19 <sup>98</sup>

<sup>94</sup> Section 44A(2), *Invalid and Old-age Pensions Act 1908* (Cth) inserted by section 13 of the *Invalid and Old-age Pensions Act 1942* (Cth). It later became section 47 of the *Social Services Consolidation Act 1947* (Cth) before being repealed by section 9 of the *Social Services Act 1959* (Cth).

<sup>95</sup> Section 43(1), *Invalid and Old-age Pensions Act 1908* (Cth). In later legislation ‘ill-health’ was added (in 1947) to the list of special circumstances (section 43, *Social Services Consolidation Act 1947* (Cth)) and then, by section 8 of the *Social Services Act 1959* (Cth), the wording of section 43 was changed to: ‘Where the Director-General is satisfied that, for any reason, it is desirable that payment of the whole or a portion of a pension should be made to a person, institution or authority on behalf of the pensioner, the Director-General may authorize payment accordingly’.

<sup>96</sup> Aborigines Welfare Board, Internal Memo, p.2, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/40.

<sup>97</sup> Ibid, p.3.

<sup>98</sup> Ibid.

Even as the eligibility criteria that discriminated against Aboriginal people were incrementally removed from the Act, the idea of directing payment of Aboriginal people's pensions to State authorities remained at the forefront of the Commonwealth's mind. Introducing the legislation that liberalised Aboriginal eligibility after 1959, the Minister for Social Services Hugh Robertson told the House of Representatives:

Where the Department of Social Services is satisfied that a native's social development is such that he can with advantage handle the pension himself then the payment will be made to him direct. In other cases some or all of the pension payable in respect of the native will be paid to the mission, to a State or other authority, or to some other person for the welfare of the native. But no restrictions will be imposed that are not common, under similar circumstances, to all sections of the Australian community.<sup>99</sup>

### ***Invalid Pensions***

#### ***State: Invalidity and Accident Pensions Act 1907 (NSW)***

The NSW Government introduced a non-contributory invalid pensions scheme which operated from 1908 until December 1910 when it was superseded by a new Commonwealth scheme. In many respects it resembled the age pension which operated in NSW between 1901 and 1909 (see above, under Age Pensions), although, additionally, it was only to be granted where the applicant was not adequately maintained by their relatives.<sup>100</sup> There were 5252 invalid pensioners in the year ending June 1910. Kewley said that the Commonwealth scheme that superseded it used the NSW legislation as its model.<sup>101</sup>

Unlike the *State's Old Age Pensions Act 1900 (NSW)*, there was no provision in the Act or regulations denying eligibility to Aboriginal people for the invalid pension. No other information has been located.

#### ***Federal: Invalid and Old-age Pensions Act 1908 (Cth)***

Although included in the same legislation as the Commonwealth old-age pension scheme, the invalid pension provisions came into force a little later, in December 1910. The Commonwealth invalid pension was payable to an applicant over the age of 16 years who was 'permanently incapacitated for work' because of an accident or natural causes and not adequately covered by insurance. In 1912 it was extended specifically to cover applicants who were blind.

The rates payable were the same as described above for the age pension. The same means test also applied, except an applicant also had to show that their near relatives did not adequately

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<sup>99</sup> House of Representatives, *Hansard*, 3 September 1959, pp.930-931.

<sup>100</sup> Section 5(g), *Invalidity and Accident Pensions Act 1907 (NSW)*.

<sup>101</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.84.

maintain them.<sup>102</sup> As noted above, a wife's allowance and a child allowance were introduced for invalid pensioners in 1943, more than twenty years before they extended to age pensioners.<sup>103</sup> The supplementary allowance introduced in 1958, mainly for single people with limited means (see above, under Age Pensions), also applied to eligible invalid pensioners.

There are some flaws in the statistics which make accurate estimates of the number of invalid pensioners across Australia difficult.<sup>104</sup> From a figure of around 13 700 pensioners in 1913, the numbers increased to about 58 700 in 1940 and 109 700 by 1964.<sup>105</sup> No figures have been located for the numbers of Aboriginal invalid pensioners.<sup>106</sup>

The Commonwealth Act originally said that 'aboriginal natives of Australia' were not eligible for the invalid pension.<sup>107</sup> The earlier discussion of the parallel provision in relation to the age pension applies equally to the invalid pension, including the way that Commonwealth legal advisors interpreted the disqualification and the way that eligibility for Aboriginal people was later widened by statutory amendment in 1942<sup>108</sup> and again in 1960<sup>109</sup> and 1966.<sup>110</sup> Likewise the statutory provisions for indirect payment of the pension, including for example to the State Aboriginal welfare authorities, also applied to invalid pensions.<sup>111</sup>

## ***Widows' Pensions***

### ***State: Widows' Pensions Act 1925 (NSW)***

*Basic features:* From February 1926 the NSW Government paid a pension to widows with at least one dependent child under the age of 14. Applicants had to meet a residence requirement and be of 'good moral character and sober habits'.<sup>112</sup> A tapered means test cut in at an annual net income of £78.<sup>113</sup> Originally the rate payable was £1 per week plus 10s per week per dependent child.<sup>114</sup> If the widow died, the Minister could approve continued payment of 10s per

<sup>102</sup> Section 22(h), *Invalid and Old-age Pensions Act 1908* (Cth).

<sup>103</sup> From 1943 the wife of an invalid pensioner, living with her husband and not herself in receipt of an age, invalid or service pension, received an allowance of 15s per week. A means test but no additional residence, age, character or nationality test applied.

<sup>104</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.122 including n.26 and p.307.

<sup>105</sup> *Ibid*, pp.93, 122, 134 and 307.

<sup>106</sup> Statistics on the population of New South Wales, and on New South Wales residents in receipt of various pensions and allowances can be found in the annual *Official Year Book of New South Wales* published by the NSW Government Statistician. The Year Books also contain estimates of the Aboriginal population.

<sup>107</sup> Section 21(1)(b), *Invalid and Old-age Pensions Act 1908* (Cth).

<sup>108</sup> In the case of invalid pensions, the change was reflected in section 21(1A), *Invalid and Old-age Pensions Act 1908* (Cth) inserted by section 6 of the *Invalid and Old-age Pensions Act 1942* (Cth). This was maintained by section 19 of the *Social Services Consolidation Act 1947* (Cth).

<sup>109</sup> Section 6 of the *Social Services Act 1959* (Cth) repealed section 19(2) of the *Social Services Act 1947* (Cth), making Aboriginal people generally eligible for the pension. However those deemed 'nomadic or primitive' were disqualified by section 137A of the *Social Services Act 1947* (Cth), inserted by section 24 of the *Social Services Act 1959* (Cth).

<sup>110</sup> Section 29 of the *Social Services Act 1966* (Cth) repealed section 137A of the *Social Services Act 1947* (Cth).

<sup>111</sup> Section 44A(2), *Invalid and Old-age Pensions Act 1908* (Cth) inserted by section 13 of the *Invalid and Old-age Pensions Act 1942* (Cth). It later became section 47 of the *Social Services Consolidation Act 1947* (Cth) before being repealed by section 9 of the *Social Services Act 1959* (Cth). The longer-standing provision about indirect payments not specific to Aboriginal people and referred to above, under Age Pensions, also applied to invalid pensions: section 43(1), *Invalid and Old-age Pensions Act 1908* (Cth); section 43, *Social Services Consolidation Act 1947* (Cth); section 8, *Social Services Act 1959* (Cth).

<sup>112</sup> Section 13, *Widows' Pensions Act 1925* (NSW).

<sup>113</sup> Section 14, *Widows' Pensions Act 1925* (NSW). The threshold was lowered to a net annual income of £26 by section 3(a) of the *Widows' Pensions (Further Amendment) Act 1929* (NSW).

<sup>114</sup> The pension rate was increased to £1 5s by section 2(b) of the *Widows' Pensions (Amendment) Act 1942* (NSW).

dependent child to their guardian until the child reached 14 years of age.<sup>115</sup> After 1929, a widow without a dependent child under 14 could also qualify for a pension in certain circumstances.<sup>116</sup>

So that widows living in NSW who had at least one dependent child were not disadvantaged by the introduction of the federal widows' pension scheme (described below), the State Government arranged for a supplementary allowance to be paid after 1942.<sup>117</sup>

*Diversion of payments:* The State Act allowed the government to make payment to another person when satisfied it was 'expedient' to do so having regard to 'the age, infirmity, ill-health, insanity, or improvidence of a pensioner, or any special circumstances'. The third party was required to apply the money 'for the benefit of the pensioner and her child' and to account to the Registrar of Widows' Pensions for all moneys received.<sup>118</sup>

Aboriginal widows were eligible for the pension – that is, the legislation did not contain the disqualification of 'aboriginal natives of Australia' seen in other, particularly federal, legislation in the first decades of the 20<sup>th</sup> Century. Evidence indicates the Board had set up a system for payment of State widows' pensions into trust accounts similar to that established for child endowment (described later), but the operation appears to have been small-scale by comparison. According to the Public Service Board report written in 1938, only 12 Aboriginal women were then receiving a widow's pension in cash and another 12 'by way of orders for goods' (presumably where the Registrar of Widows Pensions had agreed to make 'indirect payments', that is, to the APB rather than the pensioner direct).<sup>119</sup> A manual of instructions to Board staff issued in 1941 told them to be vigilant for the possibility that Aboriginal widows may be receiving the pension directly, without the intervention of the Board.<sup>120</sup> Of the State population as a whole, 7309 women were on the widows' pension as at 30 June 1939.<sup>121</sup>

### ***Federal: Widows' Pensions Act 1942 (Cth)***

*Basic features:* The federal scheme introduced in 1942 recognised three categories of widow.<sup>122</sup> Category A widows maintained at least one child under the age of 16 and were paid a maximum rate of 30s per week. Category B were widows over 50 without dependent children and category

<sup>115</sup> Section 37, *Widows' Pensions Act 1925* (NSW).

<sup>116</sup> Section 13A, *Widows' Pensions Act 1925* (NSW) inserted by section 2 of the *Widows' Pensions (Further Amendment) Act 1929* (NSW).

<sup>117</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.214 n.12. 'As a general rule, these supplementary payments are allowances for the children of widows in receipt of the Commonwealth pension': Government Statistician of New South Wales, *Official Year Book of New South Wales 1942-43*, Government of New South Wales, 1946, p.142.

<sup>118</sup> Section 36, *Widows' Pensions Act 1925* (NSW).

<sup>119</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940 p.16.

<sup>120</sup> The Board told its employees that as 'these applications may be made direct and dealt with by the Widows' Pension Department without the knowledge that the applicant is an aborigine, Managers should report any case which comes under their notice where a widow receives direct payment of Widows' Pension which has not previously been approved by the Board': Aborigines Welfare Board, *Manual of Instructions to Managers and Matrons of Aboriginal Stations and other Field Officers*, 1941, p.40, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/44.

<sup>121</sup> Government Statistician of New South Wales, *Official Year Book of New South Wales 1942-43*, Government of New South Wales, 1946, p.143.

<sup>122</sup> The typology is Kewley's.

C were widows under 50 without dependent children in ‘necessitous circumstances’.<sup>123</sup> In both categories B and C, the maximum rate payable was 25s per week, although in the latter category this cut out at 26 weeks after the death of the husband. In 1947 category D was added, creating eligibility for the wives of long-term prisoners who were either over 50 or had at least one dependent child – the rate payable was that applying to category B.<sup>124</sup> Rates increased over time, usually tied to cost-of-living increases. In 1959 the maximum rate in category A was £5 per week and by 1968 it had risen to \$14.<sup>125</sup> Supplementary assistance was introduced for all pensions in 1958 (see above, under Age Pensions) and additional allowances were introduced in 1963.<sup>126</sup> The pension was paid every four weeks (fortnightly after 1947) in cash at a post office or by cheque.<sup>127</sup>

The definition of ‘widow’ was broad and included ‘women who had lost a breadwinner in other circumstances’ (eg de facto widows, deserted wives, divorced women who had not re-married).<sup>128</sup> Character and residency requirements applied.<sup>129</sup> The income and property test varied across the three categories and was altered several times over the years. Across Australia there were 38 408 widows in receipt of the pension in 1942-43. By 1964 there were 62 124 and eight years later the figure had risen to 92 784.<sup>130</sup> In NSW at the end of 1943-44 there were 16 380 women on the federal widows’ pension.<sup>131</sup>

The 1942 Act adopted the eligibility criteria applying to Aboriginal people under the then recently amended *Invalid and Old-age Pensions Act 1908* (Cth). In other words, an ‘aboriginal native of Australia’ was ineligible unless she held an exemption certificate under State legislation such as the *Aborigines Protection Act 1909* (NSW).<sup>132</sup> The disqualification was further narrowed to those who were ‘nomadic or primitive’ from February 1960<sup>133</sup> and eliminated altogether in 1966.<sup>134</sup>

*Diversion of payments:* From the outset, the Act contained a general provision for the payment of widows’ pensions to another person on the pensioner’s behalf, due to infirmity or other

<sup>123</sup> Category C was referred to in Part IV of the original legislation as ‘widows’ allowances’.

<sup>124</sup> Kewley says they were folded into either category A or B in 1960: TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.217.

<sup>125</sup> A table of rates is provided in TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.221.

<sup>126</sup> *Ibid*, pp.224-225.

<sup>127</sup> Section 20, *Widows’ Pensions Act 1942* (Cth); section 70, *Social Services Consolidation Act 1947* (Cth); TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.216.

<sup>128</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.214.

<sup>129</sup> Section 14, *Widows’ Pensions Act 1942* (Cth).

<sup>130</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.230-32, 442.

<sup>131</sup> Government Statistician of New South Wales, *Official Year Book of New South Wales 1942-43*, Government of New South Wales, 1946, p.143.

<sup>132</sup> Section 14(1)(g) and (5), *Widows’ Pensions Act 1942* (Cth), retained with almost identical wording in section 62(2) of the *Social Services Consolidation Act 1947* (Cth). As with the age and invalid pensions, between 1942 and 1946 the Commissioner of Pensions could, where ‘it is desirable to do so’ determine that the rate of pension payable to an Aboriginal person was ‘less than the maximum rate’: section 43(1), *Widows’ Pensions Act 1942* (Cth).

<sup>133</sup> Section 11 of the *Social Services Act 1959* (Cth) repealed section 62(2) of the *Social Services Act 1947* making Aboriginal people generally eligible for the pension. However those deemed ‘nomadic or primitive’ were disqualified by section 137A of the *Social Services Act 1947* (Cth), inserted by section 24 of the *Social Services Act 1959* (Cth).

<sup>134</sup> Section 29 of the *Social Services Act 1966* (Cth) repealed section 137A of the *Social Services Act 1947* (Cth).

special circumstances.<sup>135</sup> Between 1942 and 1960 the Act also specifically authorised indirect payment of the pensions of Aboriginal widows to State Aboriginal welfare authorities.<sup>136</sup>

## ***Maternity Allowances***

### ***Federal: Maternity Allowance Act 1912 (Cth)***

*Basic features:* Unlike the Commonwealth age and invalid pensions introduced around the same time, the maternity allowance which came into operation in October 1912 ‘had no parallel in any of the States’.<sup>137</sup> It gave married and unmarried mothers a one-off payment of £5 upon the birth of a child, paid by a post office money order<sup>138</sup> or, after 1943, by cheque.<sup>139</sup> There was no character test and, to begin with, no means test either. Kewley suggests that, in 1912, £5 ‘would have been the equivalent of more than two weeks wages for the unskilled worker’.<sup>140</sup>

During the Depression the rate dropped to £4 and a family income means test was introduced. As conditions eased, the rate was increased, particularly for families with more than one child, and the means test was relaxed.<sup>141</sup> Significant changes were introduced in 1943. The means test was abolished, the rate was increased and an additional allowance of 25s per week was paid for four weeks before and four weeks after the birth of the child. The rate itself then remained unchanged until 1972 (between £5 and £7 10s depending on the number of children in the family) but the amount available as a prenatal instalment increased to £10 in 1956.

The take-up of maternity allowance was strong across the community and in 1963-64, for example, it was paid to 233 451 mothers.<sup>142</sup>

In its original form, the Act denied eligibility to ‘aboriginal natives of Australia’.<sup>143</sup> This was interpreted in a similar way as for invalid and old-age pensions. In other words the exclusion did not apply, on the basis of Commonwealth legal advice, to ‘half-castes and persons with less than half aboriginal blood’,<sup>144</sup> and indeed even mothers ‘living on State reserves or stations’ were paid maternity allowance.<sup>145</sup> In 1942, Aboriginal women with a certificate of exemption under

<sup>135</sup> Section 39, *Widows’ Pensions Act 1942* (Cth). It later became section 72 of the *Social Services Consolidation Act 1947* (Cth) and was changed in the same way as the parallel provision dealing with age and invalid pensions was, by section 13 of the *Social Services Act 1959* (Cth) so that it read: ‘Where the Director-General is satisfied that, for any reason, it is desirable that payment of the whole or a portion of a pension should be made to a person, institution or authority on behalf of the pensioner, the Director-General may authorize payment accordingly’

<sup>136</sup> Section 43(2), *Widows’ Pensions Act 1942* (Cth). It later became section 76 of the *Social Services Consolidation Act 1947* (Cth) before being repealed by section 14 of the *Social Services Act 1959* (Cth).

<sup>137</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.3.

<sup>138</sup> Section 8(1), *Maternity Allowance Act 1912* (Cth).

<sup>139</sup> Section 7, *Maternity Allowance Act 1943* (Cth) and TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.258.

<sup>140</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.106 n.28.

<sup>141</sup> *Ibid.*, pp.112-115.

<sup>142</sup> *Ibid.*, p.259.

<sup>143</sup> Section 6(2), *Maternity Allowance Act 1912* (Cth).

<sup>144</sup> National Archives of Australia, *Payment of Maternity Allowances to Aborigines*, (1938) item barcode 457465, series number A6006, control symbol 1938/06/09, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.2 (viewed 27 September 2005).

<sup>145</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.341 (viewed 24 September 2005).

the *Aborigines Protection Act* 1909 (NSW) became eligible.<sup>146</sup> Further restrictions on Aboriginal women receiving the maternity allowance were removed in 1960, however those deemed ‘nomadic or primitive’ were still excluded.<sup>147</sup> The Minister for Social Services at the time estimated this amendment would result in 1200 more Aboriginal women across Australia receiving the maternity allowance.<sup>148</sup> The last discriminatory exclusion – the reference to ‘nomadic or primitive’ mothers – was repealed in 1966.<sup>149</sup>

*Diversion of payments:* Before 1942 there was no general authority in the Act for indirect payments to third parties.<sup>150</sup> Despite this, historian Victoria Haskins, relying on APB minutes, says that the Board had attempted to divert payments as early as 1914 ‘and by 1915 at least some mothers were being forced to make their claims through the Board, the Board’s stated aim in securing the bonuses being to “retain a proportion” in order to “cover [the] cost” of assisting Aboriginal mothers’.<sup>151</sup> She cites an instance in 1917 when an employer sent to the Board the medical bill for a pregnant apprentice’s confinement and the Board replied by sending the young ward’s maternity allowance to cover the cost. This example, Haskin says, ‘indicates that the Board *was* claiming the payment in the case of eligible pregnant apprentices, and suggests that the Board usually retained the bonuses in their entirety’.<sup>152</sup>

In 1937 the first national conference of Chief Protectors and State Aboriginal welfare authorities resolved that arrangements should be made to divert payment of maternity allowances and pensions to the relevant State authority ‘to whom the grant should be made in trust for the individual’.<sup>153</sup> This found its way into Commonwealth law within a few years (see below).

In the meantime, in 1941, managers of Aboriginal Stations, matrons and field officers in NSW were directed by the Board to ensure the necessary forms were filled out ‘as soon as possible after the birth of the child. Attention is directed to the fact that if the forms are not completed within three months, the claim lapses’.<sup>154</sup>

In 1942 an amendment authorised the Commonwealth to pay an Aboriginal mother’s maternity allowance to a State welfare body such as the Aborigines Welfare Board in NSW, ‘for the

<sup>146</sup> Section 6(2A), *Maternity Allowance Act* 1912 (Cth) inserted by section 3 of the *Maternity Allowance Act* 1942 (Cth). This later became section 86(3) of the *Social Services Consolidation Act* 1947 (Cth).

<sup>147</sup> Section 16 of the *Social Services Act* 1959 (Cth) repealed section 86(3) of the *Social Services Act* 1947 (Cth). Section 137A of the *Social Services Act* 1947 (Cth), denying eligibility to the ‘nomadic or primitive’, was inserted by section 24 of the *Social Services Act* 1959 (Cth).

<sup>148</sup> See John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship*, Cambridge University Press, 1997, p.165.

<sup>149</sup> Section 29 of the *Social Services Act* 1966 (Cth) repealed section 137A of the *Social Services Act* 1947 (Cth).

<sup>150</sup> The Commonwealth Commissioner of Pensions was emphatic in telling Protectors and other Aboriginal welfare authorities at their national conference in 1937 that at that time there was ‘no provision for [a mother] to sign an authority for it to be paid to the Protector’. National Archives of Australia, *Aboriginal Welfare. Initial conference of Commonwealth and State Aboriginal authorities held at Canberra 21-23 April 1937*, (1937) item barcode 53238, series number A52, control symbol 572/99429/912, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.26 (viewed 14 November 2005).

<sup>151</sup> Victoria Haskins, ‘‘A better chance’’: Sexual abuse and the apprenticeship of Aboriginal girls under the NSW Aborigines Protection Board’, *Aboriginal History*, Vol.28, 2004, p.46.

<sup>152</sup> *Ibid.*, p.47.

<sup>153</sup> National Archives of Australia, *Aboriginal Welfare. Initial conference of Commonwealth and State Aboriginal authorities held at Canberra 21-23 April 1937*, (1937) item barcode 53238, series number A52, control symbol 572/99429/912, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.27 (viewed 11 March 2006).

<sup>154</sup> Aborigines Welfare Board, *Manual of Instructions to Managers and Matrons of Aboriginal Stations and other Field Officers*, 1941, p.39, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/44.

benefit of the aboriginal native', where it was 'desirable to do so'.<sup>155</sup> In 1944 this system was extended to all women living on 'an aboriginal station, reserve or settlement', whether deemed of 'aboriginal blood' or not.<sup>156</sup> A capacity for indirect payment was retained in 1960 even though specific references to 'aboriginal natives' were removed.<sup>157</sup>

### ***Child Endowment***

#### ***State: Family Endowment Act 1927 (NSW)***

In 1927 the Lang Government in NSW, on the recommendation of the State Industrial Commission, introduced a system of family endowment. The idea was to top up the basic or 'living wage' (which was notionally fixed at the level required to support a married male worker with no children),<sup>158</sup> and specifically to assist mothers in supporting their children.<sup>159</sup>

*Basic features:* Five shillings per week per child<sup>160</sup> was paid to the mothers or legal guardians of children under fourteen years of age.<sup>161</sup> A means test applied to family income and a NSW residency requirement applied to the mother.<sup>162</sup> Originally the scheme was financed by a three per cent payroll tax paid by employers into the Family Endowment Fund.<sup>163</sup>

Like the Lang Government's widows' pension, there was no disqualification on Aboriginal women receiving the family endowment payment.

*Diversion of payments:* The Act contained a provision for indirect payment, modelled on the one which had appeared back in 1908 in the Commonwealth age and invalid pension legislation. A warrant could be issued for payment of child endowment to a third party where it was 'expedient' having regard to the 'age, infirmity, ill-health, insanity, or improvidence or other reasonable cause of disqualification..., or any special circumstances of such person or the child'. The money was to be applied 'for the benefit of the child' and the warrantee was to account to the Commissioner of Family Endowment for all moneys received.<sup>164</sup>

Within a short time the APB had gained power as warrantee for *all* Aboriginal endowment claimants, such that payments were no longer made individually (ie not only those resident on

<sup>155</sup> Section 9A, *Maternity Allowance Act 1912* (Cth) inserted by section 4 of the *Maternity Allowance Act 1942* (Cth).

<sup>156</sup> Section 9A, *Maternity Allowance Act 1912* (Cth) as amended by section 7 of the *Maternity Allowance Act 1944* (Cth). The provision was amended to delete the phrase 'for the benefit of the aboriginal native' when it became section 91 of the *Social Services Consolidation Act 1947* (Cth).

<sup>157</sup> Section 17 of the *Social Services Act 1959* (Cth) repealed and replaced the wording of section 91 of the *Social Services Act 1947* (Cth).

<sup>158</sup> Section 2, *Industrial Arbitration (Living Wage Declaration) Act 1927* (NSW).

<sup>159</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.139.

<sup>160</sup> When the family unit for the basic wage was adjusted in 1929 to include one child, the first child was excluded from the family endowment scheme: *ibid*, p.138.

<sup>161</sup> Section 12(1), *Family Endowment Act 1927* (NSW).

<sup>162</sup> Section 14, *Family Endowment Act 1927* (NSW).

<sup>163</sup> Section 39, *Family Endowment Act 1927* (NSW) and section 2, *Finance (Family Endowment Tax) Act 1927* (NSW). This was abolished in 1933, after which the scheme was financed from consolidated revenue: TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.138.

<sup>164</sup> Section 35, *Family Endowment Act 1927* (NSW).

Stations or reserves were caught by the indirect payment scheme).<sup>165</sup> The Board said that many of the recipients were not using their endowment for its intended purpose, the welfare of the children, but Goodall says that the move was a budgetary one, to meet a shortfall in Board finances as the Depression threw Aboriginal workers out of a job and created longer ration lists.<sup>166</sup>

According to the NSW Government, family endowment payments for Aboriginal mothers were diverted every four weeks to a Trust Account operated by the Board. The money was held in the names of the individuals concerned. The Board issued orders for goods at a store allegedly nominated by the endowee, charged against their personal account. Orders were issued by Board managers for those living on or near Aboriginal Stations and otherwise by police officers, and they were required to scrutinise the purchases being made with endowment money.<sup>167</sup> In some cases, at least, the managers simply filled out the orders themselves in bulk on a weekly basis, sent them into town and the bulk of the goods were delivered back to the Station once a week with the mail.<sup>168</sup> Quizzed at a parliamentary inquiry, a Station manager's wife (and matron at the Station) admitted that her husband did not stop to ask an Aboriginal mother what she most required before sending the order to the store.<sup>169</sup> Over time the Board switched to direct cash payments in approved cases, rather than issuing orders for goods.

In 1938 an official report stated that there were 646 Aboriginal endowees:

- 449 were paid by way of order for goods
- of those who received cash payments, 10 were resident on Stations and 56 on reserves.<sup>170</sup>

Whether through mismanagement, fraud or misappropriation, many Aboriginal mothers never received what they were owed.<sup>171</sup> There were calls for an investigation into the administration of endowment by Aboriginal activist organisations and allegations about family endowment were made in the course of the 1937 inquiry into the administration of the APB by a Select Committee of the NSW Legislative Assembly. The long term Secretary of the APB, Arthur Pettitt, admitted to the Select Committee that the Board had allowed 'large sums of money' to

<sup>165</sup> The automatic diversion of payments to the Board for Aboriginal applicants was confirmed in a letter from the NSW Premier to Prime Minister Menzies in June 1941, just before the introduction of a national child endowment scheme. He wrote that the claims for family endowment in NSW 'are examined by the Family Endowment Department and, if it is ascertained that the claimant is an Aborigine, the endowment, when approved, is transferred to the Board for administration': National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.159 (viewed 12 April 2006).

<sup>166</sup> Heather Goodall, 'New South Wales' in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.84.

<sup>167</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.159-160 (viewed 11 March 2006).

<sup>168</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.18.

<sup>169</sup> *Ibid.*, p.108.

<sup>170</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.16.

<sup>171</sup> See evidence given by William Ferguson, of the Aborigines Progressive Association, and Roderick Brain, Station manager at Angledool and then Brewarrina, in Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the*

accumulate in the Trust account and that some of it had been diverted to general Board expenditure, including homes owned not by Aboriginal families but by the Board.<sup>172</sup> The same committee heard other accounts of suspect and inconsistent practices with the use of child endowment money, in particular as an offset against rations and blankets, or towards Board-owned property.<sup>173</sup> An exchange between the Select Committee and Gordon Milne, a woolclasser employed as an assistant to the Station manager at Cummeragunja, went as follows:

Q: What was your experience in regard to the conditions of the natives?

A: I found that the natives did not get a fair go.

Q: And did you complain?

A: No, it was no use my complaining.

Q: Well, how do you know, if you did not complain. Did you not complain to the board at all?

A: I made various reports. I made one report to the board, concerning their endowment, that I did not consider it just that some aboriginals had to pay for rations while others did not.<sup>174</sup>

When the Public Service Board reviewed the APB and reported to the NSW Government in 1938,<sup>175</sup> the review confirmed the existence of ‘a large accumulation of family endowment funds in the hands of the Board’.<sup>176</sup> The Public Service Board attached to its report as Appendix C a list of ‘Trust Accounts – Endowees’ Balances as at 31<sup>st</sup> July 1938’ and recommended that the amounts be reviewed regularly ‘with a view to their reduction’.<sup>177</sup> The total balance in the APB’s trust accounts to the credit of endowees was £6328 1s 11d.

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*Administration of Aborigines Protection Board*, Government Printer, 1938 p.56 (Ferguson) and pp.22 (admission of irregular payment), 28 and 31-32 (Brain).

<sup>172</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, pp.48 and 61.

<sup>173</sup> For example, that the manager at Cummeragunja had issued a notice saying that deductions would be made against family endowment payments whether a child drew rations or not: Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.71. See also evidence about endowment money and rations at p.91 and endowment money and housing at pp.56 and 113. See also the unfairness of orders for goods rather than cash noted at p.61, and in speeches to the NSW Legislative Assembly by the members for Kurri Kurri and Cobar at Legislative Assembly of NSW, Hansard, 23 June 1936, pp.4854-4856 including refusal of endowment money to buy a pram. See also Jack Patten, ‘Family Endowment Deductions: Why are these made?’ *Australian Abo Call: The Voice of the Aborigines*, No.6, September 1938, p.2 and Heather Goodall, ‘New South Wales’ in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.84, who says the APB used funds from family endowment to cover their costs for the increasing numbers of Aboriginal people who lost their jobs during the Depression and required rations as a result. The NSW Premier, writing to the Prime Minister in June 1941, said that where endowment was paid for a child, the child was ‘not issued with rations’ and did ‘not receive an issue of clothing’, the parent being expected to supply them instead from family endowment payments. National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.159 (viewed 11 March 2006).

<sup>174</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.87.

<sup>175</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940.

<sup>176</sup> *Ibid.*, p.16.

<sup>177</sup> *Ibid.*, pp.16 and 33.

The report also addressed the diversion of family endowment money to expenditure on APB property. In the dubiously bureaucratic language of its report<sup>178</sup>, the Public Service Board, while partially endorsing the policy of family endowment offsets against house construction and furnishings, acknowledged the degree to which the Board had benefited to date financially at the expense of endowees.<sup>179</sup>

It is not clear how much of the money that had accumulated under the NSW family endowment legislation in APB accounts was paid out to its rightful owners. The October 2004 report of the Aboriginal Trust Fund Repayment Scheme Panel refers to a list of 645 people who were owed money from child endowment payments as of 1938, appearing as an appendix to an APB annual report (presumably very similar or the same as Appendix C to the Public Service Board's report referred to above). The Panel's report notes that the list 'does not show whether these people were paid or whether or not there was more money paid into these accounts'.<sup>180</sup> Haskins says that by the time the federal government had moved to introduce a national scheme of child endowment within a couple of years, the Board still had £4679 in its coffers.<sup>181</sup>

### ***Federal: Child Endowment Act 1941 (Cth)***

In its last months in office in 1941, the United Australia Party-Country Party minority Government led by Robert Menzies introduced a federal scheme for child endowment. It superseded the State family endowment scheme in NSW.

*Basic features:* The Commonwealth paid (ordinarily to mothers)<sup>182</sup> a flat rate of 5s per week for each child under 16 years of age apart from the first-born (the scheme made payments only to persons 'maintaining more than one child').<sup>183</sup> The endowment was also payable 'to any institution in respect of every child maintained by it', except institutions fully funded by Commonwealth or State governments.<sup>184</sup>

The rate of child endowment increased to 7s 6d per week in 1945.<sup>185</sup> The rate was increased to 10s in 1948 and it remained at this rate for the second child beyond 1969 (the period of interest for this research report).<sup>186</sup> Child endowment was extended to include the first-born child in

<sup>178</sup> Goodall notes that unlike the public Select Committee hearings, the Public Service Board inquiry was conducted behind closed doors and effectively excluded Aboriginal people and organisations: Heather Goodall, *Invasion to Embassy: Land in Aboriginal Politics in New South Wales, 1770-1972*, Allen & Unwin, 1996, p. 231.

<sup>179</sup> Ibid, p.16: 'A practice which has evoked some criticism in connection with the expenditure of family endowment payments is the practice of the Board in permitting expenditure from the first accumulated payment on such items as furniture, and provision of additional housing accommodation. On the whole, the Public Service Board can see no objection to this procedure, provided it is established (and the Public Service Board can find no evidence otherwise) that the expenditure is in the interests of the child concerned, who is otherwise well cared for and provided also, in the case of additions to buildings, some credit is given to the family concerned if, and when, it leaves the station. The latter is not the case at present.'

<sup>180</sup> Brian Gilligan, Terri Janke and Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, Aboriginal Trust Fund Repayment Scheme, October 2004, s.2.1.3.

<sup>181</sup> Victoria Haskins, 'A Better Chance?': Sexual Abuse and the Apprenticeship of Aboriginal Girls under the NSW Aborigines Protection Board', *Aboriginal History*, Vol.28, 2004, p.47.

<sup>182</sup> Section 18(1), *Child Endowment Act 1941 (Cth)*.

<sup>183</sup> Section 13(1), *Child Endowment Act 1941 (Cth)*. The basis of eligibility was later amended to those with 'custody, care and control of more than one child': section 95, *Social Services Consolidation Act 1947 (Cth)*.

<sup>184</sup> Sections 4 and 13(1), *Child Endowment Act 1941 (Cth)*.

<sup>185</sup> Section 3, *Child Endowment Act 1945 (Cth)*.

<sup>186</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.203.

1950<sup>187</sup> and this rate also remained static, at 5s per week, for more than 20 years. An increase to 15s per week for third and subsequent children under 16 in families, and for eligible children in institutions, was introduced in 1964. At the same time, child endowment of 15s per week was extended to children between 16 and 21, in families or institutions, studying full-time and not employed.<sup>188</sup> Further changes to the rates of child endowment payments included, in 1967, an increase for fourth and subsequent children under 16, and a move to graduated payments – each child received 25 cents more than the next eldest child.

There was no means test on the payment and it became one of the largest items in the social security budget, with just over 1 million eligible children in 1948-1949, rising to almost 3.5 million in 1964.<sup>189</sup>

These figures do not include a substantial number of Aboriginal children in institutions. From the outset in 1941, child endowment was payable to an ‘aboriginal native of Australia’ unless they were ‘nomadic’ or the child was ‘wholly or mainly dependent upon the Commonwealth or a State for his support’.<sup>190</sup> In 1942 an amendment allowed payments to be made to an ‘aboriginal mission’ as an approved charitable institution, where the children were for at least six months of the year ‘supervised and assisted by, although not mainly maintained by’ the mission.<sup>191</sup> Consequently Kewley said that in 1964, in addition to the 3.5 million eligible children referred to above, there were an additional 26 107 eligible children in 502 institutions, of whom ‘a substantial proportion were aboriginal children’.<sup>192</sup>

Despite some technical alterations 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 upon the Commonwealth or a State for his support’ was also maintained.<sup>193</sup> Both restrictions were lifted in 1966.<sup>194</sup>

*Diversion of payments:* In its original form in 1941, the Act authorised payment of child endowment to a third party where it was ‘expedient’ having regard to the ‘age, infirmity, ill-health, insanity, or improvidence or other reasonable cause of disqualification...or any special circumstances’ of the applicant or the child.<sup>195</sup> A year later, as noted above, Parliament also

<sup>187</sup> *Social Services Consolidation Act 1950* (Cth).

<sup>188</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.206. Kewley notes that endowment for student children was to be paid by cheque, every twelve weeks in arrears (at p.207).

<sup>189</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973.

<sup>190</sup> Section 15, *Child Endowment Act 1941* (Cth). Later maintained as section 97, *Social Services Consolidation Act 1947* (Cth).

<sup>191</sup> Section 13(1A), *Child Endowment Act 1941* (Cth) inserted by section 6(b), *Child Endowment Act 1942* (Cth).

<sup>192</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973.

<sup>193</sup> Section 18, *Social Services Act 1959* substituting a new section 97 into the *Social Services Act 1947* (Cth). Although the term ‘nomadic’ was omitted from the new section 97, the new section 137A, inserted by section 24 of the *Social Services Act 1959*, said that an ‘aboriginal native of Australia who follows a mode of life that is, in the opinion of the Director-General, nomadic or primitive is not entitled to a[n] ...endowment...under this Act’.

<sup>194</sup> Section 26, *Social Services Act 1966* (Cth) repealing section 97 of the *Social Services Act 1947* (Cth). Section 137A was repealed by section 29 of the *Social Services Act 1966* (Cth).

<sup>195</sup> Section 22(1), *Child Endowment Act 1941* (Cth). Similar wording was maintained when various social security laws were amalgamated into a single piece of legislation: section 100, *Social Services Consolidation Act 1947* (Cth). The wording was simplified from 1960, to permit third party payment where ‘the Director-General is satisfied that, for any reason, it is desirable’: section 19, *Social Services Act 1959* (Cth) substituting a new section 100 in the *Social Services Act 1947* (Cth).

authorised direct payments of child endowment to approved missions which assisted but did not maintain Aboriginal children for at least 6 months of the year.<sup>196</sup>

The person to whom endowment was paid was required to apply the money to ‘the maintenance, training and advancement of the child’ in respect of whom it was granted or, in ‘special cases’, in the manner prescribed (and it later was, by regulation, as described below).<sup>197</sup>

*Administration:* With the handover of responsibility for child endowment to Commonwealth authorities imminent, the NSW Government in 1941 pressured their federal colleagues to maintain the system of indirect payments to the Board.<sup>198</sup> A conference of Commonwealth, State and Territory officials met on 1 July 1941 to discuss a method of payment of federal child endowment for eligible Aboriginal children and clear interest was expressed in the scheme already operating in NSW for family endowment.<sup>199</sup> Within a few days the Commonwealth had agreed, with the Minister announcing that so far ‘as aborigines are concerned, where it is proved to the satisfaction of the Administration that any of these people are capable of conducting their own affairs, they will be paid direct. In other cases payment will be made through the State Protector of Aborigines or the Aborigines Welfare Board, and steps are being taken to ensure that the endowment will be used in the best interests of the children concerned’.<sup>200</sup> In a high-level internal memo, the Director-General of Social Services acknowledged that the methods adopted were ‘similar to those operating under the New South Wales Family Endowment Act’.<sup>201</sup>

The details of the ‘very satisfactory’ NSW system for payment ‘to aborigines through the agency of the Aborigines Welfare Board in cases where it was deemed inadvisable to pay the mother direct’ were distributed to the senior Commonwealth social security officials in each

<sup>196</sup> The wording was later changed to require that the ‘institution supervises and assists children (one or both of whose parents are aboriginal natives of Australia) but the children are not inmates of the institution’: section 95(4), *Social Services Consolidation Act 1947* (Cth). See also section 25, *Social Services Act 1966* (Cth). There are amendments to the 1947 Act regarding child endowment, other than those in the *Social Services Act 1959* (Cth), which it was not possible to access during the research period and which would explain the reference to subsection (7) in section 25 of the *Social Services Act 1966* (Cth).

<sup>197</sup> Section 20, *Child Endowment Act 1941* (Cth). Similar wording was used in the counterpart provision after 1947, section 105 of the *Social Services Consolidation Act 1947* (Cth). This obligation was extended to include an ‘authority’ to whom endowment was paid, by section 20, *Social Services Act 1959* (Cth).

<sup>198</sup> In a letter to Prime Minister Menzies on 12 June 1941, NSW Premier McKell said ‘It would be much appreciated if your Government would kindly give favourable consideration to the question of arranging for the Federal Commissioner of Child Endowment to exercise his power under section 22 of the Child Endowment Act to enable the present system in respect of Aborigines in NSW entitled to Family Endowment to be continued’: National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.161 (viewed 12 April 2006).

<sup>199</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.104-108 (viewed 12 April 2006).

<sup>200</sup> Document entitled ‘Approved Institutions and Aboriginal Natives of Australia. Extract from Minister’s Statement for the Press dated 4/7/41’ in National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.116 (viewed 12 April 2006).

<sup>201</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.87 (viewed 12 April 2006).

State and Territory and they were urged to sound out local State authorities about implementing a similar system of payments.<sup>202</sup>

The Permanent Record Cards for Aboriginal people in NSW in receipt of endowment during the previous 12 months were sent to the Commonwealth Department of Social Services (DSS) on 7 July 1941. The NSW Family Endowment Office informed the DSS that there was 'no separate record readily available of the names and addresses of aborigines receiving *direct* payment of their endowment' at the time [emphasis added], but that the bulk of the information could be found in about 5000 ledger cards which could be made available to the Commonwealth.<sup>203</sup> The following month, with the Commonwealth system by then underway, the NSW AWB advised the DSS that it had not prepared new cards or forms, as the federal child endowment payments diverted to the Board had 'been simply credited to Trust Accounts which already exist, and which are kept on ordinary ledger cards'.<sup>204</sup> No further light can be thrown by the authors of this report on the significance of these comments, including the distinction between ledger cards and permanent record cards. They seem to indicate, however, the possibility that State family endowment records from 1940-41 (that is, the period immediately after the Public Service Board's recommendation that the AWB reduce accumulated trust account balances) were forwarded to the Commonwealth in 1941.

In urging a similar system on the Western Australian government in February 1943 Commonwealth officials spelt out their understanding of the system for indirect payment of the Commonwealth endowment by then operating in NSW and Queensland:

In the States of New South Wales and Queensland a very satisfactory system is in operation whereby the four weekly amounts due to individual aboriginal endowees whose monetary affairs it is deemed advisable to supervise are paid to the authority controlling aborigines within the State. These amounts are credited to a Trust Account in which a personal account for each aboriginal endowee is operated. This personal account ensures that each endowee receives the full amount to which she would normally be entitled to collect.

The method of the disbursement of the endowment, is by the issue of orders on storekeepers nominated by the endowee, such orders being charged against the personal account of the endowee concerned. The orders are issued by the local representatives of the Aborigines Department in the case of those endowees living

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<sup>202</sup> The administrative details for the new Commonwealth scheme were set out over several pages: National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.57-62 (viewed 12 April 2006).

<sup>203</sup> Letter from NSW Commissioner for Family Endowment to Secretary of the Commonwealth Department of Social Services dated 8 July 1941, National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.97 (viewed 12 April 2006).

on, or in close proximity to, an Aboriginal Station, and by the Police or Protectors in other cases. The local officers are responsible for the nature of the goods purchased and they exercise a check both on the endowee and the storekeeper to ensure that goods are not supplied, or services rendered, from which the children in respect of whom the endowment is granted will not benefit.

...The Commonwealth Government spends £894,000 per annum on Child Endowment in Western Australia but it has not the facilities for supervising the payment to aboriginal natives to ensure that the money is being properly utilised. In the States of New South Wales and Queensland this work is being undertaken by the respective Governments free of cost but they are apparently adequately recouped by a saving on rations where children are in receipt of endowment.<sup>205</sup>

Of course, the eligibility requirements under the new Commonwealth child endowment legislation were subjected to close analysis by State bureaucrats, particularly given the financial benefits to Aboriginal welfare authorities under the indirect payment schemes. Commonwealth archives include 'Notes of a Conference' held on 23 June 1941 (but otherwise without identifying information). That document records that:

1. There are two Institutions in New South Wales, Cootamundra, and Kinchells (sic), which are wholly maintained by the State. Aboriginal children resident there, are, therefore ineligible for Child Endowment. [*Authors' note: Following an amendment in 1942,<sup>206</sup> both Cootamundra Aboriginal Girls' Training Home and Kinchella Aboriginal Boys Training Home were recognised by the Commonwealth as institutions for the purposes of the Act, eligible to receive many child endowment payments bundled into one.<sup>207</sup>*]
2. There are other Institutions and Missions which are subsidised by the State.
3. Settlements or Stations, under the supervision of a Manager, provide houses, schools, medicine, blankets, but only necessitous (sic) cases receive rations. No particular provision is made for children; in any case, they would be less than 50% maintained by the State.
4. Reserves: Many Aborigines who reside on reserves earn their livelihood outside the reserve; there are more direct endowment payments to persons residing on

<sup>204</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1942) item barcode 172355, series number A885, control symbol B39PART1, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.171-172 (viewed 12 April 2006).

<sup>205</sup> National Archives of Australia, *Aboriginal Natives - Payment of Child Endowment through Department of Native Affairs*, (1941-1956) item barcode 172410, series number A885, control symbol B423, available at [www.naa.gov.au/the\\_collection/recordsearch.htm](http://www.naa.gov.au/the_collection/recordsearch.htm), pp.9-10 (viewed 17 November 2005).

<sup>206</sup> Section 13(1)(d), *Child Endowment Act 1941* (Cth) inserted by section 6(a) of the *Child Endowment Act 1942* (Cth).

<sup>207</sup> National Archives of Australia, *Institutions – Aborigines Training Home – Girls – Cootamundra, Boys – Kinchella*, (1942-1969) item barcode 1882434, series number A885, control symbol B401, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.4 (viewed 12 March 2006).

reserves than on stations, and they are certainly less than 50% maintained by the State.<sup>208</sup>

A circular issued by the AWB to Station managers and police noted the disqualification from child endowment for Aboriginal children ‘wholly or mainly dependent upon the Commonwealth or a State’ for their support<sup>209</sup> and took a somewhat different line, again with State finances a primary consideration (and perhaps over-estimating the sustenance to be derived from Board rations). It directed that children be removed from rations lists as soon as a claim for endowment was approved. However, the circular went on to state that there ‘will not be any objection, however, to rations being issued, after the approval of endowment, the cost being defrayed by the parent endowee from her Endowment Account, or to rations being purchased from ration contractors at contract rates. If rations thus charged are issued from a Station Store, the charge will be 2/6d per half ration’.<sup>210</sup>

This seemed at odds with the finding of the Public Service Board, which had earlier reported in 1938 that family endowment ‘is not a bar’ to receipt of (adult) rations, though endowment was taken into account when assessing whether a family was within the income limits for receipt of rations.<sup>211</sup> The Public Service Board had noted with concern, however, that a *child* for whom endowment was paid would not be issued with rations. It recommended that this practice be discontinued, saying that if ‘a family is in need of assistance of this nature, then the whole family should participate’.<sup>212</sup>

Local officials were expected to remit monthly returns to the AWB, showing the orders on local storekeepers issued to endowees, in lieu of the cash payment which the Commonwealth lodged instead with the Board.<sup>213</sup>

Regulation 4(2) of the Child Endowment Regulations that were made by the Commonwealth in July 1941 was very widely drawn, and it allowed authorities such as the Board in NSW to intervene as early as the original application for endowment itself. It provided that a claim for endowment for an Aboriginal person could be made by the person themselves, or ‘a member of a Board or other authority...charged with the welfare of aborigines’ or the State or Territory department administering Aboriginal affairs. It could also be made by the senior Protector for the district, ‘or by the person, if of European origin or descent, in charge of the mission or Government settlement where the person resides’.

<sup>208</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1944) item barcode 172356, series number A885, control symbol B39PART2, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.140 (viewed 12 April 2006).

<sup>209</sup> Section 15, *Child Endowment Act* 1941 (Cth). Later maintained as section 97, *Social Services Consolidation Act* 1947 (Cth).

<sup>210</sup> Document entitled ‘Circular No 233: Administration of Child Endowment payable to aborigines’, undated but presumably mid-1941, National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1942) item barcode 172355, series number A885, control symbol B39PART1, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), p.185 (viewed 12 April 2006).

<sup>211</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.14.

<sup>212</sup> *Ibid.*, p.15.

In November 1941 the Secretary of the DSS acknowledged to his senior officers in the States that, while missions might themselves apply on behalf of some Aboriginal children separated from their parents, in some cases 'children reside with and are maintained by their parents on a Mission Station'. In these cases, diversion of endowment payments at 12-weekly intervals into bank accounts operated by 'Mission Authorities' seemed semi-automatic: 'generally it will be found necessary to make payment through the Officer-in-Charge of the Mission under Regulation 16'.<sup>214</sup>

Regulation 16 of the Child Endowment Regulations 1941 (Cth) provided that endowment could be paid to an approved third party, where it was deemed necessary, 'in order to ensure the proper application of an endowment granted to an aboriginal native of Australia'. It further stated that where endowments were granted in respect of Aboriginal children living in a reserve, settlement or mission supervised by a Protector of Aborigines, the money could, with Commonwealth approval, be applied to 'the general maintenance, training and advancement of the children residing on that reserve, settlement or mission'.

The willingness of the Commonwealth to divert child endowment payments away from Aboriginal parents towards State Aboriginal welfare authorities, and to defer to their judgment on the issue, continued well beyond the first few months of Commonwealth administration in the early 1940s. Correspondence from 1956, for example, shows that the Commonwealth at that time still instructed its staff to deal with applications for child endowment from Aboriginal mothers in the following way:

In all cases in which a claim is received from an aboriginal native of Australia, a report should be obtained from the Aborigines' Welfare Board, or other appropriate authority, as to whether it is desirable to make payment of the endowment, if granted, direct to the claimant, or arrange payment through the Aborigines' Welfare Board or similar body on behalf of the claimant.<sup>215</sup>

Presumably because of a shift to direct payment of endowees, by this time in the mid to late 1950s the number of endowment payments diverted to the AWB had diminished, according to the Board's figures. The Annual Report for the AWB for the year ended 30 June 1955 said the following about child endowment:

Welfare Officers and Managers assist in the preparation of claims. In some cases, it is considered to be in the interest of the endowee and her children, that payments be

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<sup>213</sup> National Archives of Australia, *Child Endowment for Children of Aborigines – Introduction of Scheme – Payment Through State Depts. of Native Welfare – Replies to Queries and Representations*, (1941-1942) item barcode 172355, series number A885, control symbol B39PART1, available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.184 and 186 (viewed 12 April 2006).

<sup>214</sup> Ibid, p.89 (viewed 12 April 2006). The same Commonwealth preference for diverting payments to State Aborigines Welfare Boards can be seen at a Ministerial level (at p.81).

<sup>215</sup> National Archives of Australia, *Aboriginal Natives - Payment of Child Endowment through Department of Native Affairs*, (1941-1956) item barcode 172410, series number A885, control symbol B423, available at [www.naa.gov.au/the\\_collection/recordsearch.htm](http://www.naa.gov.au/the_collection/recordsearch.htm), p.4 (viewed 17 November 2005).

administered by the Board. At the end of June, 1954, sixty-two cases were so administered, while at 30<sup>th</sup> June, 1955, the number was fifty-six.<sup>216</sup>

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<sup>216</sup> Aborigines Welfare Board, *Report of the Aborigines Welfare Board for the year ended 30 June 1955*, Parliament of NSW, 1955, p.6, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/25. Figures have not been retrieved for the years in and around the end of the period of interest, that is, the abolition of the Board in 1969.

## ***Unemployment, Sickness and Special Benefits***

### ***State: Relief Work and Payments***

At the beginning of the 20<sup>th</sup> Century, the ‘customary method of assisting the unemployed was to grant wages, or sometimes rations, in return for work specially provided by the Government’.<sup>217</sup> It was essentially a ‘work for the dole’ scheme, where the government instigated public works or sometimes almost pointless labour exercises for the purpose of alleviating unemployment. Grants were also made to charities, ‘which provided food and other forms of assistance to the families of men unemployed’.<sup>218</sup> This system remained in place for decades and ‘the depression of the 1930s thus found Australia without any regular system of unemployment relief, and otherwise unprepared to cope with the widespread unemployment that existed’.<sup>219</sup>

The immediate response to the Great Depression was to increase income tax to fund the dole and to finance emergency relief works.<sup>220</sup> In the early 1930s the State government provided little more than rations but after 1932 ‘gradually transferred men from the dole to relief works’.<sup>221</sup> Work was often part-time at the rate of the basic wage resulting in payment of the dole equivalent ‘or a little more’.<sup>222</sup> After 1934 the Commonwealth began to contribute more money for public works. A statutory scheme of social security benefits for unemployed people was not introduced until 1944, after the passage of Commonwealth legislation (see below).

Goodall says that discriminatory administration of the dole by the NSW Department of Labour forced many Aboriginal workers who lost their jobs in the Depression to turn to Board rations, ‘which were equivalent to only half of the meagre unemployment food relief available to white unemployed. Aborigines were also usually excluded from work relief, which was administered by local government’.<sup>223</sup> As a consequence, by 1935 over 30% of the known Aboriginal population was directly controlled by Board managers and many more were under the supervision of police officers on reserves.<sup>224</sup>

### ***Federal: Unemployment and Sickness Benefits Act 1944 (Cth)***

The Commonwealth scheme for unemployment and sickness benefits came into operation in July 1945, just as World War Two was drawing to a close. Benefits were payable to unemployed men between the ages of 16 and 65 and to women between 16 and 60. A married

<sup>217</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.21. Kewley notes that during the ‘exceptional’ circumstances of the depression of the 1890s colonial governments sometimes made direct grants of food and shelter without a requirement for work in return.

<sup>218</sup> *Ibid.*, pp.151-152.

<sup>219</sup> *Ibid.*, p.154.

<sup>220</sup> The *Prevention and Relief of Unemployment Act 1930* (NSW) established a Council for Prevention and Relief of Unemployment to formulate public work schemes and direct expenditure on relief work. Section 9 said that wages and conditions were a matter for Ministerial discretion and could be set without regard to industrial awards.

<sup>221</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.155.

<sup>222</sup> *Ibid.*

<sup>223</sup> Heather Goodall, ‘New South Wales’ in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, p.85.

<sup>224</sup> *Ibid.*

woman was ineligible unless she was otherwise without support from her husband.<sup>225</sup> Recipients could not be on a pension and had to meet a residency requirement and also, in the case of unemployment benefits, satisfy the Department of Social Services that they had undertaken reasonable attempts to find suitable work.<sup>226</sup> An income test also applied<sup>227</sup> and payments could be suspended or cancelled where circumstances changed in a way to affect eligibility.<sup>228</sup>

Initially the rate was set at £1 5s per week, with lower rates for single people under 18 and between 18 and 21 years old. A top-up payment of up to £1 per week was available for a dependent spouse and another 5s per week where there was one child or more under 16 in the family.<sup>229</sup> By 1962 the unemployment or sickness benefit for a married person with two children was £8 12s 6d.<sup>230</sup> Across Australia there were 5839 on unemployment benefits in 1946, a figure which climbed as high as 52 950 in 1962 before falling back to 25 925 in 1964. In that year there were 10 994 Australians on sickness benefit and 2577 receiving special benefit.<sup>231</sup>

At the outset, 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.<sup>232</sup> This was essentially the formula used in other social security legislation of the time for States which had no procedure for 'exemption certificates', but for unemployment and sickness benefits it was applied generally across Australia including NSW. The provision disqualifying 'aboriginal natives of Australia' was repealed in 1960<sup>233</sup> but those deemed 'nomadic or primitive' remained ineligible until 1966.<sup>234</sup>

There was no statutory provision (general or specific) for indirect payment of the unemployment or sickness benefit to a third party such as State Aboriginal welfare authorities.

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 benefit or a pension, was unable to earn 'a sufficient livelihood for himself and his dependants (if any)' for any

<sup>225</sup> Section 18, *Unemployment and Sickness Benefits Act 1944* (Cth). This restriction applied only to the sickness benefit after the enactment of *Social Services Consolidation Act 1947* (Cth), notably section 110, 'for the means test for unemployment benefit (the aggregating of the incomes of husband and wife) rendered the provision superfluous': TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.266 n.4.

<sup>226</sup> Section 15, *Unemployment and Sickness Benefits Act 1944* (Cth), which became section 107 of the *Social Services Consolidation Act 1947* (Cth). For sickness benefits, applicants had to meet the same general requirements and satisfy the department they were 'temporarily incapacitated for work by reason of sickness or accident' that had deprived them of income: section 16.

<sup>227</sup> Section 22, *Unemployment and Sickness Benefits Act 1944* (Cth), which became section 114 of the *Social Services Consolidation Act 1947* (Cth). Sickness benefit was also offset against compensation payments for the incapacity in question: section 23 (later section 115 of the *Social Services Consolidation Act 1947* (Cth)).

<sup>228</sup> Section 28, *Unemployment and Sickness Benefits Act 1944* (Cth), which became section 120 of the *Social Services Consolidation Act 1947* (Cth).

<sup>229</sup> Section 20, *Unemployment and Sickness Benefits Act 1944* (Cth), which became section 112 of the *Social Services Consolidation Act 1947* (Cth).

<sup>230</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.281.

<sup>231</sup> *Ibid.*, pp.278-280 including n.44.

<sup>232</sup> Section 19, *Unemployment and Sickness Benefits Act 1944* (Cth). There were small changes to the wording of the provision when it became section 111 of the *Social Services Consolidation Act 1947* (Cth): 'development' became 'social development' and the threshold for payment rather than it being 'reasonable that the aboriginal native receive benefit' became that it was 'desirable that this section [the exclusion of aboriginal natives] should not apply'.

<sup>233</sup> Section 22, *Social Services Act 1959* (Cth).

<sup>234</sup> Section 137A, *Social Services Act 1947* inserted by section 24 of the *Social Services Act 1959* (Cth) and repealed by section 29 of the *Social Services Act 1966* (Cth).

reason including ‘age, physical or mental disability or domestic circumstances’.<sup>235</sup> There was nothing in the Act to exclude Aboriginal people from the special benefit.

### ***War Pensions and Service Pensions***

Indigenous people served in every major war in which Australia participated in the 20<sup>th</sup> Century.<sup>236</sup> In 2002 the Department of Veterans’ Affairs estimated that there were between 5000 and 7000 Indigenous veterans, widows and dependants eligible for entitlements under the *Veterans’ Entitlements Act 1986 (Cth)*.<sup>237</sup>

### ***Federal: Australian Soldiers Repatriation Act 1920 (Cth)***

War pensions were first introduced in 1914. They were paid in cases of death or incapacity arising from overseas military service.<sup>238</sup> Coverage was extended over the next two years to death or injury affecting nurses and those on home service.<sup>239</sup> Under fresh legislation passed in 1917, the Department of Repatriation and the Repatriation Commission commenced operations. The Commission was responsible for administering disability pensions to returned service people and war widows’ pensions to the spouses or dependent children of veterans who were killed.<sup>240</sup> These war pensions were never subject to a means test.

The *Australian Soldiers Repatriation Act 1920 (Cth)* repealed the 1914 and 1917 Acts. The eligibility for pensions in cases of incapacity or death was widened and a ‘TPI pension’ was introduced for those totally and permanently incapacitated or blinded as a result of war service. The rate was initially £4 per week.<sup>241</sup>

In response to the ‘burnt out digger syndrome’ that emerged in the 1930s, service pensions were introduced for returned servicemen in 1935, payable five years earlier than the civil pension. When amended in 1935, the *Australian Soldiers Repatriation Act 1920 (Cth)* authorised payment of service pensions to former members of the armed forces who were over the age of 60 or suffered from tuberculosis or were otherwise permanently unemployable due to a mental or physical condition. ‘This was the first repatriation income support measure, all previous benefits having been compensatory in nature.’<sup>242</sup> The Repatriation Act<sup>243</sup> was subsequently amended dozens of times. These entitlements have not been thoroughly researched for the purposes of this report. However it is worth noting that legal advice from the Attorney-

<sup>235</sup> Section 36, *Unemployment and Sickness Benefits Act 1944 (Cth)*, which became section 124 of the *Social Services Consolidation Act 1947 (Cth)*.

<sup>236</sup> Legislative Assembly of NSW, *Hansard*, 21 April 1994, p.1640; Legislative Council of NSW, *Hansard*, 28 June 2004, p.10 330.

<sup>237</sup> Department of Veterans’ Affairs, *Vetaffairs*, September 2002, p.4 available at [www.dva.gov.au/vetaffairs/sept2002/vetaffairs\\_sept2002\\_pg4.pdf](http://www.dva.gov.au/vetaffairs/sept2002/vetaffairs_sept2002_pg4.pdf) (viewed 17 April 2006).

<sup>238</sup> *War Pensions Act 1914 (Cth)*.

<sup>239</sup> Department of Veterans’ Affairs, *Report of the Review of Veterans’ Entitlements*, 2003 available at [www.veteransreview.gov.au/report/chapters/ch3.htm](http://www.veteransreview.gov.au/report/chapters/ch3.htm) (viewed 24 September 2005).

<sup>240</sup> *Australian Soldiers Repatriation Act 1917 (Cth)*

<sup>241</sup> Department of Veterans’ Affairs, *Report of the Review of Veterans’ Entitlements*, 2003, paras 3.15-3.17 available at [www.veteransreview.gov.au/report/chapters/ch3.htm](http://www.veteransreview.gov.au/report/chapters/ch3.htm) (viewed 27 September 2005).

<sup>242</sup> *Ibid.*, para 3.24 available at [www.veteransreview.gov.au/report/chapters/ch3.htm](http://www.veteransreview.gov.au/report/chapters/ch3.htm) (viewed 27 September 2005).

<sup>243</sup> The Australian Soldiers Repatriation Act was re-named the *Repatriation Act 1920* by section 12(8) of the *Statute Law Revision Act 1950 (Cth)*.

General's Department to the Repatriation Commission in the mid-1950s confirmed the eligibility of Aboriginal claimants under the Repatriation Act.

The Secretary of the Department wrote in April 1956 that 'there are no constitutional objections to the grant of the ordinary repatriation benefits to members and their dependants who happen to be aborigines'.<sup>244</sup> He added that 'there is nothing in the Repatriation Act which excludes aborigines from its operation. Accordingly aborigines who satisfy the requirements as to eligibility are entitled to receive the benefits set out in the Act'. The legal opinion confirmed that this included a war widow's pension for an Aboriginal woman.<sup>245</sup>

An AWB document from 1941 noted that Aboriginal people serving at home or overseas with the military forces were entitled to pensions and stated that the Board 'is not empowered to exercise any control over these payments'.<sup>246</sup> Unlike civil pensions, there was never a provision in the repatriation legislation for indirect payments (either general, or specific to Aboriginal recipients). Nonetheless 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'.<sup>247</sup> 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 in to the Trust Fund, although this was clearly contrary to the Aboriginal Welfare Board's written policy'.<sup>248</sup>

### ***Funeral Benefits***

#### ***Federal: Invalid and Old-age Pensions Act 1943 (Cth)***

This Act, an amendment to the *Invalid and Old-age Pensions Act 1908 (Cth)*, introduced a new Part VA dealing with funeral benefits. It provided up to £10 for the funeral expenses of an invalid or old-age pensioner who died after 1 July 1943, payable to the person liable for the costs. An amendment in 1965 authorised payments up to £20 where a pensioner themselves was responsible for the funeral expenses of a spouse, a child or another pensioner.<sup>249</sup> There were 41 148 claims for funeral benefits across Australia in 1964.<sup>250</sup>

<sup>244</sup> National Archives of Australia, *Aboriginal natives – Application of Commonwealth laws – Marriage*, (1955-1956) item barcode 1111839, series number A432, control symbol 1955/3765 available at [www.naa.gov.au/the\\_collection/recordsearch.html](http://www.naa.gov.au/the_collection/recordsearch.html), pp.10-11 (viewed 27 September 2005).

<sup>245</sup> *Ibid.*, p.12.

<sup>246</sup> Aborigines Welfare Board, *Manual of Instructions to Managers and Matrons of Aboriginal Stations and other Field Officers*, 1941, p.40, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/44.

<sup>247</sup> Correspondence 1941-42 (letter of 6 April 1942), Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/131.

<sup>248</sup> Brian Gilligan, Terri Janke and Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, Aboriginal Trust Fund Repayment Scheme, October 2004, s.2.5.2.

<sup>249</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, p.418.

<sup>250</sup> *Ibid.*, p.264.

The applicability to Aboriginal people was dependent on their wider eligibility for age or invalid pensions over time, discussed earlier.

### ***Tuberculosis Allowance***

#### ***Federal: Tuberculosis Act 1948 (Cth)***

The Commonwealth made available allowances to sufferers from tuberculosis and their dependants to encourage convalescence and recovery, promote treatment and minimise transmission of the disease. Rates and conditions were subject to departmental discretion.<sup>251</sup> According to Kewley, in 1950 the standard rate was £3 12s 6d per week for a single person and £6 10s for a married couple, with an additional 9s per dependent child. By 1964 those rates had increased to £7 12 s 6d and £12 12s 6d respectively with an additional 15s per dependent child. There was a means test based on income but not property. The number of recipients dropped steadily from 6548 in 1951, for example to 1796 in 1963.<sup>252</sup> There were no statutory provisions excluding Aboriginal people from eligibility.

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<sup>251</sup> Section 9, *Tuberculosis Act 1948 (Cth)*.

<sup>252</sup> TH Kewley, *Social Security in Australia 1900-72*, Sydney University Press, 2<sup>nd</sup> ed 1973, pp.372-373.

## *Lump Sum Entitlements*

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 lump sum compensation payments, 'such as payments to infants for parents killed in work based accidents were also put into the Trust Funds'.<sup>253</sup> It said that the Public Trustee was investigating the question whether money held in trust for deceased persons may have gone back into the Trust Fund for Aboriginal people who had trust accounts.<sup>254</sup> In announcing the NSW Government's acceptance of the Panel's recommendation to establish a repayment scheme, the Minister for Community Services also included 'lump sum compensation payments' in the list of situations where Aboriginal people in NSW had been 'forced to put' their money 'into Trust Funds administered by successive NSW State governments'.<sup>255</sup>

Our research has not produced detailed evidence about this aspect of the Board's trust accounts. In the minutes from the Select Committee inquiry in 1937 there is reference to an instance where the Board directly managed an individual's finances, initially at their request. An Aboriginal returned soldier received a legacy in a will of £26 per year, but was signed up to a loan and insurance policy by a money lender which put him in great financial difficulty. He approached the Board for assistance and it appears the Board bought out the policy by borrowing £95 from the Colonial Treasurer. The legacy was put into the Perpetual Trustee Company on the basis that after three to four years the debt to the Treasury would have been paid off from the annual allocations from the legacy. As the Secretary of the Board put it to the man during the committee hearing, 'when the money has been recovered by the Perpetual Trustee Company at the rate of £26 a year, the legacy will be restored to you again'.<sup>256</sup> We make no suggestion about whether the legacy was ultimately returned to the Aboriginal man concerned or not, as we have no evidence on the matter. We simply include it as information that confirms the active involvement of the Board in an individual's finances (in this case initially at their request) where a significant sum was involved.

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<sup>253</sup> Brian Gilligan, Terri Janke and Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, Aboriginal Trust Fund Repayment Scheme, October 2004, s.1.3.

<sup>254</sup> *Ibid.*, s.2.5.2.

<sup>255</sup> The Hon. Carmel Tebbutt MLC, *Aboriginal Trust Fund Repayment Scheme Announced*, Media Release, 15 December 2004, available at [www.atfrs.nsw.gov.au/documents/ATFRSmedia\\_1412.pdf](http://www.atfrs.nsw.gov.au/documents/ATFRSmedia_1412.pdf) (viewed 26 April 2006).

<sup>256</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.66.

## *Adult Wages*

There is a well-established and growing literature on the unpaid and underpaid labour of Aboriginal men and women, particularly in areas like the pastoral industry and domestic service. With its primary focus on NSW government administration of trust accounts holding Aboriginal people's money, this research report deals mainly with other issues, particularly the diversion into Board accounts of social security entitlements of Aboriginal people and the wages earned by child apprentices. The reason is that, although the law on the books created the potential for Board control of adult wages, in reality this does not seem to have occurred on the widespread basis it did in Queensland, for example.

From 1909 the government could make regulations about spending the wages earned by Aborigines living on reserves and Stations, although it appears no such regulations were made in relation to adults.<sup>257</sup> After 1936, the Board could direct the employer of *any* Aborigine to pay their wages to a government official, regardless of whether the employee lived on- or off-reserve. The money could only be spent on behalf of the wage earner, and the Act required that an account of expenditure be maintained.<sup>258</sup>

Another provision introduced at the same time in the 1936 amendments to the *Aborigines Protection Act 1909* (NSW), gave the Board the power to terminate the employment of any Aborigine where it had reason to believe, amongst other things, that the employee was not 'receiving fair and proper treatment and...not being paid a reasonable wage'.<sup>259</sup> In other words, where the Board believed that an Aboriginal employee was being mistreated, theoretically they could either terminate the employment and remove the person to a reserve or order that their wages be paid directly to the Board, so that it could monitor payment.

We do not have evidence of the Board using its power after 1936 to divert adult wages into its own accounts, in the period up until the power was abolished in 1963.<sup>260</sup>

A regulation made under the *Aborigines Protection Act 1909* (NSW) in September 1941 also dealt with the employment of adult workers. The regulation obliged employers to provide Aboriginal workers with accommodation and empowered the Board to specify other requirements such as 'food and drinking and bathing water'. It also regulated the employment of unmarried women and restricted the capacity for wages to be offset against debts to the employer.<sup>261</sup>

<sup>257</sup> Section 20(1)(d), *Aborigines Protection Act 1909* (NSW).

<sup>258</sup> Section 13C, *Aborigines Protection Act 1909* (NSW) inserted by section 2(1)(i) of the *Aborigines Protection (Amendment) Act 1936* (NSW): 'In any case where it appears to the board to be in the best interests of the aborigine concerned the board may direct employers or any employer to pay the wages of the aborigine to the secretary or some other officer named by him, and any employer who fails to observe such directions shall be deemed to have not paid such wages. The wages so collected shall be expended solely on behalf of the aborigine to whom they were due, and an account kept of such expenditure.'

<sup>259</sup> Section 13B, *Aborigines Protection Act 1909* (NSW) inserted by section 2(1)(i) of the *Aborigines Protection (Amendment) Act 1936* (NSW).

<sup>260</sup> Section 2(1)(i), *Aborigines Protection (Amendment) Act 1963* (NSW).

<sup>261</sup> Regulation 20 of the Regulations made under the *Aborigines Protection Act 1909* (NSW) on 12 September 1941.

The *rate* at which Aboriginal labour was paid presents a separate but related issue to the financial controls exercised by the Board through its administration of trust accounts. For example, in rural industries, federal award coverage was lost in 1932 when Aboriginal people were excluded from the definition of ‘station hand’.<sup>262</sup> This remained the situation until 1967, although a decision of the Commonwealth Conciliation and Arbitration Court in 1944 said that the exclusion only applied to ‘full blooded members of the native races’.<sup>263</sup> Payment of award rates was also subject to other factors, such as whether or not the employer was bound by the award, the kind of work carried out and whether or not the employee was a member of the Australian Workers’ Union.

Complaints about discriminatory labour practices, including underpayment of Aboriginal workers, emerged during evidence to the Select Committee of the NSW Legislative Assembly in 1937. William Ferguson, a leading Aboriginal activist of the day and Secretary of the Aborigines Progressive Association, said that the Board was paying Aboriginal workers at a sawmill on Pilliga Mission well below award wages and ‘supplying cheap labour to wealthy squatters’.<sup>264</sup> Gordon Milne, who was employed by the Board as an assistant to the manager of Cummeragunja Station, said that reserve land was leased to a non-Aboriginal man who ran a timber mill and sheep farm for profit. Milne said that, unlike some surrounding landholders who paid award wages to Aboriginal workers, the timber mill operator paid only ‘a few shillings now and then’. Milne said that when he raised concerns, the Board’s inspector said ‘I do not care how much you pay him’.<sup>265</sup> During debate on the 1936 amendments in the Legislative Assembly, the Member for Cobar in western NSW, Mr Davidson, said that Aboriginal workers were ‘worked as much as they will work, merely for their upkeep, and a very poor upkeep at that – just their bed and food’.<sup>266</sup> He moved an amendment to the 1936 Act to require the payment of award wages to Aboriginal workers, as the Board’s power to intervene was dependent on its assessment of a ‘reasonable wage’, not necessarily the award. The amendment was, however, defeated.<sup>267</sup>

Overall, the question of what Aboriginal workers were paid across the period from the late 1800s to 1969 – either when working for the Board itself on a Station, or for other employers off-reserve – is a large issue, beyond the scope of this research report.<sup>268</sup> That does not diminish, however, the importance in NSW of coming to terms with the financial and other losses suffered by Aboriginal people from unfair and discriminatory employment practices, and their intergenerational effects. As the Panel appointed in 2004 to investigate the Board’s trust

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<sup>262</sup> (1932) 31 CAR 710.

<sup>263</sup> (1944) 53 CAR 212.

<sup>264</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.54.

<sup>265</sup> *Ibid.*, p.88.

<sup>266</sup> Legislative Assembly of NSW, *Hansard*, 23 June 1936, p.4839.

<sup>267</sup> *Ibid.*, pp.4854-4855.

<sup>268</sup> Syneca Consulting, who provided expert advice to the Panel investigating the trust accounts issue for the NSW Government in 2004, said that evidence about the absolute size of Aboriginal wages in NSW is difficult to find, particularly in any one location.

accounts indicated in its report, the payment of unequal wages to Aboriginal workers, and the provision lodging and food in lieu of wages, were amongst the most prominent concerns put forward to it by Aboriginal people who attended the Panel's community consultations.<sup>269</sup>

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Brian Gilligan, Terri Janke and Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, Aboriginal Trust Fund Repayment Scheme, October 2004, Appendix E, p.14.

<sup>269</sup> Ibid, Appendix B.

## *Working for Rations*

Throughout the ‘protection’ and ‘assimilation’ periods, many Indigenous people relied on the meagre rations distributed by the Board. Such reliance was a consequence of dispossession and removal. The number of Aboriginal people who depended on rations fluctuated according to the Board’s preference for policies of dispersal into the white community or segregation from it, as well as economic conditions and the consequential demand for, or objection to, the availability of Aboriginal labour. The widespread refusal by government authorities to make mainstream work relief and food relief available to Aboriginal people forced even greater reliance on rations issued by the Board.<sup>270</sup>

Perhaps in recognition of the dependency created by the taking of traditional lands, the *Aborigines Protection Act 1909* (NSW) said it was the *duty* of the Board, in its discretion, to ‘distribute blankets, clothing and relief to aborigines’.<sup>271</sup> The Act authorised regulations to be made about the ‘mode of supply to aborigines of rations, blankets, and other necessaries, or any medical or other relief or assistance’<sup>272</sup> and this was done soon after on 8 June 1910. Rations would be issued to ‘all aged, infirm or sick Aborigines’ but ‘not under any circumstances’ were rations ‘to be issued to the able-bodied without reference to the Board. The men must go out and obtain employment, and be made to understand that they must support themselves and their families’.<sup>273</sup>

Regulation 28 said that every ‘able-bodied Aborigine, half-caste, or other person resident on one of the Board’s stations shall do a reasonable amount of work’. Persistent refusal would result in expulsion from the reserve or Station, or at least the withdrawal of ‘all supplies for himself or his family...until he resumes work’.

What was ‘reasonable’ appears to have translated, initially, to two hours a week but was later extended to two days a week.<sup>274</sup> In 1915 the regulations were amended so that, while Aboriginal people residing on Stations were still required to perform a ‘reasonable’ amount of work, a rate of remuneration was to be fixed by the manager, implying that people might expect to be paid for their work.<sup>275</sup> Instructions issued to managers indicate however that ‘remuneration’ essentially amounted to rations.<sup>276</sup> For example the 1941 manual issued by the APB stated that:

<sup>270</sup> Heather Goodall, ‘New South Wales’ in Ann McGrath (ed), *Contested Ground. Australian Aborigines under the British Crown*, Allen & Unwin, 1995, pp.84-86.

<sup>271</sup> Section 7(b), *Aborigines Protection Act 1909* (NSW).

<sup>272</sup> Section 20(1)(g), *Aborigines Protection Act 1909* (NSW).

<sup>273</sup> Regulation 19 under the *Aborigines Protection Act 1909* (NSW) made on 8 June 1910.

<sup>274</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.81.

<sup>275</sup> New regulation 28 substituted by Regulations made under the *Aborigines Protection Act 1909* (NSW) on 2 June 1915.

<sup>276</sup> Even when an Aboriginal man was said by a Station manager to have ‘worked for me like a Trojan’ he received ‘[n]othing but a double ration’: Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.83.

to determine eligibility of aborigines to receive rations and the basis upon which they may call upon able-bodied aborigines to perform work in return for such rations, the following instructions are to be followed:-

- (1) Rations should be supplied to all aged, infirm and sick aboriginal people.
- (2) Able-bodied, men in receipt of employment and able to maintain themselves may not receive rations.
- (3) Able-bodied, unemployed men may be supplied with rations, but they must be prepared to carry out work on the Station in return for such ration issue.
- (4) Wives should receive rations unless their husbands are able to support them.
- (5) Endowed children should not receive rations free
- ...
- (9) Able-bodied men and unmarried women must be prepared to perform work on the Station for a period of *up to two (2) days weekly* in return for their ration issue. The strict enforcement of this rule is, of course, left to the Manager's discretion
- ...
- (10) In connection with the performance of work by able-bodied persons in return for rations, the Board has directed that seven (7) hours shall constitute a full day's work.<sup>277</sup>

So at times of economic and ideological pressure on the Board, like the Great Depression and its aftermath in the 1930s, Aboriginal people might be forcibly removed from gainful employment onto reserves, and into reliance on Board rations for the sustenance of them and their families. Aboriginal workers on Stations had a legal right to remuneration for the two days work they were compelled to do. Despite the Public Service Board's finding that, through much of the 1930s, rations were inadequate and unsatisfactory,<sup>278</sup> the APB treated rations as 'reasonable' payment in kind for the work done.<sup>279</sup>

Standard amounts could be set for rations by regulation,<sup>280</sup> but in reality managers exercised considerable discretion over what was actually received.<sup>281</sup> The picture that emerges from evidence given to the Select Committee in 1937 is of an often authoritarian atmosphere in which

<sup>277</sup> Aborigines Welfare Board, *Manual of Instructions to Managers and Matrons of Aboriginal Stations and other Field Officers*, 1941, pp.42-43, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/44.

<sup>278</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.14.

<sup>279</sup> The Public Service Board claimed that the work done did not equate with two full days work 'as ordinarily understood' being 'on the whole, extremely light and of very limited duration', and that rations and other assistance was also given to family members and not just workers themselves: *ibid.*, p.15. For a different view of rations administration see the evidence given at the Select Committee hearings discussed below.

<sup>280</sup> For example Regulation 19(a) made under the *Aborigines Protection Act 1909* (NSW) on 8 June 1910.

<sup>281</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.78.

corruption could occur, complaint was discouraged and whistleblowers could be punished.<sup>282</sup> Several witnesses referred to the discretionary power exercised by managers, for example over the distribution of rations, and how that could be abused.<sup>283</sup> The Public Service Board agreed that ‘uniformity in such matters as the issue of rations, clothing, etc., is completely absent’.<sup>284</sup>

Rations were commonly described in the 1930s as inadequate, by the Public Service Board<sup>285</sup> and serving and former APB employees as well as by Aboriginal activists, and this was in respect of both Aboriginal adults<sup>286</sup> and children.<sup>287</sup> The Committee heard that rations had been denied to people on Stations even when there was no work available, in the local off-season in shearing and fruit-picking.<sup>288</sup> A retired Congregationalist minister said that at Cummeragunja a notice was posted by the manager that said that effectively rations would be deducted from child endowment whether they were taken by a child or not. There were also allegations made about the arbitrary and punitive use of managers’ discretion over rations.<sup>289</sup> William Ferguson presented a complaint from the North Coast that ‘[y]oung people get nothing unless they work for it, eleven hours per week for single ration, or twenty hours for double ration’.<sup>290</sup>

In 1938 the Public Service Board found the APB’s instruction to issue rations more often than once a week was ignored on Stations and that children for whom endowment was paid were wrongly disqualified from rations.<sup>291</sup> The Public Service Board also criticised the practice of remunerating work on Stations with rations or double rations, sometimes as ‘the only form of reward’ for the work done. It said ‘if worthy of higher remuneration than that paid, they should receive it in cash because they are already in receipt of a ration’.<sup>292</sup>

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<sup>282</sup> Ibid, pp.88-89

<sup>283</sup> Ibid, p.89.

<sup>284</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.29.

<sup>285</sup> Ibid, p.14.

<sup>286</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.78.

<sup>287</sup> Ibid, p.87. See also the evidence of William Ferguson of the Aborigines Progressive Association at p.67.

<sup>288</sup> Ibid, pp.77, 82.

<sup>289</sup> Ibid, pp.64, 89.

<sup>290</sup> Ibid, p.55.

<sup>291</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.15: ‘Some dissatisfaction exists in that aborigines do not participate in the scale allowable to the general community. On the whole, the two scales are on a parity but a vital distinction arises through the rule observed that rations are not issued to children in respect of whom family endowment is paid. It is considered by the Public Service Board that, in the interests of the aborigines’ well-being, it is essential that, as early as possible, the present general practice of excluding from food relief, the child in respect of whom family endowment is paid, should be discontinued. If a family is in need of assistance of this nature, then the whole family should participate.’

<sup>292</sup> Ibid.

## ***Accounting and Accountability Obligations on the Government***

### ***Aborigines Protection Act 1909 (NSW)***

The *Aborigines Protection Act 1909* (NSW) itself, and the regulations made under it, imposed some basic accounting and accountability obligations on the Board and its employees. There was a general statutory duty to protect Aboriginal people ‘against injustice, imposition and fraud’.<sup>293</sup> Station managers were required to ‘keep daily accounts of all money and supplies received and disposed of, and to furnish to the Board monthly abstracts of the same’.<sup>294</sup> As far as child apprentices were concerned, the obligations were essentially those set out at the outset of this paper. They required employers (in the absence of a contrary agreement) to pay apprentices a weekly wage according to a scale of experience, with a small portion to be paid as pocket money and the rest to be sent quarterly to the Board, to be placed in a trust account and returned to the apprentice at the end of their apprenticeship or such other time as the Board determined.<sup>295</sup> The Board could spend the money in the interest of the child, as the Board saw fit.<sup>296</sup>

After 1941, the Regulations obliged employers to obtain a receipt for the payment of pocket money ‘in the Pocket Money Book provided’ and said that ‘such book shall be available for inspection by the Board’s officers or Police at any time’.<sup>297</sup> The Regulations appear, implicitly, to have required the Board to send a monthly account for wages to employers. This was to be ‘settled promptly’ by the employer, with undue delay potentially leading to removal of the ward from their employment.<sup>298</sup> After 1944 the Board was authorised to spend any moneys held on behalf of a ward or ex-ward ‘for or towards the maintenance, advancement, education or benefit of such ward or ex-ward at anytime before he attains the age of 21 years’. Any balance was to be paid out when the ex-ward turned 21.<sup>299</sup>

### ***Audit Act 1902 (NSW)***

*Applicability:* In addition a quite extensive regime for regulating the receipt and expenditure of trust account money in NSW was set up in the *Audit Act 1902* (NSW) and Treasury Regulations made under that Act. That it would apply in at least a general sense to the Board’s trust account system is not surprising, given the very broad coverage of the Act and its definition of ‘public moneys’ discussed below. Instructions issued by the Board to Station managers, matrons and field officers in 1941 confirmed that the Act and its regulations applied to the financial

<sup>293</sup> Section 7(e), *Aborigines Protection Act 1909* (NSW).

<sup>294</sup> Regulation 14(g) made on 8 June 1910 under the *Aborigines Protection Act 1909* (NSW). This provision was omitted when a new set of regulations were introduced in 1941.

<sup>295</sup> Regulation 41(d) made on 8 June 1910 under the *Aborigines Protection Act 1909* (NSW).

<sup>296</sup> Section 11(1), *Aborigines Protection Act 1909* (NSW).

<sup>297</sup> Regulation 21(b)(vii) made on 12 September 1941 under the *Aborigines Protection Act 1909* (NSW).

<sup>298</sup> Regulation 21(b)(viii) made on 12 September 1941 under the *Aborigines Protection Act 1909* (NSW).

<sup>299</sup> Regulation 23A made on 21 April 1944 under the *Aborigines Protection Act 1909* (NSW).

operations of the Board, with some modifications approved by the Auditor-General to take account of geographical remoteness:

A copy of the Audit Act, 1902, and Regulations thereunder, is supplied to each Manager and should be kept in the Station office, where they will be available for reference. The approval of the Auditor-General has, however, been given to certain modifications of the Regulations on account of the isolation of the Board's Stations from towns where banking facilities are not available or convenient.

All officers in the service of the State shall immediately report to their Permanent Head, who shall at once report to the Auditor-General, any irregularities they may become aware of in connection with public moneys or stores. (Regulation 117.)

All persons in the service of the State shall afford every facility to claimants to enable them to prepare their accounts correctly and obtain prompt payment thereof. (Regulation 119.)

All officers who incur or authorise expenditure shall be held responsible for the exercise of due economy. (Regulation 120.)

Officers whose duties are connected with the receipt and expenditure of Public Funds shall acquaint themselves with these regulations, and the pleading of ignorance of their provisions will not be accepted in extenuation of any breach thereof. (Regulation 122.)

Although the restrictions herein are a modification of the Regulations in the Audit Act, the Manager is required to apply the regulations as they stand should the circumstances be such that the Statutory requirements would appear to apply rather than these instructions. Under no circumstances whatever, at any time, should the Manager mix his private moneys with public moneys under his control. Cheques are not to be cashed for any officer or person from public moneys in his charge. (Regulation 124.)

A penalty not exceeding five [pounds] may be imposed upon any officer who has committed a breach of the Treasury Regulations referred to above, and the strict observance thereof cannot, therefore, be too greatly emphasised.<sup>300</sup>

As these Instructions leave no doubt that detailed statutory obligations applied to Board officials and the way they handled money, we include here a brief summary of the *Audit Act* 1902 (NSW) as passed.<sup>301</sup>

The office of Auditor-General in NSW was first given a statutory basis in 1870. The *Audit Act* 1902 (NSW) continued and strengthened the role of the Auditor-General,<sup>302</sup> while confirming its basic function of monitoring and reporting on the administration of public accounts. The Act also established a parliamentary Public Accounts Committee<sup>303</sup> and authorised the Treasurer to make regulations ‘necessary or expedient’ for the fulfilment of the Act’s purposes.<sup>304</sup>

The Act said that it was the Treasurer’s responsibility to keep certain bank accounts on behalf of the government including ‘the Trust Account’<sup>305</sup> and to ‘pay to the Trust Account in such bank all moneys of which the Treasurer is by statutory obligation a trustee and custodian’.<sup>306</sup> All moneys paid into the Trust Account or any other named government account were deemed by the Act to be ‘public moneys’.<sup>307</sup> Whether this general all-purpose government Trust Account was the actual bank account in which Board trust account money was kept, or a higher level governmental account, is not clear. Regulation 41 made in 1910 under the *Aborigines Protection Act* 1909 (NSW) required apprentice wages to be paid into ‘the Trust Account’, statutory language that suggests a cross-reference to the *Audit Act* 1902 (NSW). As noted earlier, historian Victoria Haskins, who has researched Board apprenticeships in detail, said that at least in its early days the Board held apprentice wages in ‘one large interest-bearing “Trust Account” (opened in 1897) that was transferred from the Savings Bank department to the Rural Bank department of the Government Savings Bank in 1923’.<sup>308</sup>

*Payments in and out:* The *Audit Act* declared anyone ‘who by any law, regulation or appointment’ was charged with collecting, receiving or disbursing public money, or actually did so, to be an ‘accounting officer’.<sup>309</sup> Given the wording of Regulation 41 dealing with apprentices’ wages, this presumably made the Board, or more specifically its officials, accounting officers for the purposes of the Act. The same would go for the Board as warrantee or designated third party recipient of Aboriginal people’s social security entitlements, under the various State and federal laws described earlier. This would have subjected Board officials to the accounting obligations and duties set out in the *Audit Act* and its regulations.<sup>310</sup> Section 29

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<sup>300</sup> Aborigines Welfare Board, *Manual of Instructions to Managers and Matrons of Aboriginal Stations and other Field Officers*, 1941, pp.48-49, Personal Archives of Professor A P Elkin, University of Sydney Archives, P130/12/44.

<sup>301</sup> For a complete analysis of these obligations over the life of the Board, the full set of amendments to the *Audit Act* 1902 (NSW) between 1902 and 1969, as well as all the regulations made under the Act would need to be reviewed. Only a limited review of the amending legislation and the regulations has been possible for this research report. Early on in the 20<sup>th</sup> Century, the Treasury Regulations made under section 70 of the *Audit Act* 1902 (NSW) were contained not in the annual volumes of NSW Rules, Regulations and By-Laws, but in the NSW Government Gazette. From the 1920s, the regulations began to be published in the annual volumes. The regulations made on 27 February 1925 formed the core of this body of subordinate legislation until a general repeal and replacement of the regulations in 1970. In the interim, however, there were dozens of amendments and it has not been possible to review the 1925 regulations or these subsequent amendments in detail for this research report.

<sup>302</sup> Section 4, *Audit Act* 1902 (NSW).

<sup>303</sup> Section 16, *Audit Act* 1902 (NSW).

<sup>304</sup> Section 70, *Audit Act* 1902 (NSW).

<sup>305</sup> Sections 55 and 18, *Audit Act* 1902 (NSW).

<sup>306</sup> Section 20(2)(c), *Audit Act* 1902 (NSW).

<sup>307</sup> Section 21, *Audit Act* 1902 (NSW).

<sup>308</sup> Victoria Haskins, ‘& so we are “Slave Owners”!’: Employers and the NSW Aborigines Protection Board Trust Funds’, *Labour History*, No.88, May 2005, p.149.

<sup>309</sup> Section 22(1), *Audit Act* 1902 (NSW).

<sup>310</sup> Section 23, *Audit Act* 1902 (NSW).

of the Act further extended its reach by putting any public servant in receipt of trust moneys in the same position anyway as an accounting officer.

One obligation of accounting officers was to pay revenue collected in places outside Sydney on a monthly basis into the Treasury or a bank as directed, with ‘vouchers signed by him containing a full and accurate description of the services for which such moneys have been collected or received’,<sup>311</sup> together with quarterly returns to the Auditor-General.

For payments *from* the Trust Account, the Treasurer was required to prepare a warrant, indicating the amount and purpose,<sup>312</sup> and send it to the Auditor-General. The Auditor-General was to ascertain that the moneys were available for payment, certify the warrant and return it to the Treasurer who then forwarded it to the Governor for signature.<sup>313</sup> The Treasurer, or his delegate, could then issue a cheque for the amount or ‘in special cases where the Treasurer consider[ed] it expedient’ put a credit to the same amount ‘in any bank account in favour of the accounting officer’.<sup>314</sup> The accounting officer was required to account to the Treasurer for payments made from that credit.<sup>315</sup>

In September 1953, while introducing amendments to the Audit Act, Premier and Colonial Treasurer Joe Cahill told Parliament that the Auditor-General several years earlier had decided it was unnecessary to maintain both the Trust Account and the Special Deposits Account. ‘In fact, for many years now’, he said, ‘the Special Deposits Account has also served the purpose of the Trust Account’.<sup>316</sup> This was formalised by the 1953 amendments.<sup>317</sup> He also confirmed that for years payments had been made from the Special Deposits Account without warrant, essentially due to the daily calls on the money concerned, and the Act had been treated as ‘unworkable’ in this respect.<sup>318</sup> The requirement for warrants was dispensed with by the amending legislation in 1953.<sup>319</sup> Cahill assured the Legislative Assembly that other safeguards remained in place.

*Audit and accountability:* Under the Audit Act, the Auditor-General had a duty to examine accounting records and returns as they came in, to verify whether the provisions of the Act had

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<sup>311</sup> Section 28(a), *Audit Act* 1902 (NSW). The requirement for quarterly returns was removed by section 2 of the *Audit (Amendment) Act* 1945 (NSW).

<sup>312</sup> Section 38(1), *Audit Act* 1902 (NSW).

<sup>313</sup> Section 39(4) and (5), *Audit Act* 1902 (NSW).

<sup>314</sup> Section 40(1), *Audit Act* 1902 (NSW).

<sup>315</sup> Section 40(4), *Audit Act* 1902 (NSW).

<sup>316</sup> Legislative Assembly of NSW, *Hansard*, 15 September 1953, p.568.

<sup>317</sup> Section 3 of the *Audit (Amendment) Act* 1953 (NSW) omitted references in the principal Act to the ‘Trust Account’, as the definition of ‘Special Deposits Account’ in section 5 was amended to include ‘funds of which the Treasurer is, by statutory obligation, a trustee and custodian’.

<sup>318</sup> Legislative Assembly of NSW, *Hansard*, 15 September 1953, p.569.

<sup>319</sup> Along with the removal of references to the ‘Trust Account’ in 1953, references to the Special Deposits Account (which had housed trust moneys for several years) were removed from the above provisions in sections 38-40 of the Audit Act. That is, after the *Audit (Amendment) Act* 1953 (NSW), these sections dealing with payments from Treasury accounts applied only to the consolidated revenue account and the general loan account.

been complied with<sup>320</sup> and also to audit the books of any accounting officer or other public servant with control over public moneys at least once a year if possible.<sup>321</sup>

The Treasurer was required to publish in the Gazette a statement of receipts and expenditures of the Trust Account as well as the balance, on a quarterly and annual basis,<sup>322</sup> and to send an annual statement to the Auditor-General.<sup>323</sup> The Auditor-General was to append his report to the annual statement and forward them to the Legislative Assembly,<sup>324</sup> including any recommendations for improvements.<sup>325</sup> Breaches of the Act's provisions could attract serious criminal penalties.<sup>326</sup>

In fact the Auditor-General did investigate the accounts kept on particular Stations by managers employed by the Board,<sup>327</sup> as well as audit the accounts of the AWB.<sup>328</sup> State Records NSW, the government's archive and record management agency, holds reports of Inspectors of Public Accounts for the period 1907 to 1930, relating to the Board and a number of specific Aboriginal Stations.<sup>329</sup>

These detailed accountability regimes mean that theoretically there should be a substantial paper trail surrounding the operation of trust accounts on behalf of individual Aboriginal people. In fact part of the story of the Board's operations was a long history of poor record-keeping and administration. For example, the Public Service Board said in 1938 that it was disappointed 'to find that, after this lapse of time, records of the persons affected are so meagre, not only with regard to older people, but also with regard to children'.<sup>330</sup> Having regard 'to the general tenor of the Act' and the 'very wide powers' given to the Board, it said 'the complete absence of records of individual details of aborigines throughout the State represents a weakness in the administration that should be remedied'.<sup>331</sup>

In evidence to the Select Committee in 1937, Edwin Dalley, the manager of Brewarrina Aborigines Station, gave evidence about record-keeping at the Station under his predecessor Roderick Brain:

Q: What was wrong with the conditions?

<sup>320</sup> Section 45, *Audit Act 1902* (NSW).

<sup>321</sup> Section 50, *Audit Act 1902* (NSW).

<sup>322</sup> Section 57(c), *Audit Act 1902* (NSW).

<sup>323</sup> Section 58, *Audit Act 1902* (NSW).

<sup>324</sup> Sections 60-62, *Audit Act 1902* (NSW).

<sup>325</sup> Section 63, *Audit Act 1902* (NSW).

<sup>326</sup> Section 65, *Audit Act 1902* (NSW).

<sup>327</sup> For example, the Secretary of the Board, Arthur Pettitt, gave evidence to the 1937 Select Committee inquiry that in 'the course of the ordinary departmental routine an Audit Department inspector went to the station' at Brewarrina: Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.42.

<sup>328</sup> *Ibid.*, p.45, where Pettitt testified that '[a]ll our accounts are subject to examination by the Auditor-General'.

<sup>329</sup> State Records New South Wales, *A Guide to New South Wales State Archives Relating to Aboriginal People* available at [www.records.nsw.gov.au/staterecords/a-z\\_index\\_4705.asp](http://www.records.nsw.gov.au/staterecords/a-z_index_4705.asp) (viewed 12 May 2006). Presumably the Main Accounts Files 1930-1984 (series number 381), which was a continuation of the 1907-1930 series referred to in the text above, may also yield additional information about the Auditor-General's dealings with the Board and particular Stations.

<sup>330</sup> Public Service Board, *Aborigines Protection: Report and Recommendations of the Public Service Board of NSW*, Government Printer, 1940, p.12.

<sup>331</sup> *Ibid.*, p.28. See also p.19 and p.29.

A: The clerical work, the books and accounts were in a chaotic state.

...

Q: What did you find wrong with the place when you went there?

A: The accounts. Letters were coming in, while every second person I saw asked me about the accounts.

Q: What do you mean by every second person, the business people from Brewarrina?

A: Yes, Brewarrina and the district.

Q: What business would the station be doing with the Brewarrina district?

A: There were accounts unpaid for sheep and others too numerous to mention and I would be asked about them. There were also others about which I was not asked.<sup>332</sup>

Historian Victoria Haskins, writing specifically about child apprentices and trust accounts, said:

the official records are particularly notorious for their lack of objectivity and their profound inaccuracy. Furthermore, a substantial proportion of the records have (mysteriously) not survived, and those that do are scattered and difficult to locate. The Board's regime was from 1883 to 1940, but its *Register of Wards* accounts only for girls placed in Cootamundra Home between 1912 and 1928. Its *Salary Registers* cover only the period 1917 to 1934. An 'unexplained gap' in the Board files between 1938 and 1948 was identified by the recent Human Rights Commission [report] into the removal of Aboriginal children...I have personally uncovered numerous cases of girls working in 'apprenticeships' whose removal and indentures even in this time period were not registered: sometimes, even when their trust fund records *have* been made. There are apparently *no* surviving files relating to employer correspondence, and many correspondence files on individual wards removed in other periods are simply missing.<sup>333</sup>

Clearly, ascertaining today the detailed financial management of individual trust accounts by the Board in decades past is severely hampered by the state of public records. This brief and partial examination of the Audit Act reveals two main things. First, there should have been a substantial paper trail relating to the Board's management of Aboriginal people's wages and other financial entitlements, across a number of different locations within the bureaucracy.

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<sup>332</sup> Legislative Assembly of NSW, *Minutes of Evidence Taken Before the Select Committee on the Administration of Aborigines Protection Board*, Government Printer, 1938, p.116.

Secondly, Premier Carr's acknowledgment of substantial failure to return people's money suggests a major breakdown in compliance with *statutory* obligations (let alone those arising at common law or equity) by government agencies, reinforcing questions about the legal liability of the State. Continued searching for relevant records, by governments and others, is clearly necessary, including documentation of the interaction between employers, the Board, its Station managers, the Auditor-General's office, the Treasury and the banks which maintained Board accounts. This search should include the nature of any particular dispensations or special arrangements made by the Auditor-General and their consistency with the letter of the law expressed in the Audit Act and Treasury regulations.

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<sup>333</sup> Victoria Haskins, '& so we are "Slave Owners"!': Employers and the NSW Aborigines Protection Board Trust Funds', *Labour History*, No.88, May 2005, p.162 (text of n.6).

## ***Records and Record-Keeping***

### ***The legal and administrative basis for record-keeping in NSW***

The Aborigines Welfare Board was abolished nearly forty years ago. Its predecessor began collecting apprentice wages in trust accounts in the century before last. Piecing together what happened with the diversion of wages and other entitlements, in order to ensure justice is done to those who never received their money, depends on assembling the available evidence. That includes the accounts of those with knowledge about the events in question and, where possible, documents that help fill out the picture. In other words, the customary sources relied upon to clarify questions of legal liability: oral evidence supplemented, where appropriate, by documentary evidence. This last section of the paper deals with the statutory law about government record-keeping in NSW and the documentary records that might be relevant to the return of money to its original owners and their descendants. As noted already, there are serious deficiencies in the state of the paper trail. This section places these shortcomings in the context of the State Government's legal obligations to protect records and also notes the general circumstances under which government records have been managed during the 20<sup>th</sup> Century.<sup>334</sup>

Before 1960 there was no statutory law in NSW governing the preservation of documents generated by government agencies like the APB and AWB. A de facto government archive developed in the Mitchell Library during the first half of the 20<sup>th</sup> Century:

A number of instructions were issued by both the Premier and the Public Service Board 'advising departments to transfer non-current records considered to be of Historical value' to the Mitchell Library. On the authority of these instructions, the Trustees of the Public Library became, in effect, the archival authority for the State, and much work was done in the Mitchell Library in the collection and preservation of State archives.<sup>335</sup>

An Archives Department was formally established within the Library in 1953. Two years later, the Government Records Repository was established at Shea's Creek (Alexandria) in Sydney.

In 1960 the then Minister for Education, Mr Wetherell, admitted to Parliament that this ad hoc and administrative approach had frequently failed:

In circulars issued from time to time by the Premier's Department and the Public Service Board, departments were instructed to place at the disposal of the principal librarian all records that departments did not wish to keep. These instructions were

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<sup>334</sup> This material relates to the general treatment of public records in NSW. Whether it specifically applies to the management records for Aboriginal people's trust account requires more precise knowledge of the way these records have been treated in past decades.

<sup>335</sup> State Records NSW, *Archives Management*, available at <http://investigator.records.nsw.gov.au/investigator.htm> (viewed 6 June 2006).

not always properly understood, or carried out, and there are questions of the powers of Ministers and departments, which can only be settled by legislation, which should be uniform.<sup>336</sup>

In 1961 a statutory scheme for management of government records came into force that was to last for the next 38 years.<sup>337</sup> The *Archives Act 1960 (NSW)* established the Archives Authority of NSW<sup>338</sup> to deposit and preserve records it deemed ‘worthy of preservation’, as State archives, in the Archives Office of NSW.<sup>339</sup> The Authority could acquire or copy public documents not already within its custody or control.<sup>340</sup> There were two main mechanisms for protecting official documents not held in the Archives Office itself, from destruction or disposal.

First, the Act required government bodies to notify the Archives Authority if they intended to destroy or dispose of records. The Authority had two months to inspect the records and decide whether to take possession of them – after that, the government agency was entitled to dispose of them.<sup>341</sup>

The second level of protection used the criminal law as a sanction for unauthorised destruction. Where records not already under the Archives Authority’s control had ‘ceased to be in current use’, it was a criminal offence to sell, destroy, take or send them out of New South Wales, without the Authority’s written permission.<sup>342</sup> The Minister’s Second Reading Speech suggested that this penalty applied only to private persons, not government officials.<sup>343</sup>

At any time, a government body could seek permission from the Archives Authority to destroy particular documents – the Authority was to maintain a written record whenever such permission was granted.<sup>344</sup> Once documents were in the hands of the Archives Authority itself, there was nothing to prevent the Authority destroying or disposing of them.<sup>345</sup> Section 19 of the Act contemplated that the Authority might create a certificate when it destroyed a public record.<sup>346</sup>

The *Archives Act 1960* clearly applied to Board records.<sup>347</sup> A number of points emerge from this brief survey of the Act, regarding Board administration of Aboriginal people’s finances:

<sup>336</sup> Legislative Assembly of NSW, *Hansard*, 19 October 1960, p.1334.

<sup>337</sup> The *Archives Act 1960 (NSW)* has been reviewed for the purposes of this research report, apart from any amendments that may have been made between 1971 and 1990 inclusive. We have not assessed the extent to which relevant regulations were made by the government under section 25 of the Act nor if any by-laws were made by the Archives Authority under section 21.

<sup>338</sup> Section 3, *Archives Act 1960 (NSW)*.

<sup>339</sup> Section 10, *Archives Act 1960 (NSW)*.

<sup>340</sup> Section 13, *Archives Act 1960 (NSW)*.

<sup>341</sup> Section 14, *Archives Act 1960 (NSW)*.

<sup>342</sup> Section 18, *Archives Act 1960 (NSW)*.

<sup>343</sup> Legislative Assembly of NSW, *Hansard*, 19 October 1960, p.1335.

<sup>344</sup> Section 15, *Archives Act 1960 (NSW)*.

<sup>345</sup> Section 16, *Archives Act 1960 (NSW)*.

<sup>346</sup> ‘A certificate under the common seal of the Authority that any public record has been destroyed by the Authority shall be prima facie evidence of the fact so certified.’

<sup>347</sup> ‘Public office’ was defined to include ‘any...board... performing any functions of any branch of the Government of New South Wales’ and the definition of ‘public records’ was extremely wide and would have covered all documents relating to the Board’s administration of Aboriginal people’s money: section 2, *Archives Act 1960 (NSW)*.

- Board records that had survived until 1961, or were created from then on, were subject to the Act
- section 19 certificates from the Archives Authority of NSW may record any destruction of Board records the Authority itself engaged in
- authorisations issued by the Authority under section 15 should record any instances where the Board itself (or its administrative successor) was given permission to destroy particular records
- theft or wilful destruction of the records after 1961 (at least by private persons) was a criminal offence.

The *Archives Act* 1960 (NSW) was eventually replaced by stronger and more comprehensive legislation, the *State Records Act* 1998 (NSW), which took effect from 1 January 1999.<sup>348</sup>

The 1998 Act imposes legal obligations on government bodies and includes criminal sanctions against individuals for damage or destruction to documents (and there seems little doubt in this instance that public officials are as potentially liable as private citizens). It says that a department, board or other government agency ‘must ensure the safe custody and proper preservation of the State records that it has control of’ and take all reasonable steps to recover records at large for which it is responsible.<sup>349</sup>

It is a criminal offence for a person to take, damage, neglect or dispose of a State record, without legal authority.<sup>350</sup> Exceptions exist, including where the document is dealt with ‘in accordance with normal administrative practice in public office’.<sup>351</sup> There is limited guidance in the Act<sup>352</sup> and in the State Records Regulation 2005 on what that phrase means. There is a special restriction on destruction of a State record ‘that contains information with respect to the State’s Aboriginal heritage’<sup>353</sup> – it is not clear to what extent, if any, that would apply to government management of the personal finances of Aboriginal people.

State Records NSW (the successor body to the Archives Authority of NSW) is entitled to take control of any State record that is no longer in use for official purposes.<sup>354</sup> A document more than 25 years old is deemed to be in that category unless a contrary ‘still in use determination’

<sup>348</sup> The new Act established the State Records Authority of NSW, also known as State Records NSW. This was ‘a continuation of and the same legal entity as’ the earlier Archives Authority of NSW: Schedule 3, Part 2, Item 2, *State Records Act* 1998 (NSW).

<sup>349</sup> Section 11, *State Records Act* 1998 (NSW).

<sup>350</sup> Section 21, *State Records Act* 1998 (NSW).

<sup>351</sup> Section 21(2)(a), *State Records Act* 1998 (NSW).

<sup>352</sup> Section 22, *State Records Act* 1998 (NSW).

<sup>353</sup> Section 25(1), *State Records Act* 1998 (NSW): ‘The Authority must not dispose of or give permission for the disposal of a State record that contains information with respect to the State’s Aboriginal heritage unless the Authority has first consulted with the Director-General of National Parks and Wildlife on the need to preserve the record.’

<sup>354</sup> Section 27, *State Records Act* 1998 (NSW). Agencies must make documents no longer in use available to State Records NSW, although the Authority is not ordinarily *required* to take control of the record: sections 29, 31 and 32, *State Records Act* 1998 (NSW).

has been made.<sup>355</sup> State Records NSW can pursue various legal avenues, including court action, to recover control of State records held, for example, in private hands.<sup>356</sup>

There are detailed provisions in the Act dealing with access to State records, including a presumption that documents more than 30 years old will be open to public inspection.<sup>357</sup> Public access to particular records can also be restricted or prohibited under the Act.

The relevance of this most recent archival legislation is reduced by the degree to which loss and destruction of records about Aboriginal wages and entitlements had occurred before 1999. It remains important, however, as the source of *current* legal obligations regarding those State records that managed to survive until the end of the 20<sup>th</sup> Century.

### ***Government record-keeping in NSW***

A significant amount of work has been done, and continues to be done, by others on the location and content of records relevant to Aboriginal people in NSW. This research report does not attempt to duplicate that work, but it is appropriate to include some observations from the research we have carried out.<sup>358</sup>

In May 2004, NSW Premier Bob Carr admitted that records of how Aboriginal trust funds were administered have ‘vanished over the years’ and his Minister for Community Services, Carmel Tebbutt, called the documentary record ‘patchy’ and ‘incomplete’.<sup>359</sup>

This is not surprising when one appreciates the absence of any statutory obligations before 1960, regarding government management of public records, and the ad hoc development of State archives. The Minister for Education who introduced the Archives Bill to Parliament in 1960, Mr Wetherell, acknowledged the concerns of experts that unless a more concerted approach was taken, documents of historical importance would be lost. ‘Indeed, some have been’, he admitted, and ‘others have not been properly cared for’. He acknowledged that during World War Two documents that ‘should have been preserved were destroyed out of a well-meant but ill-advised intention to help the war effort by responding to appeals for waste paper’.<sup>360</sup> After the war, space constraints saw departments destroy more documents without reference to the Mitchell Library and a store set up in unsuitable premises near Circular Quay.

In 1955 these documents stored near the Quay, ‘along with a great many more from departments’, were transferred to the Government Records Repository at Shea’s Creek. This

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<sup>355</sup> Section 28, *State Records Act 1998* (NSW).

<sup>356</sup> Part 5, *State Records Act 1998* (NSW).

<sup>357</sup> Section 50, *State Records Act 1998* (NSW).

<sup>358</sup> Further information on records consulted or noted during our research can be obtained from the Indigenous Law Centre, UNSW.

<sup>359</sup> Edited transcript of media conference held on 5 May 2004, available at [www.eniar.org/news/stolen-nsw.html](http://www.eniar.org/news/stolen-nsw.html) (viewed 6 June 2006).

<sup>360</sup> Legislative Assembly of NSW, *Hansard*, 19 October 1960, p.1334.

was ‘a shed originally used for storing wool’ and ‘the only building of sufficient area available’.<sup>361</sup>

Even in the mid-1970s, the Repository was poorly maintained:

The ultimate nightmare was Shea’s Creek at Alexandria in Sydney where many NSW state records were housed in two old sheds. Most of the records were stored in cartons, two deep, on very tall shelves; cartons and files, once accessed, often never made it back to their location and lay neglected on the floor. Huge Treasury ledgers rested in piles against the walls, festooned by cobwebs.<sup>362</sup>

As far as written evidence of the Board’s financial administration goes, undoubtedly there has been destruction, loss and damage. This is apart, of course, from any deliberate removal or destruction of records, relating to apprentice employment and diversion of social security entitlements, that may have occurred. There still remain, however, a number of avenues to be explored.<sup>363</sup> A range of government agencies, both State and federal, played a role in the system of controls over the labour, wages and other entitlements of Aboriginal people in NSW, as did a number of non-government organisations, such as churches and charitable institutions. Accordingly, in the absence of a comprehensive inventory of all available documentation, claims that written records have simply disappeared are at best premature. Government and non-government agencies should continue to make strenuous efforts to locate records that may shed further light on the paternalistic administration of Aboriginal people’s money, so that the inexcusable instances where that money was never returned to them can be remedied. It is only then that the assurance – ‘eventually they get it all’ – offered by the Aborigines Protection Board almost 70 years ago will lose its hollow ring.

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<sup>361</sup> Ibid.

<sup>362</sup> Baiba Berzins, ‘Remembering the 1970s’, paper given to the Australian Society of Archivists, 20 April 2005, available at [www.archivists.org.au/pubs/newsletters/nsw200505.pdf](http://www.archivists.org.au/pubs/newsletters/nsw200505.pdf) (viewed 6 June 2006).

<sup>363</sup> For example, the NSW Department of Aboriginal Affairs is engaged in a project to index files dealing with the APB and AWB. After more than a years’ work, it estimated that four full time indexers would take an additional two years to complete the job: Brian Gilligan, Terri Janke and Sam Jeffries, *Report of the Aboriginal Trust Fund Repayment Scheme Panel*, Aboriginal Trust Fund Repayment Scheme, October 2004, Appendix D, p.2.

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