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Aboriginal Natives of Australia - Tribal Marriages -
Question of acceptance for purposes of the Social
Services Act.

First A.D.G.(P)

*Refer previous
334-337*

Up till now we have not been forced into the position of deciding whether to recognise tribal marriages for the purposes of the Social Services Act. This is because in most cases the couples have been living as man and wife for more than 3 years and, in the case of claims for widows' pensions, the husband had died. We have thus been able to avoid a decision re the tribal marriage by accepting the wife as a dependent female and grant wife's allowance or widow's pension as the case may be.

2. We now have a case submitted from Queensland in which a woman who has been tribally married has been deserted by her husband and has claimed a widow's pension as a deserted wife. If we do not recognise the tribal marriage, she becomes a deserted de-facto wife and ineligible for pension. If we do recognise the marriage she is a deserted wife.

3. It has been suggested that by accepting a tribal marriage we place Aboriginal women in a better position than white de-facto wives. This does not necessarily follow. It presupposes that a tribal marriage is not a marriage. In the view of white society this may be so but in the view of Aboriginal society a tribal marriage has just as much meaning and importance as a Church or Registry Office marriage for a white person. Tribal marriages are subject to quite complicated social rules, custom and traditions of Kinship and to the Aborigines have a deep spiritual religious significance. As opposed to this a de-facto union between a white couple is one in which, by hypothesis, marriage has no part.

4. The Queensland law recognises tribal marriages to a very large extent. Section 43 of the Aborigines and Torres Strait Islanders Affairs Act of 1965 reads -

"43. Consequences of tribal union. (1) When a male Aborigine or a female Aborigine has lived in a connubial relationship with another person in accordance with recognized tribal practice the children of such a union, whether born before or after the commencement of this Act, shall be deemed to be legitimate and the fact that such union was not created in any way required by a law of the State or Commonwealth to create a lawful marriage or was not at any material time registered in accordance with

.../2

law shall not prejudice the claim of the surviving partner of such union or of any child of such union to succeed to the estate of the deceased partner of such union or to the benefit of any damages or any right of action therefor, or of workers' compensation which would be payable in respect of the death of the deceased partner of such union to the surviving partner of such union or to any child of such union were such union a lawful marriage.

(2) A certificate purporting to be under the hand of the Director that any male Aborigine or any female Aborigine has lived with another person in accordance with recognized tribal practice shall be conclusive evidence of the fact certified."

5. Mr. Moy of the Department of Territories informed me that, in the Northern Territory, the Commonwealth also recognises tribal marriages for the purposes of the distribution of deceased estates and determining next of Kin. Section 23 of the Intestate Aborigines (Distribution of Estates) Ordinance 1961-1964 reads:-

"23. - (1.) For the purpose of assessing succession duties on property distributed under this Ordinance, a marriage according to the custom of aboriginal Natives of Australia between a ward or Aborigine or a person of Aborigine descent shall be deemed to be or to have been a marriage that is or was valid according to the laws of the Territory.

(2.) A certificate signed by the Director stating that a person named in the certificate is or was of Aborigine descent is for the purposes of the last preceding sub-section evidence that the person so named is or was of aborigine descent."

6. In South Australia the legislation is at present silent on this matter but Mr. Millar, the Director of Aboriginal Affairs, informed me that he is seeking to have tribal marriages recognised as valid marriages in his state.

7. The position in West Australia is somewhat similar to that applying in the Northern Territory, being governed by Section 26 of the Native Welfare Act and Regulation 50 of the Regulations made under that Act.

8. If State laws take sufficient cognizance of tribal marriages as to legitimise the children of such unions it would be not unreasonable for this Department to accept such marriages as valid for the purposes of the Social Services Act. However it would be suggestive of discrimination as between the States if we accepted the marriages in some States and not in others.

.../3

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Therefore I recommend that tribal marriages between Aborigines be accepted as valid for the purposes of the Social Services Act. The Directors in Queensland and South Australia support this view but the Western Australian Office is opposed to it.

P
I. Frowse
A.D.G. (P. & B.)
20/10/67.

Approved. Ref to sign memo to states. I will recall the previous Ref saying, at the time discrimination against Aborigines was removed from the Act, that tribal marriage should be recognised

N.C.T.
23/10/67

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FR/VH
A.2876/417

Amendments to Manual of Instructions
Unemployment, Sickness and Special Benefits.

<u>Instruction</u>	<u>Amendment</u>	<u>Authority</u>
2/A/3	Add new paragraphs as under:-	A2876/414

"(f) A tribal marriage entered into according to recognized tribal practice between Aborigines should be accorded the same status as a marriage registered according to law.

(g) Where an Aboriginal has more than one wife, the woman who has lived longest with him (the first wife) will be treated as the only wife for the purposes of additional benefit. Any second wife should be treated as a single person. On the death of the first wife of a man, a second wife (if any) becomes his first wife without involving any question of a waiting period."

KL

F.R.
A/g. Clerk (Policy)
14/11/67.

Approved
John Sumner
Amendment (P)
28 DEC 1967

Withdrawn
12/27/68

No. 449

Asst Insp. (Establishment)
No 443 herewith
KL 4/1/68



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COMMONWEALTH OF AUSTRALIA

MINISTER FOR SOCIAL SERVICES

13 MAR 1969

DIRECTOR-GENERAL.

...

I am enclosing a file which you have already seen including a memorandum dated 26th January, 1968 which Prof. Berndt sent to Mr. Gare.

What do we do about these polygamous marriages and the widows and deserted wives which can result from them.

Would you please let me have a summary of Departmental practices together with recommendations, if any, which you might have for its amendment. You might return this file to me at your convenience - keep a copy if you so desire.

14/3
W. C. Wentworth

W. C. Wentworth

(W. C. Wentworth)

Aboriginals - Tribal Marriages

MINISTER:

On 13 March 1969 you asked how the Department treats polygamous marriages and the widows and deserted wives which can result from them.

2. The Department recognises a tribal marriage as a marriage for the purposes of the Social Service Act in a limited way as follows:-

- (a) Where an Aboriginal pensioner has more than one wife, the woman who has lived longest with him (referred to as his first wife) will be treated as the only wife for pension and allowance purposes.
- (b) On the death of the first wife of a man, a second wife (if any) is immediately recognised as his first wife.
- (c) Only the first wife of a man who dies is regarded as his widow in determining pension entitlement.
- (d) A first wife may, if the desertion by her husband be satisfactorily proved, qualify for pension as a deserted wife.

3. Polygamous marriages are not recognised in that we do not pay wife's allowance to the several wives of an Aboriginal at the same time. Neither would we pay widows' pensions simultaneously to all of the wives of an Aboriginal who died. I do not believe that in framing the present legislation it was ever contemplated that we should.

4. As you know this question is quite complex. As a Department we have not sufficient knowledge of tribal laws and customs to make a judgment about the equity of established practice which so far seems to have been generally accepted.

5. The correspondence from Professor Berndt is returned herewith.

(Sgd.) L. B. HAMILTON

(L.B. HAMILTON)
18/3/69

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OAA 69/525

OFFICE OF ABORIGINAL AFFAIRS

MINISTER-IN-CHARGE:

WIDOWS' PENSIONS AND MARRIAGES

You will recall that during your recent visit to Arnhem Land it was noted that Widows' Pensions are paid only to one widow of an Aboriginal who was tribally married to two or more women. The administrative practice in this matter was outlined in a minute from the Director-General of Social Services on 18 March 1969 (copy ... attached).

2. There is nothing preventing the payment of Widows' Pensions to more than one woman on the decease of one man. It therefore seems something very like discrimination to maintain special administrative procedures limiting the eligibility of Aboriginal widows.

3. Because younger women usually remarry and because the total number of women in polygamous marriages is relatively small, a change in the practice would not have any significant effect financially. It would ensure that women were not left without adequate support on the death of a husband.

4. I recommend that you consider amending the established practice in this matter.

B. G. Dexter
(B. G. DEXTER)
Director

29 October 1969

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A.2876(3)/545
IP/EJR

Tribal Marriages - Widows' Pensions

Director-General :

Please see the minute from the Office of Aboriginal Affairs on folio 543 and the Minister's request on folio 544 for our comments.

2. It is true, as Mr. Moy says, that there is no specific provision in the Act to prevent the payment of two or more widows' pensions to a man who dies leaving two or more wives. However, in our minute to the Minister of 18.3.69 it was stated :-

"Polygamous marriages are not recognised in that we do not pay wife's allowance to the several wives of an Aboriginal at the same time. Neither would we pay widows' pensions simultaneously to all of the wives of an Aboriginal who died. I do not believe that in framing the present legislation it was ever contemplated that we should."

3. Most certainly it would be quite contrary to the intention and against the spirit of the law to accept polygamous marriages for pension purposes. If we did, we could create all sorts of problems for ourselves apart from the obvious discrimination in favour of tribal Aboriginals.

4. The first tribal wife of an Aboriginal is accepted as his "wife" for pension purposes and his other wives are, in effect, in the same position as bigamous wives. If we extend pension eligibility to these other wives of Aboriginals it would be difficult to refuse pensions to European women who, innocently or otherwise, enter into bigamous marriages.

5. It is recommended that the Minister be informed accordingly and it be recommended to him that there be no change in our present practice.

yes
[Signature]
28/11/69

I. Prose
(I. PROSE)
A.D.G. (P. & B.)
28/11/69

Aborigines - Tribal Marriages

MINISTER:

On 20 November you forwarded me a copy of a minute from the Office of Aboriginal Affairs concerning tribal marriages and widows' pensions and asked for my comments. *pl 547*

2. It is true, as the Office says, that there is no specific provision in the Act to prevent the payment of widows' pensions to two or more "widows" of the same man.

3. In my minute to you of 18 March 1969 it was stated -

"Polygamous marriages are not recognised in that we do not pay wife's allowance to the several wives of an Aboriginal at the same time. Neither would we pay widows' pensions simultaneously to all of the wives of an Aboriginal who died. I do not believe that in framing the present legislation it was ever contemplated that we should."

4. The Office suggests in effect that any number of women tribally married to an aboriginal should be granted widows' pensions on his death.

5. In support of this suggestion two reasons are advanced :-

- (a) the change would not cost much;
- (b) second and subsequent wives should not be left without adequate support on the death of a husband.

6. In my view (a) is irrelevant to the policy issue.

7. As to (b) this is not supported by any evidence of relative poverty within the tribe of the women in question.

8. I understand that some tribal customs that co-exist with the custom of tribal marriages, could require sharing within the tribe of pension support, notwithstanding that by our law the pension is wholly the property of, and is paid to, the "first" wife.

9. I do not think there is a good case for altering our present practice. However, if you do not agree I think we must be more certain of the reasons for, and likely results of, paying two or more widows' pensions on the death of one man before considering any change.

(Sgd.) L. B. HAMILTON

(L. B. HAMILTON)

12/12/69



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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MINISTER FOR SOCIAL SERVICES

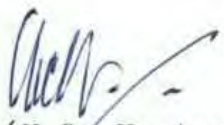
20 NOV 1970

DIRECTOR GENERAL.

You will recall your memorandum of 18th March - Aboriginals Tribal Marriages.

I attach hereto a memorandum on this same matter from my Office of Aboriginal Affairs.

I am myself inclined to agree with the suggestion made by the Office of Aboriginal Affairs. Could I please have your comments on this matter before a decision is made.


(W.C. Wentworth)

to Bureau