

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/08/2018 4:30:06 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: QUD714/2016  
File Title: Hans Pearson v State of Queensland  
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/08/2018 4:30:09 PM AEST

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

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Federal Court of Australia  
District Registry: Queensland  
Division: General

**HANS PEARSON**

Applicant

**STATE OF QUEENSLAND**

Respondent

**FURTHER AMENDED DEFENCE**

**Contents**

A. Introduction .....	2
B. Respondent .....	5
C. The Director of Native Affairs .....	5
D. The Applicant.....	6
E. Legislation.....	8
Applicable dates .....	8
Protectors and superintendents .....	10
Defined terms .....	13
Employment of Aborigines and Islanders .....	14
Pocket money .....	23
Exemption from statutory control .....	25
Property .....	26
Trust funds.....	26
Welfare fund .....	27
F. The Applicant's employment history .....	29
<del>Starcke Station (1)</del> .....	<del>30</del>
<del>Laura Station</del> .....	<del>39</del>
<del>Kings Plains Station</del> .....	<del>39</del>
<del>Starcke Station (2)</del> .....	<del>40</del>
<del>1957</del> .....	<del>44</del>
<del>Starcke Station (3)</del> .....	<del>49</del>
<del>Laura Station</del> .....	<del>53</del>
<del>Palm Island</del> .....	<del>57</del>
<del>Dunraven Station</del> .....	<del>59</del>
<del>Palm Island (2)</del> .....	<del>61</del>
<del>Rokeby Station</del> .....	<del>61</del>
<del>Kalinga Station</del> .....	<del>63</del>
<del>Droving</del> .....	<del>65</del>
G. Move to Innisfail.....	73

Filed on behalf of (name & role of party)	Respondent
Prepared by (name of person/lawyer)	GR Cooper, Crown Solicitor, Solicitor for the Respondent
Law firm (if applicable)	Crown Law
Tel	07 3008 8708   Fax   07 3239 6959
Email	Nikki.A-Khavari@crownlaw.qld.gov.au
<b>Address for service</b> (include state and postcode)	Crown Law, Level 11, State Law Building, 50 Ann Street, Brisbane, Queensland, 4000

H. Exemption under the 1939 Act.....	74
I. Wages paid .....	75
J. Withdrawal of money by the Applicant .....	76
K. Establishment of the Trust.....	83
L. Trustee's Duties .....	99
M. Fiduciary Duty .....	110
N. Validity of payments to the Welfare Fund.....	118
NA. Improper purpose and unlawful conduct.....	120
NB. Slavery Abolition Act.....	120
O. Trust Fund – the Applicant.....	121
P. Breach of Trust – the Applicant .....	122
Q. Breach of Fiduciary Duty – the Applicant .....	130
QA. The Respondent's wilful default or neglect .....	138
R. Applicant's payout.....	138
S. Complaints by the Applicant.....	139
T. Applicant's additional loss .....	140
U. Reparation scheme – general .....	140
V. Reparation scheme – the Applicant.....	147
W. Effect of the release .....	152
X. Group Members .....	153
Y. Complaints under the AHRC Act 1986 .....	155
Z. Relief sought .....	157
ZA. Account on the basis of Wilful default.....	157
ZB. Common Account .....	157

## A. Introduction

1. The State of Queensland (**Respondent**):
  - a. admits the allegations in paragraph 1 of the Third Amended Statement of Claim dated 12 July 2018~~17 March 2017~~ (**ASOC**) in respect of the complaint under the *Australian Human Rights Commission Act 1986* (Cth) pleaded in paragraphs 332 to 337~~8~~ of the ASOC on the basis that the complaint permitted the Applicant to commence these proceedings as a representative party but denies that the Applicant remains entitled to continue these proceedings as a representative party in respect of the complaint under the *Australian Human Rights Commission Act 1986* (Cth) because the unlawful discrimination alleged in paragraphs 338A to 338E of the ASOC is not the same as or the same in substance as the unlawful discrimination that was the subject of the terminated complaint pleaded in paragraph 336 of the ASOC and did not arise out of the same or substantially the same acts, omissions or practices that were the subject of the terminated complaint pleaded in paragraph 336 of the ASOC;
  - b. denies the allegations in paragraph 1 of the ASOC in respect of the causes of action for breach of trust and breach of fiduciary duty, invalidity or lack of statutory authority of some or all of ss. 6, 9(1), 10, 12(1) and 28 of the 1945 regulations and

wilful default or neglect, an account, unjust enrichment and a constructive trust on the basis that:

- i. the causes of action alleged for breach of trust and breach of fiduciary duty, invalidity or lack of statutory authority of some or all of ss. 6, 9(1), 10, 12(1) and 28 of the 1945 regulations and wilful default or neglect, an account, unjust enrichment and a constructive trust ~~or lack of statutory authority of some or all of~~ arose before 4 March 1992;
- ii. by section 33B of the *Federal Court of Australia Act 1976* (Cth) a proceeding in respect of a cause of action arising before 4 March 1992 cannot be brought under Part IVA.

2. As to paragraph 2 of the ASOC:

- a. to the extent that it defines those who are claimed to be Group Members the Respondent does not plead to the allegations as it contains no allegations against it;
- b. in respect of subparagraph 2(j) to the extent that it alleges that a Group Member is a person who had the whole or part of his or her wages directed to be paid by the employer but was not a person whose wages were in fact so paid, the allegation is prejudicial and embarrassing on the basis it is inconsistent with the trust pleaded in paragraph 250 of the ASOC;
- c. otherwise, the Respondent has adopted the definitions in paragraph 2 of the ASOC and used those definitions in this defence.

3. The Respondent is not required to plead to paragraph 3 as it makes no allegations against the Respondent.

4. As to paragraph 4 of the ASOC the Respondent:

- a. does not know the identity of any person who is a Group Member and so it cannot admit the allegations contained in paragraph 2;
- b. in respect of the Group Members as Claimants does not admit paragraph 4;
- c. in respect of the Applicant (as a Claimant):
  - i. admits in respect of sub-paragraph (a) that during the Claim Period the Applicant was an Australian Aborigine, was or had been in paid employment, had entered into an employment agreement pursuant to the provisions of the 1939 Act and regulations and had ~~had~~ some of his wages paid to a protector of a reserve or a superintendent of a mission reserve but otherwise denies the allegations therein;

- ii. in respect of sub-paragraph (b) says that during the Claim Period the wages referred to in sub-paragraph (i) above were paid into the relevant accounts referred to in paragraph 248 of the defence and does not otherwise admit the allegations;
  - iii. in respect of sub-paragraph (c) ~~does not admit~~ denies the allegation;
  - iv. in respect of sub-paragraph (d) says that up until 18 January 1962 money was withdrawn from the relevant accounts referred to in paragraph 248 as set out in paragraph 237(j) of the defence and otherwise denies the allegations;
  - v. in respect of sub-paragraph (e) says that withdrawal from the relevant accounts referred to in paragraph 248 of the defence was required to occur in accordance with the terms of the 1939 Act and the 1945 regulations;
  - vi. in respect of sub-paragraph (f) says:
    - 1. it refers to the matters at paragraph 237(a) – (f) of the defence and says that thereby the Applicant was given information of the kind alleged in sub-paragraph (f)(v) of the ASOC;
    - 2. it otherwise has no knowledge of the balance of the matters contained in this sub-paragraph. All the protectors and superintendents from Hopevale and Palm Island in the period between 1954 and 18 January 1962 are deceased;
    - 3. it does not admit the balance of the allegations contained in this sub-paragraph;
  - vii. denies the allegation in sub-paragraph (g) and refers to and repeats the matters set out at paragraphs 237, 238, 241 and 272 to 273 and 275 of the defence;
  - viii. denies the allegation in sub-paragraph (h) and refers to and repeats the matters set out at paragraphs 233A, 237, 238, 241, 256(g) and 272 to 273 and 275 of the defence;.
5. As to paragraph 5 of the ASOC:
- a. the Respondent does not know the identity of any person who is a Group Member and so it cannot admit the allegation contained in paragraph 5;
  - b. the Respondent does not admit paragraph 5.

## B. Respondent

6. The Respondent admits the allegation in paragraph 6 of the ASOC.

## C. The Director of Native Affairs

7. The Respondent denies the allegation contained in paragraph 7 of the ASOC and says that:

- a. section 6(1) of the 1939 Act provided that a Director of Native Affairs, subject to the Minister, shall be charged with the administration of that Act; and
- b. 'Director of Native Affairs' was defined in section 4 of the 1939 Act as '*the Director of Native Affairs appointed under the provisions of this Act: the term shall also include the Deputy Director of Native Affairs and the officer (if any) appointed as Assistant Director of Native Affairs so far as may be necessary to enable either such officer to duly do or execute any power, authority, function or jurisdiction of the Director which may be legally done or executed by him.*'

8. The Respondent denies the allegation contained in paragraph 8 of the ASOC and says that:

- a. section 4(1) of the Islander Act provided that the Director, subject to the Minister, shall be charged with the administration of that Act; and
- b. 'Director' was defined in section 3 of the Islander Act as 'The Director of Native Affairs appointed under '*The Aboriginals Preservation and Protection Act of 1939*' and charged with the administration of this Act: the term includes the Deputy Director of Native Affairs or any officer who may be appointed as Assistant Director of Native Affairs.

9. As to paragraph 9 of the ASOC the Respondent:

- a. admits the 1965 Act repealed the 1939 Act and the Islander Act;
- b. admits the allegations contained in paragraph 9(a) but says further that:
  - i. the 1965 Act provided in section 9 that it was to be administered by the Minister and, subject to him, by the Director, the Deputy Director, district officers and such other officers as may from time to time be appointed by the Governor in Council for the purposes of the 1965 Act;
  - ii. the terms 'Director' and 'District officer' were defined terms in section 5 of the 1965 Act; and
  - iii. the 1965 Act provided for the appointment of a person as 'Deputy Director' in section 11 of the 1965 Act;

- c. admits the allegation contained in paragraph 9(b).
10. The Respondent admits the allegation in paragraph 10 of the ASOC and says further that, by section 10(3) of the 1967 Amendment Act, with respect to the exercise of any of its powers and with respect to any matter arising in connection therewith the corporation sole thereby created was provided with all the privileges, rights and remedies of the Crown.
  11. The Respondent admits the allegation in paragraph 11 of the ASOC.
  12. The Respondent admits the allegation in paragraph 12 of the ASOC.
  13. The Respondent admits the allegation in paragraph 13 of the ASOC.
  14. As to paragraph 14 of the ASOC the Respondent:
    - a. admits that the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld)* altered the name of the said corporation to the “Aboriginal and Islander Affairs Corporation”; and
    - b. does not otherwise plead to the balance of that paragraph as it contains no allegations against it and does not adopt the definition of “the Director” contained in the ASOC.
  15. As to paragraph 15 of the ASOC the Respondent:
    - a. admits the Director, the protectors and superintendents for the Districts, reserves and missions were servants or agents of the Respondent and acted for and on behalf of the Respondent in respect of the discharge of their duties under the 1939 Act, the 1965 Act or the Islander Act;
    - b. cannot plead further to the allegations because paragraph 15 of the ASOC does not plead the particular acts said to be done for and on behalf of the Respondent.

#### **D. The Applicant**

16. As to paragraph 16 of the ASOC the Respondent:
  - a. admits the allegation contained in sub-paragraph (a);
  - b. admits the allegation contained in sub-paragraph (b);
  - c. admits the allegation contained in sub-paragraph (c);
  - d. admits that from 1954 the Applicant had his financial affairs compulsorily managed in accordance with the 1939 Act and regulations but denies that this continued until 1964 because by certificate of exemption no 2/62 the Applicant was exempt from the 1939 Act from 18 January 1962 and the Applicant acknowledged receipt of the certificate of exemption on 26 February 1962;

- e. admits the allegations contained in sub-paragraph (e) and says further that his employment away from Hopevale was not continuous;
- f. admits the allegation contained in sub-paragraph (f) and further says that paragraphs 159 and 163 of the ASOC are inconsistent with this allegation and are thereby prejudicial and embarrassing;
- g. admits the allegation contained in sub-paragraph (g);
- h. as to sub-paragraph (h):
  - i. says that the Applicant was exempted from the 1939 Act by exemption certificate No 2/62 which he acknowledged receipt of in writing at Kalinga Station on 26 February 1962;
  - ii. says that it is in possession of a letter dated 9 February 1962 from K.F.C. Tanzer for the Protector of Aborigines to the Director, Department of Native Affairs which states in part: “ ... on 19 December 1961, [Anna May Pearson], her husband and family travelled from Coen to Cooktown where she is now believed to be residing. As far as can be ascertained, this woman does not intend to return to this Protectorate ...”;
  - iii. says that it is in possession of a letter dated 29 August 1962 from the Applicant addressed from Kalinga Station, Laura, in which he states in part: “ .. my wife and I and two kids came out from Palm Island Settlement, that was in September 1961 ...”;
  - iv. says that it is in possession of a letter dated 5 September 1962 from the Director of Native Affairs to the Applicant addressed to Kalinga Station, Laura, which states in part: “ ... your wife has not received any endowment in respect to your to children since you left Pam Island ... you have not kept the Department informed of your movements ... you informed [the Protector of Aborigines, Laura] that you were leaving Kalinga Station on the 14<sup>th</sup> June and travelling to Cairns ... it is now noted that you are still at Kalinga Station. Do you intend to remain there ...”
  - v. in the premises of i – iv does not know and cannot admit the allegations contained in sub-paragraph (h);
- i. as to sub-paragraph (i):
  - i. admits the allegation contained in sub-sub paragraph (i)(i);
  - ii. does not know and so cannot admit the balance of the allegations contained in sub-paragraph (i);

- j. admits the allegation contained in sub-paragraph (j);
  - k. does not know and so cannot admit the allegations contained in sub-paragraph (k);
  - l. denies the allegation contained in sub-paragraph (l) because the Applicant was educated to Grade 5.
17. The Respondent admits the allegation contained in paragraph 17 of the ASOC.
18. The Respondent denies the allegations contained in paragraph 18 of the ASOC because the Applicant:
- a. was exempt from the 1939 Act by Certificate of Exemption 2/62 dated 18 January 1962;
  - b. Certificate of Exemption 2/62 contained no conditions;
  - c. acknowledged in writing receipt of Certificate of Exemption No 2/62 at Kalinga Station on 26 February 1962; and
  - d. was thereby exempt from the operation of the 1939 Act from 18 January 1962.

## E. Legislation

### ***Applicable dates***

19. The Respondent denies the allegation in paragraph 19 of the ASOC because:
- a. section 5(1) of the 1939 Act provided “*The purposes of this Act shall be the preservation and protection of aboriginals in the State of Queensland*”; and
  - b. ‘aboriginal’ was a term with a specific meaning within the 1939 Act as set out in section 5(2) of the 1939 Act.
20. The Respondent admits the allegations contained in paragraph 20 of the ASOC.

### 20A. The Respondent says in respect of paragraph 20A of the ASOC that:

- a. it denies the allegations contained in subparagraph (a) thereof as it does not set out in full what is provided for in the opening words of section 12 which provides the Governor in Council with power to relevantly: “... from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to further and carry out the objects and purposes of this Act and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency”;

- b. it admits the allegations contained in subparagraph (b);
- c. it admits the allegations contained in subparagraph (c);
- d. it admits the allegations contained in subparagraph (d);
- e. further, s 12(1) of the 1939 Act provides regulation making power for “*Defining the duties and powers of superintendents*”;
- f. further, s 12(6) of the 1939 Act provides regulation making power for “*Regulating the employment of aboriginals on vessels and elsewhere*”;
- g. further, s 12(8) of the 1939 Act provides regulation making power for “*Prescribing the conditions on which aboriginal children may be apprenticed or placed in service*”; and
- h. further, s 12(12) of the 1939 Act provides regulation making power for “*All matters required or permitted by this Act to be prescribed*”.

21. The Respondent denies the allegation contained in paragraph 21 of the ASOC because:

- a. the Islander Act does not contain a provision stating the purpose for which the Queensland parliament enacted it; and
- b. section 5(1) of the 1939 Act is not, by section 21 of the Islander Act, applied and extended for the purposes of the Islander Act.

22. The Respondent admits the allegations contained in paragraph 22 of the ASOC.

22A. The Respondent denies the allegations contained in paragraph 22A of the ASOC as it does not set out in full what is provided for in the opening words of section 6 which in fact provides the Governor in Council with power to relevantly: “... from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to further and carry out the objects and purposes of this Act and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency”.

23. As to paragraph 23 of the ASOC the Respondent:

- a. ~~admits the allegation contained in paragraph (a);~~
- b. admits the allegations contained in paragraph (b) and says further that the 1945 regulations were made pursuant to section 12 of the 1939 Act; and

- c. says further that the regulations approved on 23 April 1945 were amended on 23 December 1950, 12 April 1952, 26 March 1955, 11 June 1955, 15 September 1956, 30 March 1957, 23 December 1961, 7 July 1962, and 1 October 1964; and
  - d. says further that on and from 13 September 1956 the 1945 regulations were amended to include regulation 12(5) which provided “The Director is empowered to withdraw from the trust fund or trust funds so deposited for the purpose of the investment of the same by the Treasurer on his behalf in such manner as the Treasurer shall think fit, whether by loan to the Crown, any Crown instrumentality, any local body within the meaning of “The Local Bodies’ Loans Guarantee Acts 1923 to 1936” or otherwise”.
24. As to paragraph 24 of the ASOC the Respondent:
- a. ~~admits the allegation contained in sub-paragraph (a);~~
  - b. denies the Islander regulations were in force until 28 April 1965 because they were in force until 28 April 1966 and otherwise admits the allegations contained in sub-paragraph (b) and says further that the Islander regulations were made pursuant to section 6 of the Islander Act.
25. As to paragraph 25 of the ASOC the Respondent:
- a. denies the 1965 Act and regulations were in force from 28 April 1965 but says each of them was in force from 28 April 1966;
  - b. admits the 1965 Act and regulations was in force until 4 December 1972.

### ***Protectors and superintendents***

26. The Respondent denies the allegation contained in paragraph 26 of the ASOC and says the 1939 Act:
- a. contained a definition of ‘District’ in section 4 being: “a district proclaimed under the provisions of this Act”;
  - b. provided that all districts for Aboriginals existing at the commencement of the 1939 Act and not situated upon a Torres Strait island within the meaning of “*The Torres Strait Islanders Act of 1939*” shall remain as such and be subject to the 1939 Act in all respects;
  - c. provided in section 5(1), as its purpose, the “preservation and protection of aboriginals in the State of Queensland”;
  - d. provided in section 8(1) that the Governor in Council may by Proclamation declare any portion or portions of the State to be district or districts for the purposes of the Act; and

- e. provided in section 8(2) that the Governor in Council may from time to time appoint fit and proper persons to be severally called 'protectors of aboriginals' who shall, subject to the Director, have and exercise such powers and duties as may be prescribed and be responsible to the Director for the administration of the Act in the districts to which they are respectively assigned, or in the case of a protector, specially authorised by the Director in the district or districts to which such special authority relates.
27. The Respondent denies the allegation contained in paragraph 27 of the ASOC and says the 1939 Act:
- a. contained a definition of 'Reserve' in section 4 being: "any reserve heretofore or hereafter granted in trust or reserved for sale or lease by the Governor in Council for the benefit of the aboriginals of the State under the provisions of any law in force in Queensland relating to Crown lands";
  - b. provided in section 3(a) that all reserves existing at the commencement of the Act and not situated upon a Torres Strait island within the meaning of "*The Torres Strait Islanders Act of 1939*" shall remain as such and be subject to the 1939 Act in all respects; and
  - c. provided in section 9(1) that every reserve was subject to the 1939 Act.
28. The Respondent denies the allegation contained in paragraph 28 of the ASOC and says the 1939 Act provided in section 9(4) that the Governor in Council may establish on any reserve a settlement for the preservation and protection of Aboriginals.
29. As to paragraph 29 of the ASOC the Respondent:
- a. admits a reserve could be placed under the management and control of a religious organisation;
  - b. says the process for doing this was contained in section 9(3) of the 1939 Act and was by the Governor in Council by an Order in Council; and
  - c. admits the definition of 'Mission Reserve' in the 1945 Regulations was 'a reserve which has been placed under the management and control of a religious organisation under section 9(3) of the Act'.
30. As to paragraph 30 of the ASOC the Respondent:
- a. admits the allegation contained in sub-paragraph (a);
  - b. denies the allegation contained in sub-paragraph (b) because section 8(2) of the 1939 Act provided that the protector was responsible to the Director for the administration of the 1939 Act in the district to which the protector was assigned;

- c. admits a superintendent was appointed to each reserve and was responsible as a protector of aborigines within the reserve but otherwise denies the allegations contained in sub-paragraph (c) because by the superintendent's appointment as a protector, the superintendent was responsible to the Director for the administration of the 1939 Act in the reserve to which the superintendent was appointed; and
  - d. says that the term "Protector" was defined in section 4 of the 1939 Act to include the Director, the Deputy Director of Native Affairs, the Assistant Director of Native Affairs or any person authorised to act in the absence of the Director.
- 31. The Respondent admits the allegations contained in paragraph 31 of the ASOC.
- 32. As to paragraph 32 of the ASOC the Respondent:
  - a. admits the allegation contained in sub-paragraph (a);
  - b. admits the allegation contained in sub-paragraph (b) but says the definition of District officer in section 5 of the 1965 Act expressly included the Director and Deputy Director; and
  - c. admits the allegation contained in sub-paragraph (c).
- 33. The Respondent admits the allegations contained in paragraph 33 of the ASOC.
- 34. The Respondent denies the allegations contained in paragraph 34 of the ASOC because:
  - a. the whole of Great Palm Island exclusive of Special Leases 1788 and 1789 and an esplanade along their frontages was gazetted as a reserve on 20 June 1914; and
  - b. by order in council dated 14 July 1938 Great Palm Island, Fantome, Curocoa, Eclipse, Falcon, Esk, Brisk and Havannah Islands of the Palm Island Group comprising an area of about 20,400 acres were set apart as a reserve.
- 35. As to paragraph 35 of the ASOC the Respondent:
  - a. admits the allegations in respect of Hopevale for the period 1954 to 18 January 1962, when the Applicant was at Hopevale;
  - b. admits the allegations in respect of Palm Island for the period 1960 to 18 January 1962, when the Applicant was at Palm Island;
  - c. otherwise does not admit the balance of the allegations contained therein and says they are not relevant to the Applicant.

36. The Respondent ~~does not~~ admits the allegations contained in paragraph 36 of the ASOC and says further it refers to and repeats the matters set out at paragraph 8 of the defence. they are not relevant to the Applicant.
37. The Respondent ~~does not admit the allegation contained in paragraph 37 of the ASOC as it is not relevant to the Applicant.~~ denies the allegations contained in paragraph 37 of the ASOC and says:
- a. section (1)(4)(a) of the Islander Act provided:

“All reserves under “The Aboriginals Protection and Restriction of the Sale of Opium Acts 1897 to 1934” existing upon any Torres Strait island at the commencement of this Act shall be reserves under this Act and subject to this Act in all aspects”.
  - b. “reserve” under the Islander Act was defined in section 3 of that Act as “Any Torres Strait Island or part of a Torres Strait Island heretofore or thereafter granted in trust or reserved from sale or lease by the Governor in Council for the benefit of islanders under the provision of any law in force in Queensland relating to Crown lands”.

### **Defined terms**

38. As to paragraph 38 of the ASOC the Respondent:
- a. in respect of sub-paragraph (a):
    - i. admits the allegation contained in paragraph (a)(i):
    - ii. admits the allegation contained in sub-paragraph (a)(ii) and says that at the end of the words set out in that sub-paragraph the definition continued “as defined in paragraph (i) hereof”;
    - iii. admits the allegation contained in sub-paragraph (a)(iii) and says that at the end of the words set out in that sub-paragraph the definition continued “after trial to be in need of the protection of this Act, and who is ordered to be so protected”;
    - iv. admits the allegation contained in sub-paragraph (a)(iv) and says that the definition also included the words “as herein before defined” after where the word ‘aboriginal’ first appears and the words “as so defined” after where the word ‘aboriginal’ next appears in that sub-paragraph;
    - v. admits the allegation contained in sub-paragraph (a)(v);

- vi. admits the allegation contained in sub-paragraph (a)(vi) and says that at the end of the words set out in that sub-paragraph the definition continued “as herein before defined”;
  - b. in respect of sub-paragraph (b) admits the allegations contained therein.
39. The Respondent admits the allegations contained in paragraph 39 of the ASOC.

### ***Employment of Aborigines and Islanders***

40. As to paragraph 40 of the ASOC the Respondent:
- a. admits the allegation contained in sub-paragraph (a);
  - b. ~~admits~~ by reason of sub-paragraph (e) hereof denies the allegation contained in sub-paragraph (b), ~~save that section 14(3) of the 1939 Act used the word ‘aboriginal’ rather than ‘aborigine’;~~ and says section 14(3) of the 1939 Act provided:
 

“Every person employing an aboriginal under the provisions of this Act shall forthwith upon permission being granted by a protector enter into a written agreement with such aboriginal in the presence of such protector, a person authorised by him, a justice of the peace, a member of the Police Force, or an officer of the Public Service. Every agreement relating to the employment of aboriginals under this Act shall be in the prescribed form and shall contain particulars of the names of the parties thereto, the nature of the service to be rendered by such aboriginal, the period during which such employment is to continue, the wages or other remuneration to be paid or given by the employer for such service, the nature of the food and accommodation to be provided for such aboriginal, and any other conditions which may be provided ...”;
  - c. denies the allegation contained in sub-paragraph (c) because neither section 14(3) of the 1939 Act nor section 15(2) of the 1939 Act required the employment agreement to be signed as alleged therein;
  - d. denies the allegation contained in sub-paragraph (d) because section 14(3) provided that an employment agreement can be attested by a protector or a person authorised by the protector before whom it is entered into;
  - e. ~~admits~~ denies the allegation contained in sub-paragraph (e) save on the basis that section 14(4) applied to permits and not to employment agreements and says that section 14(4) of the 1939 Act ~~used the word ‘aboriginal’ rather than ‘aborigine’ and provided further that the protector may fix the period~~ provided:

*“Every permit to employ an aboriginal shall remain in force for such period not exceeding twelve months as the protector may fix”:*

- f. denies the allegation contained in sub-paragraph (f) because section 14(5) of the 1939 Act provided that the wages payable to an Aboriginal employed under the 1939 Act shall be not less than prescribed, unless otherwise approved by the Director;
- g. denies the allegation contained in sub-paragraph (g) because section 14(5) of the 1939 Act provided that the food, accommodation and other necessaries shall not be of lower standard than prescribed, unless otherwise approved by the Director;
- h. denies the allegations contained in sub-paragraph (h) because section 14(6) of the 1939 Act provided that a protector may direct employers or any employer to pay the whole or any portion of the wages of Aboriginals to himself or some other person on his behalf and any employer who fails to observe such direction shall be deemed to have not paid such wages;
- i. says that the 1939 Act also provided, in respect of the employment of Aboriginals:
  - i. in section 14(2) that a protector may refuse to permit any person to employ an Aboriginal;
  - ii. in section 14(3) that the employment agreement shall contain particulars of the names of the parties thereto, the nature of the service to be rendered by the Aboriginal, the period during which the employment is to continue, the wages or other remuneration to be paid or given by the employer for such service, the nature of the food and accommodation to be provided for such Aboriginal and any other conditions which may be prescribed;
  - iii. in section 14(7) that an employer of an Aboriginal shall permit any protector or person authorised by the protector to have access to the Aboriginal at all reasonable times for the purpose of making such inspection and inquiries as the protector may deem necessary;
  - iv. in section 14(8) that any permit or agreement to employ an Aboriginal may be cancelled at any time by a protector by writing under his hand; and
  - v. in section 14(10) that a protector may investigate any complaint made by either an employer or the employee of any breach of an agreement to employ an Aboriginal or any complaint made by any employee under such agreement of ill treatment by his employer; and

- vi. in section 15, on the terms set out therein, for the employment of  
Aboriginals on vessels.
41. The Respondent admits the allegations contained in paragraph 41(a) – (f) of the ASOC save that the reference to section 39 in sub-paragraph (b) should be a reference to section 33 of the 1939 Act- and says further:
- a. that “Superintendent” was to mean the Island Council; and
  - b. it denies that references in the ASOC to the employment of Aboriginals,  
Aboriginal property and Aboriginal wages can accordingly be read as also  
including the employment of Islanders, Islanders’ property and Islanders’ wages  
with the altered meanings of the words and phrases set out in paragraph 41 by  
reason of the following differing provisions:
    - i. the 1945 regulations were made pursuant to the 1939 Act only and did not  
apply to Islanders;
    - ii. Forms 7 and 8 of the Schedule to the 1945 regulations did not apply to  
Islanders;
    - iii. neither the Islander Act nor the Islander regulations made any provisions  
for the payment of pocket money to Islanders;
    - iv. section 16 of the Islander Act provided for the establishment of the Island  
Fund to consist of all monies received in respect of the island tax and all  
monies received in respect of fees, charges, fares, rents, dues, fines  
imposed by the island court and grants (if any) and be applied to  
expenditure incurred by the council in the exercise and performance of the  
functions of island government under the Islander Act;
    - v. section 17(v) of the Islander Act provided, relevantly, that the protector  
shall, if required by the council, as far as practicable, collect the island tax  
by deductions from the earnings of Islanders;
    - vi. there was no provision for contribution by Islanders to a welfare fund in:
      - A. the Islander Act;
      - B. the Islander regulation; or
      - C. the 1939 Act;
    - vii. Islanders did not contribute to the Welfare Fund during the Claim Period;
    - viii. the pleading is embarrassing in so far as it refers to Aboriginals or Islanders  
after the repeal of the 1939 Act and the Islander Act;

- ix. the 1966 regulations and Form 14 do not refer to “pocket money”; and
- x. accordingly, to the extent the Respondent admits a paragraph of the ASOC which refers only to Aboriginals, such admission relates only to Aboriginals.

42. The Respondent admits the allegation contained in paragraph 42 of the ASOC and says further that the 1945 regulations (and thereby the prescribed form in Form 7 of the Schedule):

- a. did not commence until Monday 23 April 1945; ~~and~~
- b. were repealed on 28 April 1966; and
- c. did not apply to Islanders as the 1945 regulations were made under the 1939 Act and, further, by regulation 1, were to be sighted as “The Aboriginal Regulations of 1945”.

43. The Respondent says in respect of the allegations contained in paragraph 43 of the ASOC:

- a. it refers to and repeats paragraph 40(f) of the defence;
- b. that Form 8 of the 1945 regulations:
  - i. did not commence until Monday 23 April 1945;
  - ii. was repealed and replaced with another Form 8 which came into operation on 1 January 1951;
  - iii. was again repealed and replaced with another Form 8 which came into operation on 1 July 1952;
  - iv. was again repealed and replaced with another Form 8 which came into operation on 30 March 1957;
  - v. was again repealed and replaced with another Form 8 which came into operation on 21 December 1961;
  - vi. was again repealed and replaced with another Form 8 which came into operation on 7 July 1962;
  - vii. was again repealed and replaced with another Form 8 which came into operation on 1 October 1964; and
  - viii. was repealed when the 1945 regulations were repealed on 28 April 1966; and
- c. did not apply to Islanders as the 1945 regulations were made under the 1939 Act.

44. The Respondent ~~does not admit~~ says in respect of the allegations in paragraph 44 of the ASOC; ~~and says they are not relevant to the Applicant.~~
- a. it refers to and repeats paragraphs 40(f) and 41 of the defence;
  - b. it refers to and repeats paragraph 42(c) of the defence;
  - c. that the Islander regulations:
    - i. commenced on 1 August 1946 with separate tables of wage rates applicable depending on whether an Islander was employed in the Trochus Industry or employed in the Pearl Shell Industry;
    - ii. were repealed on 5 April 1951 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry and making provision in respect of the employment of Aboriginals on vessels being:
      - A. for the Director to issue permits to recruit Aboriginals on the East Coast of the Peninsula north of Cooktown and on the West Coast of the Peninsula and when Aboriginals are secured, the Director may permit them to work for a period of 90 days before signing Articles at Thursday Island, conditional that the wage set out at paragraph (a) of the regulation shall operate from the day the Aboriginal joins the vessel;
      - B. Aboriginals recruited at Cooktown shall be discharged at Cooktown and wages paid to the Protector of Aboriginals Cooktown;
      - C. Aboriginals discharged at Cairns shall be paid wages in the presence of the Protector of Aboriginals Cairns or his accredited representative;
      - D. Aboriginals discharged at ports south of Cairns shall be paid off in the presence of the Protector of Aboriginals in that town or his accredited representative;
      - E. employees engaged in the Thursday Island area shall report to the Director and the Shipping Master there when any member of the crew leaves the vessel in circumstances other than on discharge from Articles before the Shipping Master and any failure to so report in writing makes the Captain responsible for payment of wages during the absence of such member from the crew of the vessel;

F. employees engaged at ports other than Thursday Island shall similarly advise the Protector of Aboriginals in those ports. Aboriginals engaged at southern ports shall be returned to their home ports on discharge, otherwise their return shall be a charge against the employer;

- iii. were repealed on 10 April 1952 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- iv. were repealed on 4 June 1953 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- v. were repealed on 15 April 1954 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- vi. were repealed on 4 August 1955 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- vii. were repealed on 15 March 1956 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- viii. were repealed on 19 December 1957 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- ix. were repealed as to Clause 3(a)(iii) only on 1 May 1958 and replaced with a new Clause 3(a)(iii) in regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry;
- x. were repealed on 3 December 1959 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry; and
- xi. were repealed on 6 July 1961 and replaced with regulations made pursuant to the Islander Act and the 1939 Act containing wage rates for Islanders and Aboriginals employed in the Trochus Shell Industry.

45. The Respondent admits the allegations contained in paragraph 45 of the ASOC, and refers to and repeats the matters set out in paragraphs 43(b), 43(c) and 44(c) of the defence.
46. As to paragraph 46 of the ASOC the Respondent:
- a. admits the allegations contained in sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) save that this admission does not apply to the employment of Islanders as Form 7 of the 1945 regulations did not apply to Islanders;
  - b. denies that Form 7 required that the gross wage to be paid to the Aboriginal worker was to be included in the form, because the Form 7 did not so provide. The Form 7 provided for the statement of the gross wage;
  - c. denies the Form 7 required that any direction by the protector or superintendent concerning the portion of wages payable to the protector or superintendent on behalf of an Aboriginal worker be included because the Form 7 did not so provide. The Form 7 provided for a direction from the protector in respect of the proportion of wages of the Aboriginal person payable to the protector.

46A. The Respondent says in respect of paragraph 46A of the ASOC that it denies the allegations contained in that paragraph that relate to Islanders as the 1945 regulations did not apply to Islanders and it repeats and relies on paragraph 42(c) of the defence and otherwise:

- a. it admits the allegations contained in sub-paragraph (a):
- b. it admits the allegations contained in sub-paragraph (b):
- c. it denies the allegations contained in sub-paragraph (c) and says that the Form 7 only required the Protector to sign it if the Protector was giving the direction contemplated within the terms of the Form:
- d. it denies the allegations contained in sub-paragraph (d) and says the Form 7 provided:
  - i. for the witness to be a witness to the signature of the employee;
  - ii. for the witness to sign to the following statement: “The above Agreement was explained in my presence to the said employee who appeared to understand the same and it was then signed by him by affixing his signature and right thumb print thereto”; and
  - iii. for the witness to be “(Protector, person authorised by the protector justice of the peace, member of the police force or officer of the public service)”.

46B. The Respondent says in respect of paragraph 46B of the ASOC that:

- a. it denies the allegations contained in that paragraph that relate to Islanders as the 1945 regulations did not apply to Islanders and it repeats and relies on paragraph 42(c) of the defence; and
- b. otherwise it denies the allegations contained therein and says:
  - i. section 28(1) of the 1945 regulations provided “Every aboriginal shall, when required by the protector or superintendent, perform, according to his ability, any work necessary for the development and maintenance of the reserve, settlement or mission reserve as directed by the protector or superintendent; provided that an aboriginal shall not be called upon to work in excess of thirty-two hours in any one week without remuneration”;
  - ii. section 28(1) appears within Part II of the 1945 regulations which is entitled “Administration, Control and Development of Reserves, Settlements and Mission Reserves”; and
  - iii. by section 31 of the 1945 regulations food was issued to Aboriginals on reserves, settlements and mission reserves in accordance with ration scales authorised by the Director.

47. The Respondent denies the allegations contained in paragraph 47 and says:

- a. by section 8(1) of the 1965 Act assisted Aborigines were:
  - i. an Aborigine who at the commencement of the Act was resident or usually resident upon a reserve for Aborigines;
  - ii. an Aborigine, part-Aborigine or person having a strain of Aboriginal blood declared by the Director to be an assisted Aborigine and every child of such a person named in such a declaration;
  - iii. an Aborigine, part-Aborigine or person having a strain of Aboriginal blood declared by the Magistrates Court pursuant to the 1965 Act to be in need of care under the 1965 Act and every child of such a person named in such a declaration;
  - iv. an Aborigine or part-Aborigine in respect of whom a Judge or Stipendiary Magistrate orders pursuant to the 1965 Act that care under the 1965 Act be provided; and
  - v. a child born by or to an assisted Aborigine which child is declared by the Director pursuant to the 1965 Act to be an assisted Aborigine;
- b. by section 8(2) assisted Islanders were:

- i. an Islander who at the commencement of the Act was resident or usually resident upon a reserve for Islanders or in a community of Islanders upon a reserve for Aborigines;
  - ii. an Islander declared by the Director to be an assisted Islander and every child of such a person named in such a declaration;
  - iii. an Islander or person having a strain of Island blood declared by the Magistrates Court pursuant to the 1965 Act to be in need of care under the 1965 Act and every child of such a person named in such a declaration;
  - iv. an Islander in respect of whom a Judge or Stipendiary Magistrate orders pursuant to the 1965 Act that care under the 1965 Act be provided; and
  - v. a child born by or to an assisted Islander which child is declared by the Director pursuant to the 1965 Act to be an assisted Islander;
- c. section 60(11) of the 1965 Act conferred a power on the Governor in Council to make regulations for the employment of assisted Aborigines and assisted Islanders on vessels and elsewhere;
  - d. section 71(1) of the 1966 Regulations provided that a District Officer or a Manager may require that an agreement covering the employment of an assisted person be drawn up in Form 14 of the Schedule;
  - e. section 73 of the 1966 Regulations provided, relevantly, that a District Officer or a Manager may, by notice in writing to an employer of an assisted Aborigine or assisted Islander, require that the whole or such part as he may specify of the wages, allowances or other moneys due to an assisted person to be paid to him as Trustee for and on behalf of such assisted person;
  - f. section 74 of the 1966 Regulations provided relevantly, every assisted person employed in pursuance of these Regulations shall be paid at a rate not less than that set out in Form 15 in the Schedule except in the case of any persons employed under an Award from which he is not excluded;
  - g. section 96 of the 1966 Regulations provided that an employer shall maintain an exact record of all wages, allowances and other moneys due to any employee and obtain a satisfactory quittance from such employee for any payment made in respect thereof. Any such payment must be made in the presence of an independent witness, who shall sign his name as witness;
  - h. section 97 of the 1966 Regulations provided that where the District Officer or Manager required the whole or any portion of the wages, allowances or other moneys due to any assisted person to be paid to him by an employer, the

employer was required to comply with the requirement and the District Officer or Manager's official receipt would be good discharge to such an employer for the payment;

- i. in the premises of a – h above the system regarding the employment of Aboriginals provided for in the 1965 Act and the 1966 Regulations:
  - i. did not apply to all Aborigines or Islanders;
  - ii. did not mandate that an agreement in the form in the 1966 Regulations must be entered into in respect of the employment of every assisted person;
  - iii. did not mandate that monies payable by the employer were to be paid to the District Officer or Manager;
  - iv. provided for the employer accounting to the employee for money due to the employee unless an agreement had been entered into; and
  - v. was not thereby the same system as that under the 1939 Act or the Islander Act.

### ***Pocket money***

48. As to paragraph 48 of the ASOC the Respondent:
  - a. admits the allegations so far as they are allegations in respect of the 1945 regulations;
  - b. says that the 1966 regulations and Form 14 do not refer to 'pocket money'; ~~and~~
  - c. says that as the Applicant was exempt on 18 January 1962:
    - i. the 1945 regulations did not apply to him thereafter; and
    - ii. the 1966 regulation does not apply to him: and
  - d. says the Islander regulations did not provide for the payment of pocket money.
49. As to paragraph 49 of the ASOC the Respondent:
  - a. admits the allegations so far as they are allegations in respect of the 1945 regulations;
  - b. says the 1945 ~~R~~regulations did not apply to the Applicant after 18 January 1962;
  - c. admits the allegations in sub-paragraphs (a) and (c) in respect of the 1966 regulations;

- d. says in respect of sub-paragraph (b) that the 1966 regulations required the employer to 'obtain a satisfactory quittance from such employee' and otherwise denies the allegations contained therein;
- e. denies the allegation in sub-paragraph (d) because the 1966 regulations contain no such requirement; and
- f. says further that the 1966 regulations on this point are irrelevant to the Applicant as he was exempt on 18 January 1962-; and
- g. says the Islander regulations did not provide for the payment of pocket money.

50. The Respondent:

- a. admits the allegation contained in sub-paragraph (a) of paragraph 50 of the ASOC-; and
- b. denies the allegation contained in sub-paragraph (b) of paragraph 50 of the ASOC and says:

- i. Regulation 73(2) of the 1945 regulations provided:

"In the case of an employer who, with the consent of the protector, does not pay pocket money to any aboriginal employee weekly, such employer shall keep a proper record of any such moneys becoming due and payable and he shall, on the application of any such employee, pay such employee the whole or any part of the pocket money then due, as the employee may demand":

- ii. Regulation 73(4) of the 1945 regulations provided:

"Every employer who fails to pay any wages, including pocket money, as provided for under an agreement on the due date shall be deemed to have committed a breach of such agreement, and such agreement may be cancelled and the employer may be sued for any moneys remaining due".

50A. The Respondent denies the allegations in paragraph 50A of the ASOC and says:

- a. Section 16(1)(b) of the 1939 Act provided:

"The protector shall undertake the protection and management of the property of all aboriginals in the district assigned to him and, subject to the approval of the Director may – in his own name sue for, recover or receive any money or other property due or belonging to an aboriginal, or damages for any conversion of or injury to any such property":

b. Section 16(3)(d) of the 1939 Act provided:

“No person shall have any right or remedy to or against any property or money held by a protector for or on behalf of any aboriginal or any estate of a deceased or missing aboriginal on account of any debt due and owing to such person by such aboriginal or deceased or missing aboriginal for or on account of any money lent or goods supplied to him on credit unless such money or goods have been so lent or supplied with the prior consent of a protector.”

### **Exemption from statutory control**

51. The Respondent admits the allegation contained in paragraph 51 of the ASOC.
52. The Respondent admits the allegations contained in paragraph 52 of the ASOC.
53. The Respondent does not admit the allegations contained in paragraph 53 of the ASOC and says the Applicant was issued a certificate of exemption on 18 January 1962 and the 1965 Act has no application to him and further says the pleading is prejudicial and embarrassing by use of the words “a similar system”.

53A. The Islander Act:

- a. by section 1(4)(a) of the Islander Act applied only to ‘Islanders’ within the meaning of section 3 of the Islander Act when they were on a ‘Reserve’ within the meaning of section 3 of the Islander Act or on a vessel within the terms of section 1(3) of the Islander Act;
- b. defined ‘Reserve’ relevantly as any Torres Strait island or part of a Torres Strait Island heretofore or hereafter granted in trust or reserved from sale or lease by the Governor in Council for the benefit of Islanders under the provision of any law in force in Queensland relating to Crown lands;
- c. did not apply to Thursday Island because Thursday Island was not a ‘Reserve’ within the meaning of section 3 of the Islander Act;
- d. did not apply to Islanders who were employed on Thursday Island;
- e. did not otherwise apply to persons who came within the definition of ‘Islander’ within the meaning of section 3 of the Islander Act;
- f. did not otherwise apply within the State of Queensland; and
- g. in the premises of (a) to (f) did not contain a provision for exemption of an ‘Islander’ from the provisions of the Islander Act.

**Property**

54. The Respondent admits the allegations contained in paragraph 54 of the ASOC save that the word used in section 16(1) of the 1939 Act is 'aboriginal' not aborigine and the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 above).
55. The Respondent admits the allegation contained in paragraph 55 of the ASOC.
56. The Respondent does not admit the allegation contained in paragraph 56 of the ASOC and says the Applicant was issued a certificate of exemption on 18 January 1962 and the 1965 Act has no application to him and further says the pleading is prejudicial and embarrassing by use of the words "a similar system".
57. As to paragraph 57 of the ASOC the Respondent:
- a. admits the allegations made in respect of the 1939 Act and the Islander Act;
  - b. ~~does not~~ admits the allegations made in respect of the 1965 Act and but says the Applicant was issued a certificate of exemption on 18 January 1962 and the 1965 Act has no application to him.

**Trust funds**

58. As to paragraph 58 of the ASOC the Respondent:
- a. admits the allegations insofar as they concern the 1945 regulations, save that the word used in section 12(1) and (2) of the 1945 regulations is 'aboriginal' not aborigine and the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 of the defence);
  - b. admits the allegations so far as they concern the 1966 regulations: and
  - c. says the Islander regulations contained no such requirement.
59. As to paragraph 59 of the ASOC the Respondent:
- a. admits the allegations in so far as they concern the 1945 regulations, save that:
    - i. the word used in section 12(3) of the 1945 regulations is 'aboriginal' not aborigine and the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 of the defence);
    - ii. the words used in section 12(3) of the 1945 regulations is 'such fund or funds' not 'said trust fund or funds';
  - b. says further that:

- i. section 13 of the 1945 regulations provided that no withdrawal of cash from an Aboriginal's Savings Bank Account in any one sum exceeding £10 shall be made without the approval of the Director being first obtained; and
  - ii. section 13 of the 1945 regulations provided that the reason for any withdrawal exceeding £2 must be stated when reporting the transaction to the Head Office;
  - iii. section 13 of the 1945 regulations was amended with effect from 11 June 1955 such that the sum referred to in sub-paragraph (i) became £20 and the sum referred to in sub-paragraph (ii) became £10 from that date;
- c. admits the allegations insofar as they concern the 1966 regulations save that the words used in section 5(3) of the 1966 regulations is 'such fund or funds' not 'said trust fund or funds':- and
- d. says the Islander regulations contained no such provision.

60. As to paragraph 60 of the ASOC the Respondent:

- a. admits the allegations insofar as they concern the 1945 regulations, save that:
  - i. the word used in section 12(4) of the 1945 regulations is 'aboriginal' not aborigine and the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 of the defence);
  - ii. the words used in section 12(4) of the 1945 regulations is 'such fund or funds' not 'trust fund or funds';
- b. admits the allegations insofar as they concern the 1966 regulations save that the words used in section 5(4) of the 1966 regulations is 'such fund or funds' not 'trust fund or funds':- and
- c. says the Islander regulations contained no such provision.

60A. The Respondent admits the allegations in paragraph 60A of the ASOC save for the reference to "trust fund", which is denied because section 13 of the 1945 regulations referred to withdrawal of cash from an Aboriginal's "savings bank account" and says further that the Islander regulations contained no such requirement.

60B. The Respondent admits the allegations contained in paragraphs 60B and says further:

- a. the date for the increase was 11 June 1955; and
- b. the Islander regulations contained no such requirement.

### **Welfare fund**

61. The Respondent:

- a. admits the allegation contained in paragraph 61 of the ASOC ~~save that the word used in section 6 of the 1945 regulations is 'aboriginal' not aborigine and the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 above);~~
- b. says further that section 6 of the 1945 regulations required the Aboriginal to be earning wages before they were required to contribute to the Welfare Fund; and
- c. says further that such contributions were authorised by section 12 of the 1939 Act.

62. The Respondent:

- a. admits the allegations contained in paragraph 62 of the ASOC in so far as they apply to Aboriginals other than Aboriginals employed through the Protector, Somerset District, Thursday Island save that the word used in section 6 of the 1945 regulations is 'aboriginal' not aborigine and the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 above):
- b. denies the allegations in respect of Aboriginals employed through the Protector, Somerset District, Thursday Island.

63. The Respondent ~~does not admit~~ denies the allegation contained in paragraph 63 of the ASOC and says ~~the Applicant was not an aboriginal person employed through the Protector, Somerset District Thursday Island and section 7 of the 1945 regulations has no application to him. that:~~

- a. section 7 of the 1945 regulations provided:

*"Contributions from any aboriginal employed through the Protector, Somerset District, Thursday Island shall be at the rate of 5 per centum of the gross earnings of such aboriginal and shall be paid to a welfare fund established by the said Protector with the Commonwealth Savings Bank of Australia for the general benefit of aboriginals in the mission, reserve or district to which the abovementioned aboriginal belongs":*

- b. any contributions so made were made into the Island Fund referred to in paragraph 41(b)(iv) of the defence into a separate ledger in respect of the mission or reserve of the Aboriginal worker; and
- c. in the premises of (a) and (b), says that the use of a combined definition for Welfare Fund Deduction in the ASOC is embarrassing.

64. The Respondent admits the allegations contained in paragraph 64 of the ASOC save that the word used in section 11 of the 1945 regulations is 'aboriginal' not aborigine and

the word 'aboriginal' has a specific meaning as set out in the 1939 Act (and as pleaded at paragraph 38 above).

65. The Respondent admits the allegation contained in paragraph 65 of the ASOC.
66. The Respondent admits the allegations contained in paragraph 66 of the ASOC save that the word "subscribed" in sub-paragraph (a) is in fact "inscribed" in section 9(1) of the 1945 regulations and says further that such payments into the Welfare Fund were required by section 9 of the 1945 regulations.
67. ~~[Blank] The Respondent denies the allegations contained in paragraph 67 of the ASOC because:~~
- ~~a. section 14(1) of the 1939 Act does not so provide;~~
- ~~b. section 10 of the 1945 regulations provides that all contributions payable to the Welfare Fund from the earnings of aboriginals shall be deducted from the wages of such aboriginals by the protector or superintendent and duly accounted for.~~

## F. The Applicant's employment history

68. As to paragraph 68 of the ASOC the Respondent:
- a. denies the allegation contained in sub-paragraph (a) but says that from time to time, in the period from 1954 until 18 January 1962, the Applicant was employed;
- b. admits the allegations s contained in sub-paragraph (b)(i);
- c. says that an employment agreement that was entered into was required to comply with section 14(3) of the 1939 Act;
- d. says that section 14(4) of the 1939 Act expressly referred to a permit to employ an Aboriginal;
- e. says further;
- i. forms in the form of a Permit for Casual Employment (Permit) were used from time to time in the employment of the Applicant and were recorded on the Applicant's ledger cards with the preface P;
- ii. a Permit was used in triplicate;
- iii. a Permit contained the information required in section 14(3) of the 1939 Act being particulars of the:
- A. names of the parties thereto;
- B. nature of the service to be rendered by such Aboriginal;
- C. period during which such employment is to continue;

- D. wages or other remuneration to be given by the employer for such service;
- E. nature of the food and accommodation to be provided for such Aboriginal and any other condition which may be prescribed by providing the employer agrees to comply with the regulations made under “The Aboriginals Preservation and Protection Act of 1939 to 1946”;
- iv. in the premises of (i) - (iii) the employment of the Applicant on a Permit was not invalid; and
- f. otherwise denies sub-paragraph (b)(ii);
- g. in respect of sub-paragraph (c):
- i. admits the allegations in respect of Hopevale for the period 1954 to 1960;
- ii. admits the allegations in respect of Palm Island for the period 1960 – 18 January 1962;
- iii. does not admit the balance of the allegations and says they are not relevant to the Applicant; and
- h. admits the allegation contained in respect of sub-paragraph (d) says that each incident of employment of the Applicant was made with the permission of the superintendent at Hopevale or Palm Island and that there was an employment agreement or a Permit in place and otherwise denies sub-paragraph (d).

### **Starcke Station (1)**

69. (a) The Respondent denies the allegations contained in the Particulars Table paragraph 69 of the ASOC and says that from time to time in the period between 1954 and 18 January 1962 the Applicant was employed as set out in the following table (Applicant’s Employment):

<u>PLACE OF EMPLOYMENT</u>	<u>EMPLOYER</u>	<u>MISSION, SETTLEMENT OR RESERVE</u>	<u>AGREEMENT NUMBER</u>	<u>PERIOD OF EMPLOYMENT</u>	<u>WAGES</u>			<u>PAID/ YES NO</u>	<u>AMOUNT PAID TO SUPERINTENDENT</u>
					<u>GROSS</u>	<u>POCKET MONEY</u>	<u>NET</u>		
<u>Cooktown</u>	<u>Starcke Graziers</u>	<u>Hopevale</u>	<u>275 [indecipherable]</u>	<u>(approximately) 19.5.54 – 20.9.54</u>	<u>£4/- per week</u>	<u>£-/10/- per week</u>	<u>£3/10/- per week</u>	<u>Yes</u>	<u>£67/1/8</u>
<u>Cooktown</u>	<u>Starcke Graziers</u>	<u>Hopevale</u>	<u>20245</u>	<u>1.10.54 for 26 days</u>	<u>£4/- per week</u>	<u>£-/10/- per week</u>	<u>£3/10/- per week</u>	<u>Yes</u>	<u>£15/3/4</u>

<a href="#">Cooktown</a>	<a href="#">Mr Len Elmes</a>	<a href="#">Hopevale</a>	<a href="#">P20299</a>	<a href="#">28.6.55 – 15.8.55</a>	<a href="#">£7/- per week</a>	<a href="#">£2/- per week</a>	<a href="#">£5/- per week</a>	<a href="#">Yes</a>	<a href="#">£35/-</a>
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">P21074</a>	<a href="#">28.12.55 – 31.12.55</a>	<a href="#">£7/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£6/- per week</a>	<a href="#">Yes</a>	<a href="#">£4/-</a>
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">P21081</a>	<a href="#">2.1.56 for 9 days</a>	<a href="#">£7/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£6/- per week</a>	<a href="#">Yes</a>	<a href="#">£44/10/-</a>
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">P21082</a>	<a href="#">21.2.56 for 35 days</a>	<a href="#">£7/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£6/- per week</a>	<a href="#">Yes</a>	
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">P21027 and P21028</a>	<a href="#">2.4.56 for 45 days</a>	<a href="#">£7/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£6/- per week</a>	<a href="#">Yes</a>	<a href="#">£45/-</a>
<a href="#">Laura</a>	<a href="#">Mossman Butchering Co</a>	<a href="#">Hopevale</a>	<a href="#">P22366</a>	<a href="#">4.4.57 for 23 days</a>	<a href="#">£5/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£4/- per week</a>	<a href="#">Yes</a>	<a href="#">£33/3/4</a>
<a href="#">Laura</a>	<a href="#">Mossman Butchering Co</a>	<a href="#">Hopevale</a>	<a href="#">P22367</a>	<a href="#">1.5.57 for 27 days</a>	<a href="#">£5/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£4/- per week</a>	<a href="#">Yes</a>	
<a href="#">Laura</a>	<a href="#">Mossman Butchering Co</a>	<a href="#">Hopevale</a>	<a href="#">P22379</a>	<a href="#">1.6.57 for 22 days</a>	<a href="#">£5/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£4/- per week</a>	<a href="#">Yes</a>	<a href="#">£14/13/4</a>
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">P22439</a>	<a href="#">24.12.57 for 7 days</a>	<a href="#">£7/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£6/- per week</a>	<a href="#">Yes</a>	<a href="#">£7/-</a>
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">P22535</a>	<a href="#">27.12.57 for 14 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes</a>	<a href="#">£17/10/-</a>
<a href="#">Harvest Home</a>	<a href="#">W. H. Wallace</a>	<a href="#">Hopevale</a>	<a href="#">P22521</a>	<a href="#">13.1.58 for 17 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes</a>	<a href="#">£51/5/-</a>
<a href="#">Harvest Home</a>	<a href="#">W. H. Wallace</a>	<a href="#">Hopevale</a>	<a href="#">P22522</a>	<a href="#">1.2.58 for 24 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes</a>	
<a href="#">Cooktown</a>	<a href="#">Starcke Graziers</a>	<a href="#">Hopevale</a>	<a href="#">22537</a>	<a href="#">22.3.58 for 6 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes</a>	<a href="#">£7/10/-</a>
<a href="#">Mossman</a>	<a href="#">Mossman Butchering Co</a>	<a href="#">Hopevale</a>	<a href="#">P22483</a>	<a href="#">25.6.58 for 5 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes (stock work)</a>	<a href="#">£6/5/-</a>
<a href="#">Mossman</a>	<a href="#">Mossman Butchering Co</a>	<a href="#">Hopevale</a>	<a href="#">P22484</a>	<a href="#">1.7.58 for 27 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes (stock work)</a>	<a href="#">£33/15/-</a>
<a href="#">Mossman</a>	<a href="#">Mossman Butchering Co</a>	<a href="#">Hopevale</a>	<a href="#">P22485</a>	<a href="#">1.8.58 for 18 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes (stock work)</a>	<a href="#">£22/10/-</a>
<a href="#">Crocodile</a>	<a href="#">B Wallace</a>	<a href="#">Hopevale or Palm Island</a>	<a href="#">P23497</a>	<a href="#">30.01.59 for 24 days</a>	<a href="#">£8/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£7/10/- per week</a>	<a href="#">Yes</a>	<a href="#">£30/-</a>
<a href="#">Olive Vale</a>	<a href="#">L. Elmes</a>	<a href="#">Hopevale or Palm Island</a>	<a href="#">P22568</a>	<a href="#">8.4.59 for 20 days</a>	<a href="#">£9/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£8/10/- per week</a>	<a href="#">Yes</a>	<a href="#">£52/8/4</a>
<a href="#">Olive Vale</a>	<a href="#">L. Elmes</a>	<a href="#">Hopevale or Palm Island</a>	<a href="#">P22574</a>	<a href="#">1.5.59 for 17 days</a>	<a href="#">£9/10/- per week</a>	<a href="#">£1/- per week</a>	<a href="#">£8/10/- per week</a>	<a href="#">Yes</a>	

<u>Crocodile</u>	<u>B.Wallace</u>	<u>Hopevale</u>	<u>P22575</u>	<u>21.5.59 to 4.6.59</u>	<u>£9/10/- per week</u>	<u>£2/-/- per week</u>	<u>£7/10/- per week</u>	<u>Yes</u>	<u>£16/5/-</u>
<u>Starcke Graziers</u>	<u>C. King</u>	<u>Hopevale or Palm Island</u>	<u>P23522</u>	<u>1.7.59 for 10 days</u>	<u>£8/10/- per week</u>	<u>£1/-/- per week</u>	<u>£7/10/- per week</u>	<u>Yes</u>	<u>£12/10/-</u>
<u>Cooktown</u>	<u>[L]. C Chisholm</u>	<u>Hopevale or Palm Island</u>	<u>P24204</u>	<u>4.11.59 for 15 days</u>	<u>£8/10/- per week</u>	<u>£1/-/- per week</u>	<u>£7/10/- per week</u>	<u>Yes (stock work)</u>	<u>£18/15/-</u>
<u>Dunraven Station</u>	<u>NV &amp; AR Rose of Hughenden</u>	<u>Taxation Record at Palm Island</u>		<u>F/Y ending 30.6.60</u>				<u>Yes</u>	<u>£65/-/-</u>
	<u>Rokeyby Cattle Co</u>	<u>Palm Island</u>	<u>38145</u>	<u>5.9.61 – 18.12.61</u>	<u>£14/-/- per week</u>	<u>£8/-/- per week</u>	<u>£6/-/- per week</u>	<u>Yes</u>	<u>£101/3/-</u>
<u>Kalinga Station</u>				<u>As at 16.2.62</u>					

(b) As to subparagraphs (a) to (c) of the Particulars the Respondent:

(i) does not admit sub-paragraphs (a) and (c); and

(ii) admits sub-paragraph (b) but relies on paragraphs 69 to 158G and 167 to 225A (now all deleted from the ASOC) as reflecting the Applicant's recollection of his employment history.

70. The Respondent denies the allegations contained in paragraph 70 of the ASOC because the Applicant was not employed as alleged in each episode of employment and refers to and repeats the matters set out in paragraph 69 of the defence.

71. The Respondent says in respect of the allegations contained in paragraph 71 of the ASOC that:

- a. clause 68(1) of the 1945 regulations provided for work on six days per week between the hours of 6am and 6pm daily;
- b. there were no ordinary working hours prescribed for workers classified as 'stockmen' in the Station Hands Award;
- c. there were no ordinary working hours prescribed for workers classified as 'drovers' in the Station Hands Award; and
- d. the Respondent does not otherwise admit paragraph 71.

72. The Respondent denies the allegations contained in paragraph 72 of the ASOC because the Applicant was not employed as alleged in each episode of employment and says further there were agreements or permits in place in respect of the

Applicant's Employment set out in the table at paragraph 69 of the defence bearing the numbers set out in the table at paragraph 69 of the defence.

73. The Respondent does not plead to the allegations contained in paragraph 73 of the ASOC as it contains no allegations against it but denies that the "episode of employment" referred to was an episode of employment as pleaded in paragraph 69 of the ASOC.
74. The Respondent says in respect of the allegations in paragraph 74 of the ASOC:
- a. it does not admit the allegations contained therein relating to the alleged actions of the superintendent as those matters are not within its knowledge and cannot be tested as all the protectors of Hopevale and the superintendents of Palm Island are dead;
  - b. it does not plead to the allegations contained therein relating to the alleged actions of the employers as it contains no allegations against it; and
  - c. it denies the episodes of employment alleged therein and refers to and repeats paragraph 69 of the defence as to the Applicant's Employment.
75. The Respondent says in respect of the allegations at paragraph 75 of the ASOC:
- a. the ledger cards for the Applicant in respect of the Applicant's Employment set out in the table at paragraph 69 of the defence, other than the employment by NV and AR Rose of Hughenden and Rokeby Cattle Co each bear the notation "paid" in respect of "pocket money" amongst other components, as set out in the table at paragraph 69 of the defence;
  - b. there is no record of the Applicant having ever made any complaint to the protector at Hopevale or the superintendent at Palm Island that he did not receive pocket money for the Applicant's Employment as set out in the table at paragraph 69 of the defence at any time;
  - c. in a letter from the Superintendent, Palm Island to the Director Native Affairs Brisbane dated 16 March 1961 the Superintendent informed the Director of the only wages remaining outstanding for 1959 and that did not include any wages owing to the Applicant;
  - d. the allegations contained at sub-paragraph (c) therein relating to the alleged actions of the superintendent are not within its knowledge and cannot be tested as all the protectors of Hopevale and the superintendents of Palm Island are dead;

- e. the allegations contained at sub-paragraph (d) therein relating to the alleged actions of the employer are not within its knowledge and cannot be tested as all the persons identified in the ASOC as employers of the Applicant are deceased;
  - f. the matters contained within subparagraph (e) contain no allegations against the Respondent; and
  - g. in the premises of (a) – (i) does not admit the allegations contained therein.
76. The Respondent says in respect of the allegations in paragraph 76 of the ASOC:
- a. it denies the episodes of employment as alleged therein and refers to and repeats the Applicant's Employment as set out in paragraph 69 of the defence;
  - b. the Applicant generally returned to and was at Hopevale when he was not employed in accordance with the Applicant's Employment as set out in paragraph 69 of the defence;
  - c. that the allegation that the Applicant moved to Palm Island in 1959 is inconsistent with the allegation in paragraph 159 of the ASOC that the Applicant visited Palm Island in the week prior to Christmas 1958 or 1959 and is embarrassing; and
  - d. it otherwise denies paragraph 76 of the ASOC.
77. The Applicant denies the allegations contained in paragraph 77 of the ASOC because the Applicant was not employed as alleged in each episode of employment and says further that when the Applicant was living at Hopevale in accordance with the matters set out at paragraph 76 of the defence:
- a. he was provided with food, clothing, accommodation and access to necessary medical and dental services by the superintendent at Hopevale;
  - b. in accordance with clause 28 of the 1945 regulations he could be required by the superintendent at Hopevale to perform, according to his ability, any work necessary for the development and maintenance of the mission reserve on which he resided as directed by the superintendent;
  - c. it was the practice of the various superintendents at Hopevale to require those Aboriginal persons who were living at Hopevale and being supported by the superintendent at Hopevale to perform work in accordance with section 28 of the 1945 regulations for the welfare and development of Hopevale; and
  - d. the Respondent cannot plead any further because those matters are not within its knowledge and cannot be tested as all the superintendents of Hopevale at the relevant time are dead.

78. The Respondent admits the allegations contained in paragraph 78 of the ASOC and says that by section 2 of the 1945 regulations the superintendent at Hopevale was not an employer and was not required to enter into an agreement in respect of the work referred to therein, the work that could be required to be performed pursuant to section 28 of the 1945 regulations was not employment which came within or was regulated by the 1939 Act or Part III of the 1945 regulations and in any event not performed under a contract of employment as the arrangements between the parties under the 1939 Act in respect of such work by a person residing at Hopevale do not evince an intention to enter into legal relations under a contract of employment.
79. The Respondent denies the allegations contained in paragraph 79 of the ASOC and refers to and repeats the matters set out at paragraph 77 of the defence.
80. The Respondent denies the allegations contained in paragraph 80 of the ASOC and refers to and repeats the matters set out at paragraphs 69 to 79 of the defence.
- ~~69. The Respondent does not admit the allegations contained in paragraph 69 of the ASOC and says that on an unknown date in 1954 the Applicant was employed by Starcke Graziers.~~
- ~~70. The Respondent denies the allegations contained in paragraph 70 of the ASOC because:~~
- ~~a. there is no position of 'Stockman' in the Form 8 of the 1945 regulations;~~
- ~~b. the only position description in Form 8 of the 1945 regulations which contains the word stockman is "head stockman or stockman in charge of out stations"; and~~
- ~~c. the Form 8 otherwise describes the callings as 'General Station Hands— including also General Farm Labourers, Houseboys, Gardeners, Yardsmen and all employees not otherwise specified'.~~
- ~~71. The Respondent denies the allegation contained in paragraph 71 of the ASOC and says that Starcke Holding in the District of Cook was a lease of a pastoral development holding of eight hundred and fifty four square miles and the lessees as at 1954 were Thomas John Foster, John Ingles Skene, Doreen Elizabeth Brown, Heather Mary King, Joyce Stewart and Ruth Stewart as tenants in common in equal shares.~~
- ~~72. The Respondent denies the allegations contained in paragraph 72 of the ASOC and says that the employment of the Applicant by Starcke Graziers was permitted by the then superintendent at Hopevale, Reverend Wenke.~~
- ~~73. The Respondent denies the allegations contained in paragraph 73 of the ASOC and says that by reason of section 57(3) of the 1945 regulations the Applicant's~~

~~employment by Starcke Graziers, which was permitted as set out in paragraph 72 of the defence, would have been sanctioned by the Director.~~

~~74. The Respondent does not admit the allegation contained in paragraph 74 of the ASOC and says it does not know how many or what documents were signed by the Applicant or when they were signed, prior to him commencing in the employment of Starcke Graziers.~~

~~75. As to paragraph 75 of the ASOC the Respondent:~~

- ~~a. admits the allegation contained in sub-paragraph (a);~~
- ~~b. denies the allegation contained in sub-paragraph (b) and refers to and repeats the matters set out in paragraph 72 of the defence;~~
- ~~c. does not admit the matters set out in sub-paragraph (c) as those are matters which:
  - ~~i. are not within its knowledge; and~~
  - ~~ii. cannot be tested because Reverend Wenke is deceased.~~~~

~~76. As to paragraph 76 of the ASOC the Respondent:~~

- ~~a. denies the allegations contained in sub-paragraph (a) and says the employer was Starcke Graziers and the agreement number was 275 [indecipherable];~~
- ~~b. admits the allegation contained in sub-paragraph (b);~~
- ~~c. admits the allegation contained in sub-paragraph (c);~~
- ~~d. says in respect of the allegations contained in sub-paragraph (d) that the gross wage was £4 per week, with 10 shillings per week as pocket money and £ 3/10/- per week as a credit;~~
- ~~e. admits the allegation contained in sub-paragraph (e);~~
- ~~f. denies the allegations contained in sub-paragraph (f) and says that section 74(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance of 9 shillings per day while en route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);~~
- ~~g. denies the allegations contained therein and says that the period of employment was from approximately 19 May 1954 to 20 September 1954 and further that:~~

- ~~i. Starcke Graziers was the employer of the Applicant pursuant to agreement number 20245;~~
  - ~~ii. this employment was for a period of 26 days from 1 October 1954; and~~
  - ~~iii. the gross wage was £4 per week, with 10 shillings per week as pocket money and £ 3/10/- per week as a credit;~~
  - ~~h. denies the allegation contained in sub-paragraph (h) and relies on the matters set out at paragraph 70 of the defence;~~
  - ~~i. admits the allegation contained in sub-paragraph (i).~~
- ~~77. The Respondent does not admit the allegations contained in paragraph 77 of the ASOC because it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1954.~~
- ~~78. The Respondent does not admit the allegations contained in paragraph 78 of the ASOC because:~~
- ~~a. by section 14(5) of the 1939 Act the Director could approve the level of wages payable to an aboriginal employee;~~
  - ~~b. by section 14(6) of the 1939 Act a protector could direct employers to pay the whole or any portion of the wages of aboriginals to himself or some other person on his behalf;~~
  - ~~c. it does not know the employment or the payments to which paragraph 78 relates and so does not know the truth or falsity of the practice alleged.~~
- ~~79. The Respondent does not admit the allegations contained in paragraph 79 of the ASOC because it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1954.~~
- ~~80. The Respondent is not required to plead to the allegations contained in paragraph 80 of the ASOC as it contains no allegations against it.~~
- ~~81. As to paragraph 81 of the ASOC the Respondent:~~
- ~~a. does not admit the allegations contained in sub-paragraph (a) as those are matters which:
    - ~~i. are not within its knowledge; and~~
    - ~~ii. cannot be tested because neither Reverend Wenke nor Reverend Kernich is still alive.~~~~

b. — does not admit the allegations contained in sub paragraph (b) because it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1954.

82. — The Respondent does not admit the allegations contained in paragraph 82 of the ASOC because:

a. — those matters are not within its own knowledge;

b. — it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1954.

83. — The Respondent denies the allegations contained in paragraph 83 of the ASOC and refers to and repeats the matters set out in paragraph 76(g) of the defence.

84. — The Respondent denies the allegations contained in paragraph 84 of the ASOC and says the ledger card for the Applicant at the Hopevale Protectorate for 1954 records that:

a. — the Applicant was not a party to any employment agreement in 1954 other than the two employment agreements with Starcke Graziers in 1954 referred to in paragraph 76 of the defence;

b. — wages due to the Applicant from his employer Starcke Graziers under the agreement to employ the Applicant from approximately 19 May 1954 to 20 September 1954 were paid; and

c. — wages due to the Applicant from his employer Starcke Graziers under agreement 20245 for 26 days employment from 1 October 1954 were paid;

d. — a total of £82/5/- is recorded as banked comprising:

i. — £21/11/8 for the period 19.05.54 — indecipherable;

ii. — £45/10 for the period 1.07.54 — 30.09.54; and

iii. — £15/3/4 for the period 1.10.54 — 30.10.54.

85. — As to paragraph 85 of the ASOC the Respondent:

a. — admits the Applicant was entitled to receive pocket money of 10 shillings a week whilst employed by Starcke Graziers;

b. — does not admit the amount in fact received by the Applicant because it does not have a copy of the pocket money book completed by Starcke Graziers.

86. — As to paragraph 86 of the ASOC the Respondent:

- a. — ~~says the amounts due to the Applicant in respect of each period of employment by Starcke Graziers in 1954 are recorded on the Applicant's ledger card as paid; and~~
- b. — ~~does not admit the allegations and refers to and repeats the matters set out at paragraph 85(b) of the defence.~~

### ***Laura Station***

87. — ~~The Respondent denies the allegation contained in paragraph 87 of the ASOC on the basis that the Applicant did not work at Laura Station in 1955.~~
88. — ~~The Respondent denies the allegation contained in paragraph 88 of the ASOC.~~
89. — ~~The Respondent denies the allegations contained in paragraph 89 of the ASOC.~~
90. — ~~The Respondent denies the allegation contained in paragraph 90 of the ASOC.~~
91. — ~~The Respondent denies the allegations contained in paragraph 91 of the ASOC.~~
92. — ~~The Respondent denies the allegations contained in paragraph 92 of the ASOC.~~
93. — ~~The Respondent denies the allegations contained in paragraph 93 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.~~
94. — ~~The Respondent denies the allegations contained in paragraph 94 of the ASOC.~~
95. — ~~The Respondent is not required to plead to the allegations contained in paragraph 95 of the ASOC as it contains no allegations against it.~~
96. — ~~The Respondent denies the allegations contained in paragraph 96 of the ASOC.~~
97. — ~~The Respondent denies the allegations contained in paragraph 97 of the ASOC.~~
98. — ~~The Respondent denies the allegations contained in paragraph 98 of the ASOC.~~
99. — ~~The Respondent denies the allegations contained in paragraph 99 of the ASOC.~~
100. — ~~The Respondent denies the allegation contained in paragraph 100 of the ASOC.~~
101. — ~~The Respondent denies the allegation contained in paragraph 101 of the ASOC.~~

### ***Kings Plains Station***

102. — ~~The Respondent denies the allegations contained in paragraph 102 of the ASOC on the basis that the Applicant did not work at Kings Plains Station in 1956.~~
103. — ~~The Respondent denies the allegation contained in paragraph 103 of the ASOC.~~
104. — ~~The Respondent denies the allegations contained in paragraph 104 of the ASOC.~~
105. — ~~The Respondent denies the allegation contained in paragraph 105 of the ASOC.~~

~~106.—The Respondent denies the allegations contained in paragraph 106 of the ASOC.~~

~~107.—The Respondent denies the allegations contained in paragraph 107 of the ASOC.~~

~~108.—The Respondent denies the allegations contained in paragraph 108 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.~~

~~109.—The Respondent denies the allegations contained in paragraph 109 of the ASOC.~~

~~110.—The Respondent is not required to plead to the allegations contained in paragraph 110 of the ASOC as it contains no allegations against it.~~

~~111.—The Respondent denies the allegations contained in paragraph 111 of the ASOC.~~

~~112.—The Respondent denies the allegations contained in paragraph 112 of the ASOC.~~

~~113.—The Respondent denies the allegations contained in paragraph 113 of the ASOC.~~

~~114.—The Respondent denies the allegations contained in paragraph 114 of the ASOC and says further that:~~

~~a.—whilst on 20 December 1956 a Mr Christensen paid the Hopevale Mission £10 in respect of the wages for a Young Romeo during the period 13.11.56 to 26.11.56 there was no payment made for wages to the Applicant on that occasion; and~~

~~b.—the receipts book for Hopevale Mission for the period 28 November 1956 to 29 December 1958 contains no record of any wages paid by a Mr Christensen or any other person on behalf of Kings Plains Station in respect of the Applicant.~~

~~115.—The Respondent denies the allegation contained in paragraph 115 of the ASOC.~~

~~116.—The Respondent denies the allegation contained in paragraph 116 of the ASOC and refers to and repeats the matters set out at paragraph 114 of the defence.~~

### **~~Starcke Station (2)~~**

~~117.—The Respondent denies the allegations contained in paragraph 117 of the ASOC and says that on an unknown date in or about December 1955 the Applicant was employed by Starcke Graziers.~~

~~118.—The Respondent denies the allegation contained in paragraph 118 of the ASOC and says that the employment of the Applicant by Starcke Graziers was permitted by the then superintendent at Hopevale, Reverend Wenke.~~

~~119.—The Respondent denies the allegation contained in paragraph 119 of the ASOC and says:~~

~~a.—the Hopevale Ledger cards refer to agreement numbers starting with 'P' as set out in paragraph 120(g);~~

- b. ~~the "P" is a reference to a permit for casual employment;~~
- c. ~~it does not know if, how many or what documents were signed by the Applicant or when they were signed, prior to him commencing employment by Starcke Graziers.~~

120. ~~As to paragraph 120 of the ASOC the Respondent:~~

- a. ~~denies the allegation contained in sub-paragraph (a) and says the employer was Starcke Graziers;~~
- b. ~~admits the allegation contained in sub-paragraph (b);~~
- c. ~~admits the allegation contained in sub-paragraph (c);~~
- d. ~~says in respect of the allegation contained in sub-paragraph (d) that the gross wage was £7 per week, with £1 per week as pocket money and £6 per week as a credit;~~
- e. ~~admits the allegation contained in sub-paragraph (e);~~
- f. ~~denies the allegations contained in sub-paragraph (f) and says that section 74(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance of 9 shillings per day while en route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);~~
- g. ~~denies the allegations contained therein and says that the first period of employment was from 28 December 1955 to 31 December 1955 pursuant to agreement number P21074 and says further:————~~
  - i. ~~Starcke Graziers was the employer of the Applicant for a second period pursuant to agreement number P21081;~~
  - ii. ~~this employment was for a period of 9 days from 2 January 1956;~~
  - iii. ~~the gross wage was £7 per week, with £1 per week as pocket money and £6 per week as a credit;~~
  - iv. ~~Starcke Graziers was the employer of the Applicant for a third period pursuant to agreement number P21082;~~
  - v. ~~this employment was for a period of 35 days from 21 February 1956;~~
  - vi. ~~the gross wage was £7 per week, with £1 per week as pocket money and £6 per week as a credit;~~

- ~~vii. — Starcke Graziers was the employer of the Applicant for a fourth period pursuant to agreement numbers P21027 and 21028~~
  - ~~viii. — this employment was for a period of 45 days from 2 April 1956; and~~
  - ~~ix. — the gross wage was £7 per week, with £1 per week as pocket money and £6 per week as a credit;~~
  - ~~h. — denies the allegation contained in sub-paragraph (h) and refers to and repeats the matters set out at paragraph 70 of the defence;~~
  - ~~i. — denies the allegation contained in sub-paragraph (i) because the Applicant was to be paid pocket money as set out in sub-paragraphs (d) and (g)~~
  - ~~j. — admits the allegation contained in sub-paragraph (j);~~
  - ~~k. — refers to and repeats the matters set out in paragraph 119 of this defence.~~
- ~~121. — The Respondent does not admit the allegations contained in paragraph 121 of the ASOC because:~~
- ~~a. — it refers to and repeats the matters set out in paragraph 119 of this defence; and~~
  - ~~b. — it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1955 and 1956 as set out in paragraph 120 of the defence.~~
- ~~122. — The Respondent does not admit the allegations contained in paragraph 122 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.~~
- ~~123. — The Respondent does not admit the allegations contained in paragraph 123 of the ASOC because it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1955 and 1956 as set out in paragraph 120 of the defence.~~
- ~~124. — The Respondent is not required to plead to the allegations contained in paragraph 124 of the ASOC as it contains no allegation against it.~~
- ~~125. — As to paragraph 125 of the ASOC the Respondent:~~
- ~~a. — does not admit the allegations contained in sub-paragraph (a) as those are matters which:
    - ~~i. — are not within its knowledge; and~~
    - ~~ii. — cannot be tested because Reverend Wenke and Reverend Kernich are deceased;~~~~
  - ~~b. — does not admit the allegations contained in sub-paragraph (b) because it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1955 and 1956 as set out in paragraph 120 of the defence.~~

~~126. The Respondent does not admit the allegations contained in paragraph 126 of the ASOC because:~~

- ~~a. those matters are not within its own knowledge;~~
- ~~b. it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1955 and 1956 as set out in paragraph 120 of the defence.~~

~~127. The Respondent denies the allegations contained in paragraph 127 of the ASOC and refers to and repeats the matters set out in paragraph 120(g) of the defence.~~

~~128. The Respondent denies the allegations contained in paragraph 128 of the ASOC and says the ledger card for the Applicant at the Hopevale Protectorate for 1955 and 1956 records that:~~

- ~~a. the Applicant was not a party to any employment agreement in 1955 and 1956 other than the employment agreements with Starcke Graziers referred to in paragraph 120(g) of this defence and the employment set out at paragraph 225A(a) of this defence;~~
- ~~b. wages due to the Applicant from his employer Starcke Graziers under the agreement to employ the Applicant from 28 December 1955 to 31 December 1955 were paid;~~
- ~~c. wages due to the Applicant from his employer Starcke Graziers under agreement P21081 for a period of 9 days from 2 January 1956 were paid;~~
- ~~d. wages due to the Applicant from his employer Starcke Graziers under agreement P21082 for a period of 35 days from 21 February 1956 were paid;~~
- ~~e. wages due to the Applicant from his employer Starcke Graziers under agreements P21027 and 21028 for a period of 45 days from 2 April 1956 were paid; and~~
- ~~f. a total of £93/10/- is recorded as banked comprising:
  - ~~i. £ 4/- for the period from 28 December 1955 to 31 December 1955;~~
  - ~~ii. £44/10 for the periods of 9 days from 2 January 1956 and of 35 days from 21 February 1956; and~~
  - ~~iii. £45 for the period of 45 days from 2 April 1956.~~~~

~~129. As to paragraph 129 of the ASOC the Respondent:~~

- ~~a. admits the Applicant was entitled to receive pocket money of £1 a week whilst employed by Starcke Graziers pursuant to each of the agreements set out in paragraph 120(g) of the defence;~~

- b. — ~~does not admit the amount in fact received by the Applicant because it does not have a copy of the pocket money book completed by Starcke Graziers;~~
- c. — ~~otherwise denies the matters alleged therein and refers to and repeats the matters set out at paragraph 128 of the defence.~~

130. — ~~As to paragraph 130 of the ASOC the Respondent:~~

- a. — ~~says the amounts due to the Applicant in respect of each period of employment by Starcke Graziers in 1955 and 1956 are recorded on the Applicant's ledger card as paid; and~~
- b. — ~~does not admit the allegations and refers to and repeats the matters set out at paragraph 129 of the defence.~~

### **1957**

131. — ~~As to paragraph 131 of the ASOC the Respondent:~~

- a. — ~~denies the allegations concerning Crocodile Station on the basis the Applicant was not so employed in 1957;~~
- b. — ~~denies the allegations concerning Lakefield Station on the basis the Applicant was not so employed in 1957;~~
- c. — ~~denies the allegations concerning Laura Station on the basis the Applicant was not so employed in 1957;~~
- d. — ~~says in respect of the allegations concerning Lakefield Station that:~~
  - i. — ~~on an unknown date in 1957 the Applicant was employed by Mossman Butchering Company;~~
  - ii. — ~~Mossman Butchering Company was the owner of Lakefield Station.~~

132. — ~~As to paragraph 132 of the ASOC the Respondent:~~

- a. — ~~denies the allegations concerning Crocodile Station;~~
- b. — ~~denies the allegations concerning Lakefield Station;~~
- c. — ~~denies the allegations concerning Laura Station;~~
- d. — ~~says in respect of the allegations concerning Lakefield Station that the employment of the Applicant by Mossman Butchering Company was permitted by the then superintendent at Hopevale, Reverend Wenke.~~

133. — ~~As to paragraph 133 of the ASOC the Respondent:~~

- a. — ~~denies the allegations concerning Crocodile Station;~~

- b. — ~~denies the allegations concerning Lakefield Station;~~
- c. — ~~denies the allegations concerning Laura Station;~~
- d. — ~~says in respect of the employment pleaded at paragraph 132(d) of this defence:~~
  - i. — ~~the Hopevale Ledger cards refer to agreement numbers starting with 'P' as set out in paragraph 134(g), (j) and (m) of this defence;~~
  - ii. — ~~the "P" is a reference to a permit for casual employment;~~
  - iii. — ~~it does not know if, how many or what documents were signed by the Applicant or when they were signed, prior to him commencing employment by Mossman Butchering Company which was the owner of Lakefield Station.~~

134. — ~~As to paragraph 134 of the ASOC the Respondent denies the allegations in respect of Crocodile Station, Lakefield Station and Laura Station and says that:~~

- a. — ~~the employer was Mossman Butchering Company which was the owner of Lakefield Station;~~
- b. — ~~in respect of Mossman Butchering Company it admits the allegation contained in sub-paragraph (b);~~
- c. — ~~in respect of Mossman Butchering Company it admits the allegation contained in sub-paragraph (c);~~
- d. — ~~in respect of Mossman Butchering Company it says in respect of the allegations contained in sub-paragraph (d) that the gross wage was £5 per week, with £1 per week as pocket money and £4 per week as a credit;~~
- e. — ~~in respect of Mossman Butchering Company it admits the allegation contained in sub-paragraph (e);~~
- f. — ~~it denies the allegations contained in sub-paragraph (f) and further says that section 74(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance of 15 shillings per day while en route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);~~
- g. — ~~Mossman Butchering Company was the employer of the Applicant pursuant to agreement number P22366;~~

- ~~h. — this employment was for a period of 23 days from 4 April 1957;~~
- ~~i. — the gross wage was £5 per week, with £1 per week as pocket money and £4 per week as a credit;~~
- ~~j. — Mossman Butchering Company was the employer of the Applicant pursuant to agreement number P22367;~~
- ~~k. — this employment was for a period of 27 days from 1 May 1957;~~
- ~~l. — the gross wage was £5 per week, with £1 per week as pocket money and £4 per week as a credit;~~
- ~~m. — Mossman Butchering Company was the employer of the Applicant pursuant to agreement number P22379;~~
- ~~n. — this employment was for a period of 22 days from 1 June 1957;~~
- ~~o. — the gross wage was £5 per week, with £1 per week as pocket money and £4 per week as a credit;~~
- ~~p. — it denies the allegations contained in sub-paragraph (h) and relies on the matters set out at paragraph 70 of the defence;~~
- ~~q. — it denies the allegations contained in sub-paragraph (i) because the Applicant was to be paid pocket money as set out in sub-paragraphs (d), (i), (l) and (o);~~
- ~~r. — it denies the allegations contained in sub-paragraph (j);~~
- ~~s. — refers to and repeats the matters set out in paragraph 133 of this defence.~~

~~135. — As to paragraph 135 of the ASOC the Respondent:~~

- ~~a. — denies the allegations in respect of Crocodile Station;~~
- ~~b. — denies the allegations in respect of Lakefield Station refers to and repeats the matters set out at paragraph 134 of this amended defence;~~
- ~~c. — denies the allegations in respect of Laura Station.~~

~~136. — As to paragraph 136 of the ASOC the Respondent:~~

- ~~a. — denies the allegations in respect of Crocodile Station;~~
- ~~b. — denies the allegations in respect of Lakefield Station;~~
- ~~c. — denies the allegations in respect of Laura Station;~~
- ~~d. — refers to and repeats the matters set out at paragraph 78 of the defence.~~

~~137. — As to paragraph 137 of the ASOC the Respondent:~~

- ~~a. — denies the allegations in respect of Crocodile Station;~~

~~b. — denies the allegations in respect of Lakefield Station refers to and repeats the matters set out at paragraph 133(d) of this amended defence;~~

~~c. — denies the allegations in respect of Laura Station.~~

~~138. — As to paragraph 138 of the ASOC the Respondent is not required to plead to it as it contains no allegations against it.~~

~~139. — As to paragraph 139 of the ASOC the Respondent:~~

~~a. — denies the allegations in respect of Crocodile Station;~~

~~b. — denies the allegations in respect of Lakefield Station;~~

~~i. — does not admit the allegations contained in sub paragraph (a) as those are matters which:~~

~~1. — are not within its knowledge; and~~

~~2. — cannot be tested as the Hopevale superintendent is not still alive~~

~~ii. — does not admit the allegations contained in sub paragraph (b) because it does not have a copy of the agreements referred to in paragraph 133(d) of the amended defence;~~

~~c. — denies the allegations in respect of Laura Station.~~

~~140. — As to paragraph 140 of the ASOC the Respondent:~~

~~a. — denies the allegations in respect of Crocodile Station;~~

~~b. — denies the allegations does not admit the allegations in respect of Lakefield Station because;~~

~~i. — those matters are not within its own knowledge;~~

~~ii. — it does not have a copy of the agreements referred to in paragraph 133(d) of the amended defence;~~

~~c. — denies the allegations in respect of Laura Station.~~

~~141. — As to paragraph 141 of the ASOC the Respondent:~~

~~a. — denies the allegations in respect of Crocodile Station;~~

~~b. — denies the allegations in respect of Lakefield Station~~

~~c. — denies the allegations in respect of Laura Station;~~

~~d. — says that the Applicant was employed by Mossman Butchering Company (which was the owner of Lakefield Station) as set out in paragraph 134(g) of the defence.~~

~~142. The Respondent does not admit the allegations contained in paragraph 142 of the ASOC because:~~

- ~~a. those are not matters which are within its knowledge; and~~
- ~~b. those allegations cannot be tested because Reverend Wenke and Reverend Kernich are deceased.~~

~~143. As to paragraph 143 of the ASOC the Respondent:~~

- ~~a. denies the allegations in sub-paragraph (a) in respect of Crocodile Station, Lakefield Station and Laura Station;~~
- ~~b. says that in respect of the employment by Mossman Butchering Company which was the owner of Lakefield Station:~~
  - ~~i. the ledger card for the Applicant at the Hopevale Protectorate for 1957 records that wages due to the Applicant from his employer Mossman Butchering Company under the agreement to employ the Applicant for 23 days from 4 April 1957 were paid;~~
  - ~~ii. Hopevale Mission Receipt number 91235 dated 9 August 1957 records the payment of £15/3/4 in respect of the Applicant for the period from 4 April—30 April 1957;~~
  - ~~iii. the ledger card for the Applicant at the Hopevale Protectorate for 1957 records that wages due to the Applicant from his employer Mossman Butchering Company under the agreement to employ the Applicant for 27 days from 1 May 1957 were paid;~~
  - ~~iv. Hopevale Mission Receipt number 91235 dated 9 August 1957 records the payment of £18/- in respect of the Applicant for the period from 1 May—31 May 1957;~~
  - ~~v. the ledger card for the Applicant at the Hopevale Protectorate for 1957 records that wages due to the Applicant from his employer Mossman Butchering Company under the agreement to employ the Applicant for 22 days from 1 June 1957 were paid;~~
  - ~~vi. Hopevale Mission Receipt number 91240 dated 18 September 1957 records the payment of £14/13/4 in respect of the Applicant for the period from 1 June—30 June 1957;~~
  - ~~vii. the ledger card for the Applicant at the Hopevale Protectorate for 1957 records that a total of £48/2/8 is recorded as banked in respect of employment with Mossman Butchering Company comprising:~~

1. — ~~£33/3/4 for the period from 4 April 1957 to 31 May 1957;~~
2. — ~~£14/19/4 for the period from 1 June 1957 to 26 June 1957;~~
- viii. — ~~on 31 May 1957 there an entry “Ref Laura J 182” for a withdrawal of £22/11/6; and~~
- e. — ~~it does not have a copy of the pocket money book completed by Mossman Butchering Company.~~

### **~~Starcke Station (3)~~**

144. — ~~The Respondent denies the allegation contained in paragraph 144 of the ASOC and says that:~~
- a. — ~~on 24 December 1957 the Applicant was employed by Starcke Graziers;~~
  - b. — ~~the Permit for Casual Employment number 22439 (**Permit**) provides the nature of the employment as stock work.~~
145. — ~~The Respondent denies the allegation contained in paragraph 145 of the ASOC and says that the employment of the Applicant by Starcke Graziers was permitted by the then superintendent at Hopevale, Reverend Kernich who signed the Permit as the Protector.~~
146. — ~~The Respondent denies the allegation contained in paragraph 146 of the ASOC and says:~~
- a. — ~~the employment of the Applicant by Starcke Graziers for 7 days from 24 December 1957 is evidenced by the Permit which is dated 27 December 1957 and signed by Mr Kernich as Protector for the District of the Hopevale Mission;~~
  - b. — ~~the Hopevale Ledger cards record the number P22439 as the number for the employment referred to at sub-paragraph (a);~~
  - c. — ~~the Hopevale Ledger cards refer to agreement numbers starting with ‘P’ as set out in paragraph 147(g)(i) of this defence;~~
  - d. — ~~the ‘P’ is a reference to a permit for casual employment;~~
  - e. — ~~it does not know if, how many or what documents were signed by the Applicant or when they were signed prior to him commencing employment by Starcke Graziers.~~
147. — ~~As to paragraph 147 of the ASOC the Respondent:~~
- a. — ~~denies the allegation contained in sub-paragraph (a) and says the employer was Starcke Graziers;~~

- b. — admits the allegation contained in sub-paragraph (b);
- c. — admits the allegation contained in sub-paragraph (c);
- d. — denies the allegation contained in sub-paragraph (d) and says that the gross wage was £7 per week (expressed in the Permit as 140/-), with £1 per week (expressed in the Permit as 20/-) as pocket money and £6 per week (expressed in the Permit as 120/-) to the Protector;
- e. — admits the allegation contained in sub-paragraph (e);
- f. — denies the allegations contained in sub-paragraph (f) and says that section 74(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance of 15 shillings per day while en route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);
- g. — denies the allegations contained therein and says that the period of employment in the Permit was for 7 days from 24 December 1957 and says further that:
  - i. — Starcke Graziers was the employer of the Applicant for a further period pursuant to agreement number P22535;
  - ii. — this employment was for a period of 14 days from 27 December 1957;
  - iii. — the gross wage was £8/10/- per week, with £1 per week as pocket money and £7/10/- per week as a credit;
  - iv. — Starcke Graziers was the employer of the Applicant for a further period pursuant to agreement number 22537;
  - v. — this employment was for a period of 6 days from 22 March 1958; and
  - vi. — the gross wage was £8/10/- per week, with £1 per week as pocket money and £7/10/- per week as a credit;
- h. — denies the allegation contained in sub-paragraph (h) and relies on the matters set out at paragraph 144(b) of the defence;
- i. — denies the allegation contained in sub-paragraph (i) and repeats and relies on the matters set out at sub-paragraphs (d) and (g);
- j. — denies the allegation contained in sub-paragraph (j) and repeats and relies on the matters set out at sub-paragraphs (d) and (g);
- k. — refers to and repeats the matters set out in paragraph 146 of this defence.

- ~~148. The Respondent says, in respect of the allegations contained in paragraph 148 of the ASOC:~~
- ~~a. in respect of the Permit it denies the allegations and refers to and repeats paragraph 147 of the defence; and~~
  - ~~b. in respect of the period of employment set out at sub-paragraph (g)(i) above:
    - ~~i. it refers to and repeats the matters set out in paragraph 146 of this defence;~~
    - ~~ii. it does not admit the allegations because it does not have a copy of each of the agreement by which Starcke Graziers employed the Applicant;~~~~
  - ~~c. in respect of the period of employment set out at sub-paragraph (g)(iv) above it does not admit the allegations because it does not have a copy of the agreement by which Starcke Graziers employed the Applicant.~~
- ~~149. The Respondent denies the allegations contained in paragraph 149 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.~~
- ~~150. As to paragraph 150 of the ASOC the Respondent:~~
- ~~a. denies the allegations because the Applicant has not signed the Permit;~~
  - ~~b. says in respect of the periods of employment set out at sub-paragraphs 147(g)(i) and (g)(iv) above it does not admit the allegations and it does not have a copy of each of the agreements by which Starcke Graziers employed the Applicant.~~
- ~~151. The Respondent is not required to plead to the allegations in paragraph 151 of the ASOC as it contains no allegations against it.~~
- ~~152. As to paragraph 152 of the ASOC the Respondent:~~
- ~~a. in respect of the employment of the Applicant by Starcke Graziers evidenced by the Permit does not admit the allegations in sub-paragraphs (a) and (b) because:
    - ~~i. the allegations in sub-paragraph (a) cannot be tested because Mr Kernich is deceased;~~
    - ~~ii. the Permit does not contain any attestation as alleged in sub-paragraph (b); and~~
    - ~~iii. the Applicant has not signed the Permit;~~~~
  - ~~b. in respect of the periods of employment of the Applicant by Starcke Graziers set out at sub-paragraphs 147(g)(i) and (g)(iv) above does not admit the matters set out in sub-paragraph (a) as those are matters which:~~

- ~~i. — are not within its knowledge; and~~
    - ~~ii. — cannot be tested because Mr Kernich is deceased;~~
  - ~~c. — does not admit the allegations contained in sub-paragraph (b) because it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1957 and 1958 as set out in paragraphs 147(g)(i) and (g)(iv) of the defence.~~
153. — ~~The Respondent does not admit the allegations contained in paragraph 153 of the ASOC because:~~
- ~~a. — those matters are not within its own knowledge;~~
  - ~~b. — it does not have a copy of the agreements by which Starcke Graziers employed the Applicant in 1957 and 1958 as set out in paragraphs 147(g)(i) and (g)(iv) of the defence.~~
154. — ~~The Respondent admits the allegation contained in paragraph 154 of the ASOC.~~
155. — ~~The Respondent denies the allegations contained in paragraph 155 of the ASOC and refers to and repeats the matters set out in paragraph 147(g) of the defence.~~
156. — ~~The Respondent denies the allegations contained in paragraph 156 of the ASOC and says in respect of the employment by Starcke Graziers:~~
- ~~a. — the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that wages due to the Applicant from his employer Starcke Graziers under the Permit were paid;~~
  - ~~b. — Hopevale Mission Receipt number 91266 dated 17 March 1958 records the payment of £7/- in respect of the Applicant for the period from 24 December 31 December 1957;~~
  - ~~c. — the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that wages due to the Applicant from his employer Starcke Graziers under the agreement number P22535 to employ the Applicant for 14 days from 27 December 1957 were paid;~~
  - ~~d. — Hopevale Mission Receipt number 91274 dated 30 June 1958 records the payment of £17/10/- in respect of the Applicant for the period from 27 December 1957 11 January 1958;~~
  - ~~e. — the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that wages due to the Applicant from his employer Starcke Graziers under the agreement number 22537 to employ the Applicant for 6 days from 22 March 1958 were paid;~~

- f. ~~Hopevale Mission Receipt number 91274 dated 30 June 1958 records the payment of £7/10/ in respect of the Applicant for the period from 22 March 1958 — 28 March 1958;~~
- g. ~~the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that a total of £22/- is recorded as banked comprising:
  - i. ~~£7/- for the period from 24 December — 31 December 1957;~~
  - ii. ~~£17/10/ for the period from 27 December 1957 to 11 January 1958;~~
  - iii. ~~£7/10/ for the period from 22 March 1958 to 28 March 1958; and~~~~
- h. ~~it does not have a copy of the pocket money book completed by Starcke Graziers.~~

157. ~~As to paragraph 157 of the ASOC the Respondent:~~

- a. ~~admits the Applicant was entitled to receive pocket money of £1 a week whilst employed by Starcke Graziers pursuant to each of the agreements set out in paragraph 156 of the defence;~~
- b. ~~does not admit the amount in fact received by the Applicant because it does not have a copy of the pocket money book completed by Starcke Graziers; and~~
- c. ~~otherwise denies the matters alleged therein and refers to and repeats the matters set out at paragraph 156(a), (c), (e) and (g) of the defence.~~

158. ~~The Respondent denies the allegation contained in paragraph 158 of the ASOC and refers to and repeats the matters set out in paragraph 156 of the defence.~~

### ***Laura Station***

158A. ~~The Respondent denies the allegations contained in paragraph 158A of the ASOC and says:~~

- a. ~~by agreement number P22483 Mossman Butchering Company was the employer of the Applicant for a period of 5 days from 25 June 1958;~~
- b. ~~by agreement number P22484 Mossman Butchering Company was the employer of the Applicant for a period of 27 days from 1 July 1958;~~
- c. ~~by agreement number P22485 Mossman Butchering Company was the employer of the Applicant for a period of 18 days from 1 August 1958; and~~
- d. ~~the nature of the employment in each case was stock work.~~

158B. ~~As to paragraph 158B of the ASOC the Respondent:~~

- a. ~~in respect of paragraph 88 of the ASOC that it denies the allegations contained in that paragraph of the ASOC and says the employment of the Applicant by Mossman Butchering Company was permitted by the then superintendent at Hopevale, Reverend Kernich;~~
- b. ~~in respect of:~~
- i. ~~the allegations contained in paragraph 89 of the ASOC, does not admit those allegations as those are not matters within its knowledge;~~
  - ii. ~~in respect of the allegations in paragraph 90 of the ASOC, denies those allegations and says:~~
    - 1. ~~the Hopevale Ledger cards refer to agreement numbers starting with 'P' as set out in paragraph 158A of this defence;~~
    - 2. ~~the 'P' is a reference to a permit for casual employment;~~
    - 3. ~~it does not know if, how many or what documents were signed by the Applicant or when they were signed, prior to him commencing employment by Mossman Butchering Company;~~
- c. ~~in respect of paragraph 91 of the ASOC:~~
- i. ~~denies the allegations contained in sub-paragraph (a) for each of the periods of employment set out at paragraph 158A of the defence and refers to and repeats the matters set out at paragraph 158A (a), (b) and (c) of the defence;~~
  - ii. ~~admits the allegations contained in sub-paragraph (b) for each of the periods of employment set out at paragraph 158A of the defence;~~
  - iii. ~~admits the allegations contained in sub-paragraph (c) for each of the periods of employment set out at paragraph 158A of the defence;~~
  - iv. ~~admits the allegations contained in sub-paragraph (e) for each of the periods of employment set out at paragraph 158A of the defence;~~
  - v. ~~denies the allegations contained in sub-paragraph (f) for each of the periods of employment set out at paragraph 158A of the defence and says that section 74(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance of 15 shillings per day while en~~

~~route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);~~

~~vi. — says in respect of the allegations contained in sub-paragraph (h) that, for each of the periods of employment set out at paragraph 158A of the defence, the nature of the employment was for stock work;~~

~~d. — in respect of:~~

~~i. — paragraph 92 of the ASOC does not admit the allegations contained in paragraph 92 of the ASOC because it does not have a copy of each of the agreements by which Mossman Butchering Company Graziers employed the Applicant for the periods of employment set out in paragraph 158A of the defence;~~

~~ii. — paragraph 93 of the ASOC denies the allegations and refers to and repeats paragraph 78 of the defence;~~

~~iii. — paragraph 94 of the ASOC does not admit the allegations contained in paragraph 94 of the ASOC because it does not have a copy of each of the agreements by which Mossman Butchering Company Graziers employed the Applicant for the periods of employment set out in paragraph 158A of the defence~~

~~iv. — paragraph 95 of the ASOC, does not plead to the allegations in paragraph 95 of the ASOC as it contains no allegations against it;~~

~~e. — in respect of paragraph 96 of the ASOC says:~~

~~i. — it does not admit the matters set out in sub-paragraph (a) as those are matters which:~~

~~1. — are not within its knowledge; and~~

~~2. — cannot be tested because Reverend Wenke and Reverend Kernich are deceased;~~

~~ii. — it does not admit the allegations contained in sub-paragraph (b) because it does not have a copy of the agreements by which Mossman Butchering Company employed the Applicant as set out in paragraph 158A of the defence.~~

~~158C. — As to paragraph 158C of the ASOC the Respondent:~~

~~a. — admits the allegation contained in sub-paragraph (a);~~

~~b. — admits the allegations contained in sub-paragraph (b);~~

- ~~c. — says in respect of the allegations contained in sub-paragraph (d) that the amount of £7/10/— was to be a credit;~~
- ~~d. — admits the allegation contained in sub-paragraph (c);~~
- ~~e. — refers to and repeats the matters set out in paragraph 158B(b)(ii) of this defence.~~

~~158D. — As to paragraph 158D of the ASOC the Respondent:~~

- ~~a. — does not admit the allegations contained in sub-paragraph (a) as those are matters which:
  - ~~i. — are not within its knowledge; and~~
  - ~~ii. — cannot be tested because Reverend Wenke and Reverend Kernich are deceased;~~~~
- ~~b. — does not admit the allegations contained in sub-paragraph (b) because it does not have a copy of each of the agreements by which Mossman Butchering Company employed the Applicant as set out in paragraph 158A of the defence.~~

~~158E. — As to paragraph 158E of the ASOC the Respondent:~~

- ~~a. — admits the periods of employment of the Applicant totalled about 50 days;~~
- ~~b. — does not admit the balance of the allegations contained in paragraph 158E as those matters are not matters within its knowledge.~~

~~158F. — The Respondent denies the allegations contained in paragraph 158F of the ASOC and says:~~

- ~~a. — the ledger card for the Applicant at the Hopevale Protectorate for 1958 and 1959 records that wages due to the Applicant from his employer Mossman Butchering Company under the agreement referred to in paragraph 158A(a) were paid;~~
- ~~b. — Hopevale Mission Receipt number 91290 dated 5 November 1958 records the payment of £6/5/— in respect of the Applicant for the period from 25 June — 30 June 1958;~~
- ~~c. — the ledger card for the Applicant at the Hopevale Protectorate for 1958 and 1959 records that wages due to the Applicant from his employer Mossman Butchering Company under the agreement referred to in paragraph 158A(b) were paid;~~
- ~~d. — Hopevale Mission Receipt number 91290 dated 5 November 1958 records the payment of £33/15/— in respect of the Applicant for the period from 1 July — 31 July 1958;~~

- e. ~~the ledger card for the Applicant at the Hopevale Protectorate for 1958 and 1959 records that wages due to the Applicant from his employer Mossman Butchering Company under the agreement referred to in paragraph 158A(c) were paid;~~
- f. ~~Hopevale Mission Receipt number 91290 dated 5 November 1958 records the payment of £22/10/- in respect of the Applicant for the period from 1 August—31 August 1958;~~
- g. ~~the ledger card for the Applicant at the Hopevale Protectorate for 1958 and 1959 records that a total of £62/10/0 is recorded as banked comprising:
 
  - i. ~~£6/5/- for the period from 25 June to 30 June 1958;~~
  - ii. ~~£33/15/- for the period from 1 July to 31 July 1958;~~
  - iii. ~~£22/10/- for the period from 1 August to 31 August 1958; and~~~~
- h. ~~it does not have a copy of the pocket money book completed by Mossman Butchering Company.~~

~~158G. As to the allegations contained in paragraph 158G of the ASOC the Respondent:~~

- a. ~~admits the Applicant was entitled to receive pocket money of £1 a week whilst employed by Mossman Butchering Company pursuant to each of the agreements set out in paragraph 158A of the defence;~~
- b. ~~does not admit the amount in fact received by the Applicant because it does not have a copy of the pocket money book completed by Mossman Butchering Company;~~
- c. ~~otherwise denies the matters alleged therein and refers to and repeats the matters set out at paragraphs 158F(a), (c), (e) and (g) of the defence.~~

### ***Palm Island***

- 159. The Respondent does not admit the allegations contained in paragraph 159 of the ASOC as those matters are not within its knowledge and further say that this paragraph and paragraph 163 of the ASOC are inconsistent with the allegation in paragraph 16(d) of the ASOC and are thereby prejudicial and embarrassing.
- 160. The Respondent admits the allegations contained in paragraph 160 of the ASOC.
- 161. The Respondent does not admit the allegations contained in paragraph 161 of the ASOC as those matters are not within its knowledge and Reverend Kernich and Mr Bartlam are deceased.
- 162. The Respondent admits the allegations contained in paragraph 162 of the ASOC.

163. The Respondent does not admit the allegations contained in paragraph 163 of the ASOC as those matters are not within its knowledge and the Palm Island Superintendent, Mr Bartlam, is deceased and further say that this paragraph and paragraph 159 of the ASOC are inconsistent with the allegation in paragraph 16(d) of the ASOC and are thereby prejudicial and embarrassing.
164. The Respondent does not admit the allegations contained in paragraph 164 of the ASOC as those matters are not within its knowledge and says further that:
- a. the Palm Island Superintendent, Mr Bartlam, is deceased;
  - b. section 28(1) of the 1945 regulations provided that every Aboriginal shall, when required by the protector or superintendent, perform, according to his ability, any work necessary for the development and maintenance of the reserve, settlement or mission reserve as directed by the protector or superintendent, provided that an Aboriginal shall not be called upon to work in excess of 32 hours in any one week without remuneration; ~~and~~
  - c. the 1945 regulations did not require the superintendent to sign an employment agreement for work undertaken at the settlement on Palm Island-; and
  - d. by section 2 of the 1945 regulations the superintendent at Palm Island was not an employer and was not required to enter into an agreement in respect of the work referred to therein, the work that could be required to be performed pursuant to section 28 of the 1945 regulations was not employment which came within or was regulated by the 1939 Act or Part III of the 1945 regulations and in any event not performed under a contract of employment as the arrangements between the parties under the 1939 Act in respect of such work by a person residing at Palm Island do not evince an intention to enter into legal relations under a contract of employment.
165. As to paragraph 165 of the ASOC the Respondent:
- a. says the Applicant's wages as a settlement worker were recorded as £1 per fortnight in or about July 1960; and
  - b. otherwise does not admit the allegations contained in paragraph 165 of the ASOC as those matters are not within its knowledge and the Palm Island Superintendent, Mr Bartlam, is deceased.
166. As to paragraph 166 of the ASOC the Respondent:
- a. says the Applicant's taxation record card for 1959 – 1960 records he received settlement wages for the financial year 1959 – 1960;

- b. says the Applicant's occupation was ~~noted~~ recorded as a settlement worker in the Application for Permission to Marry Form completed sometime after 22 July 1960;
- c. says the Applicant's wages were stated as £1 per fortnight in the Application for Permission to Marry Form completed sometime after 22 July 1960;
- d. says the Applicant was recorded as a "Visiting Native" in the Palm Island "Reconciliation of Visiting Natives" as at 31 December 1959, 29 February 1960, 30 April 1960 and 30 May 1960;
- e. admits that for some periods in 1959 and 1960 the Applicant worked on the settlement of Palm Island;
- f. denies the episode of employment alleged therein and refers to and repeats the Applicant's Employment at Dunraven Station as set out in paragraph 69 of the defence;
- g. says it otherwise has no knowledge of the balance of the matters contained in that paragraph; and
- h. does not admit the balance of the matters contained in that paragraph.

166A. The Respondent denies the allegations contained in paragraph 166A of the ASOC because the Applicant was not employed as alleged in each episode of employment and refers to and repeats the Applicant's Employment set out in paragraph 69 of the defence and otherwise says it does not know if the Applicant returned to Hopevale or Palm Island during any of the Applicant's Employment as all the superintendents of Hopevale and Palm Island are deceased.

### ***Dunraven Station***

~~167. As to paragraph 167 of the ASOC the Respondent:~~

- ~~a. says the Applicant's Taxation Record for the Taxation Year 1959—1960 records that his employer was N.V and A.R. Rose of Hughenden and that they paid gross earnings of £65/- in that year;~~
- ~~b. says N.V. Rose is understood to be Mr Neville Vincent Rose, of Dunraven Station, Hughenden;~~
- ~~c. admits that for a time in the financial year 1959—1960 Mr Rose was the employer of the Applicant;~~
- ~~d. says it otherwise has no knowledge of the matters alleged in the ASOC; and~~
- ~~e. does not admit the matters alleged in paragraph 167 of the ASOC.~~

- ~~168. As to paragraph 168 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 168.~~
- ~~169. As to paragraph 169 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 169.~~
- ~~170. As to paragraph 170 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 170.~~
- ~~171. As to paragraph 171 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 171.~~
- ~~172. The Respondent denies the allegations contained in paragraph 172 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.~~
- ~~173. As to paragraph 173 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 173.~~
- ~~174. As to paragraph 174 of the ASOC the Respondent is not required to plead to the allegations as it contains no allegations against it.~~
- ~~175. As to paragraph 175 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 175.~~
- ~~176. As to paragraph 176 of the ASOC the Respondent:~~
- ~~a. refers to and repeats on the matters set out in paragraph 167 of the defence; and~~
  - ~~b. otherwise does not admit paragraph 176.~~
- ~~177. As to paragraph 177 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out in paragraph 167 of the defence;~~
  - ~~b. otherwise does not admit paragraph 177.~~
- ~~178. As to paragraph 178 of the ASOC the Respondent:~~

- a. — refers to and repeats the matters set out in paragraph 167 of the defence; and
- b. — otherwise does not admit paragraph 178.

### ***Palm Island (2)***

179. — The Respondent says, in response to the allegation contained in paragraph 179 of the ASOC:

- a. — so far as it alleges work at Dunraven Station the Respondent refers to and repeats the matters set out at paragraph 167 of the defence;
- b. — so far as it is alleged the Applicant was at Palm Island, the Respondent refers to and repeats the matters set out at paragraph 166 of the defence;
- c. — the allegation is otherwise not within its knowledge; and
- d. — it does not admit the allegation.

180. — The Respondent does not admit the allegation contained in paragraph 180 of the ASOC as the allegation is not within its knowledge and the Palm Island Superintendent, Mr Bartlam, is deceased.

### ***Rokeby Station***

181. — The Respondent denies the allegations contained in paragraph 181 of the ASOC and says that in or about 5 September 1961 the Applicant was employed by Rokeby Cattle Co of Coen.

182. — The Respondent admits the allegation contained in paragraph 182 of the ASOC.

183. — The Respondent does not know and so cannot admit the allegation contained in paragraph 183 of the ASOC.

184. — The Respondent denies the allegation contained in paragraph 184 of the ASOC and says that the employment of the Applicant by Rokeby Cattle Co was permitted by the then superintendent at Palm Island.

185. — The Respondent does not admit the allegation contained in paragraph 185 of the ASOC because it does not know what document was signed by the Applicant or when it was signed, prior to him commencing employment by Rokeby Cattle Co and it does not have a copy.

186. — As to paragraph 186 of the ASOC the Respondent:

- a. — denies the allegation contained in sub-paragraph (a) and says the employer was Rokeby Cattle Co;

- b. — admits the allegation contained in sub-paragraph (b);
  - c. — admits the allegation contained in sub-paragraph (c);
  - d. — admits the allegation contained in sub-paragraph (d) and says further that £6 per week of that amount of £14 per week was payable to the Superintendent at Palm Island;
  - e. — admits the allegation contained in sub-paragraph (e);
  - f. — denies the allegations contained in sub-paragraph (f) and says that section 74(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance of 15 shillings per day while en route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);
  - g. — denies the allegation contained therein and says that the period of employment was from 5 September 1961 to 18 December 1961;
  - h. — does not admit the allegation contained in sub-paragraph (h) because it does not know what the occupation of the Applicant was;
  - i. — admits the allegation contained in sub-paragraph (i);
  - j. — admits the allegation contained in sub-paragraph (j).
187. — The Respondent does not admit the allegations contained in paragraph 187 of the ASOC because it does not have a copy of the agreement by which Rokeby Cattle Co employed the Applicant in 1961 as set out in paragraph 181 of the defence.
188. — The Respondent denies the allegations contained in paragraph 188 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.
189. — The Respondent does not admit the allegation contained in paragraph 189 of the ASOC because it does not have a copy of the agreement by which Rokeby Cattle Co employed the Applicant in 1961 as set out in paragraph 181 of the defence.
190. — The Respondent is not required to plead to the allegations in paragraph 190 of the ASOC as it contains no allegations against it.
191. — As to paragraph 191 of the ASOC the Respondent:
- a. — does not admit the allegations contained in sub-paragraph (a) as those are matters which:
    - i. — are not within its knowledge; and

- ii. ~~cannot be tested because the Palm Island Superintendent, Mr Bartlam, is deceased;~~
  - b. ~~does not admit the allegations contained in sub paragraph (b) because it does not have a copy of the agreement by which Rokeby Cattle Co employed the Applicant in 1961 as set out in paragraph 181 of the defence.~~
192. ~~The Respondent does not admit the allegations contained in paragraph 192 of the ASOC because:~~
- a. ~~these matters are not within its own knowledge;~~
  - b. ~~it does not have a copy of the agreements by which Rokeby Cattle Co employed the Applicant in 1961 as set out in paragraph 181 of the defence.~~
193. ~~The Respondent denies the allegation contained in paragraph 193 of the ASOC and says the period during which Rokeby Cattle Co was the employer of the Applicant is as set out at paragraph 186(g) of the defence.~~
194. ~~The Respondent denies the allegations contained in paragraph 194 of the ASOC and says:~~
- a. ~~the amount of the Applicant's wages due to the Superintendent from 5 September 1961 to 18 December 1961 was £90;~~
  - b. ~~the employer was also required to pay forwarding expenses to the Superintendent for the Applicant in the amount of £10/3/0;~~
  - c. ~~on 26 October 1961 the employer paid the Superintendent £33/3/-; and~~
  - d. ~~on 9 July 1962 the employer paid the Superintendent £68/-.~~

### ***Kalinga Station***

195. ~~As to paragraph 195 of the ASOC the Respondent:~~
- a. ~~says that as at 16 February 1962 the Applicant was working at Kalinga Station via Laura;~~
  - b. ~~says that it has no knowledge of the terms or basis of that employment as the Applicant was exempt from the operation of the 1939 Act on 18 January 1962; and~~
  - c. ~~does not admit the allegations.~~
196. ~~As to paragraph 196 of the ASOC the Respondent:~~
- a. ~~refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 196.~~

~~197. — As to paragraph 197 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 197.~~

~~198. — As to paragraph 198 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 198.~~

~~199. — As to paragraph 199 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 199.~~

~~200. — The Respondent denies the allegations contained in paragraph 200 of the ASOC and refers to and repeats the matters set out at paragraph 78 of the defence.~~

~~201. — As to paragraph 201 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 201.~~

~~202. — As to paragraph 202 of the ASOC the Respondent is not required to plead to the allegation therein as it contains no allegation against it.~~

~~203. — As to paragraph 203 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 203.~~

~~204. — As to paragraph 204 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 204.~~

~~205. — As to paragraph 205 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 205.~~

~~206. — As to paragraph 206 of the ASOC the Respondent:~~

~~a. — refers to and repeats the matters set out in paragraph 195 of the defence; and~~

~~b. — otherwise does not admit paragraph 206.~~

***Driving***

~~207. The Respondent says in response to paragraph 207 of the ASOC:~~

- ~~a. that in addition to the periods of employment set out in the earlier paragraphs of the defence, the Applicant performed some other periods of employment, as set out in paragraph 225A of the defence;~~
- ~~b. other than as is set out in paragraph 225A of the defence, it has no knowledge of the nature of work performed during those periods of employment;~~
- ~~c. it has no knowledge of any other periods of employment performed by the Applicant;~~
- ~~d. the Applicant was exempt from the 1939 Act on 18 January 1962; and~~
- ~~e. it does not admit the allegations contained in paragraph 207 of the ASOC.~~

~~208. As to paragraph 208 of the ASOC the Respondent refers to and repeats the matters set out in paragraph 207 of the defence.~~

~~209. As to paragraph 209 of the ASOC the Respondent:~~

- ~~a. in respect of sub-paragraph (aa) refers to and repeats the matters set out at paragraph 225A of the defence and otherwise does not admit the allegations;~~
- ~~b. in respect of sub-paragraph (b) denies the allegations;~~
- ~~c. in respect of sub-paragraph (c) refers to and repeats the matters set out at paragraph 225A of the defence and otherwise denies the allegations;~~
- ~~d. says in respect of sub-paragraph (e):~~
  - ~~i. that for the year ended 30 June 1960, the Applicant earned settlement wages at a rate from which it can be inferred that, other than when he was in periods of employment otherwise specified in this defence, for that financial year he was engaged as a settlement worker on Palm Island; and~~
  - ~~ii. otherwise does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations.~~

~~210. As to paragraph 210 of the ASOC the Respondent:~~

- ~~a. refers to and repeats the matters set out at each of paragraphs 207, 208 and 209 of the defence; and~~
- ~~b. otherwise does not admit the allegations as those matters are not within its knowledge.~~

- ~~211. As to paragraph 211 of the ASOC the Respondent:~~
- ~~a. refers to and repeats the matters set out at each of paragraphs 207, 208 and 209 of the defence; and~~
  - ~~b. otherwise does not admit the allegations as those matters are not within its knowledge.~~
- ~~212. As to paragraph 212 of the ASOC the Respondent:~~
- ~~a. denies the allegations in respect of the period between 1954 and the end of 1959 when the Applicant was based at Hopevale;~~
  - ~~b. denies the allegations in respect of the period between the end of 1959 and September 1961 when the Applicant was based at Palm Island and refers to and repeats the matters set out at sub-paragraph 209(d)(i) of the defence.~~
- ~~213. The Respondent denies the allegation contained in paragraph 213 of the ASOC and refers to and repeats paragraph 212 of the defence.~~
- ~~214. The Respondent says in respect of paragraph 214 of the ASOC:~~
- ~~a. in addition to the periods of employment set out in the earlier paragraphs of the defence, it refers to and repeats the matters set out in paragraph 225A of the defence as to the periods of employment;~~
  - ~~b. in respect of those periods of employment set out at paragraph 225A below, it denies the allegations contained in paragraph 214 and says that the employment of the Applicant in each of those periods was permitted by the then superintendent at either Hopevale or Palm Island; and~~
  - ~~c. it otherwise refers to and repeats the matters set out at paragraph 207 (b), (c) and (d) of the defence.~~
- ~~215. The Respondent says in respect of paragraph 215 of the ASOC:~~
- ~~a. in respect of sub-paragraph (a) it refers to and repeats the matters set out at sub-paragraphs 225A(a), (d) and (e) below;~~
  - ~~b. it has no knowledge of the matters set out in sub-paragraph (b) and it does not admit them;~~
  - ~~c. it has no knowledge of the matters set out in sub-paragraph (c) and it does not admit them;~~
  - ~~d. in respect of sub-paragraph (d) it refers to and repeats the matters set out at sub-paragraphs 225A(b), (c) and (h) below;~~

- e. ~~in respect of sub-paragraph (e) it refers to and repeats the matters set out at sub-paragraph 225A(f) below; and~~
- f. ~~in respect of sub-paragraph (f) it refers to and repeats the matters set out at sub-paragraph 225A(g) below.~~

216. ~~The Respondent denies the allegation contained in paragraph 216 of the ASOC and says:~~

- a. ~~the Hopevale Ledger cards refer to agreement numbers starting with 'P' as set out in paragraph 225A of this defence;~~
- b. ~~the 'P' is a reference to a permit for casual employment; and~~
- c. ~~it does not have a copy of any of the agreements referred to in paragraph 225A of the defence.~~

217. ~~The Respondent says in respect of the allegations contained in paragraph 217 of the ASOC:~~

- a. ~~in respect of sub-paragraph (a):~~
  - i. ~~in so far as there are periods of employment referred to in paragraph 225A of the defence, the employer is the person identified in paragraph 225A of the defence as the employer;~~
  - ii. ~~otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- b. ~~in respect of sub-paragraph (b):~~
  - i. ~~in so far as there are periods of employment referred to in paragraph 225A of the defence, it admits the allegations;~~
  - ii. ~~otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- c. ~~in respect of sub-paragraph (c):~~
  - i. ~~in so far as there are periods of employment referred to in paragraph 225A of the defence, it admits the allegations;~~
  - ii. ~~otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- d. ~~in respect of sub-paragraph (d):~~

- ~~i. — in so far as there are periods of employment referred to in paragraph 225A of the defence, the wages to be paid to the Applicant are as set out in paragraph 225A;~~
  - ~~ii. — otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- ~~e. — in respect of sub-paragraph (e):~~
  - ~~i. — in so far as there are periods of employment referred to in paragraph 225A of the defence, it admits the allegations;~~
  - ~~ii. — otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- ~~f. — in respect of sub-paragraph (f):~~
  - ~~i. — in so far as there are periods of employment referred to in paragraph 225A of the defence it denies the allegations contained in sub-paragraph (f) and says that section 71(1) of the 1945 regulations required the employer to pay all expenses of the employee's conveyance from the place of residence to the place of employment and on completion of the period of the agreement, the cost of the employee's return to the place of residence together with an allowance for sustenance at the rate specified per day while en route (which allowance did not apply to any employee traveling by steamer when board is provided for by the passage money);~~
  - ~~ii. — otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- ~~g. — in respect of sub-paragraph (g):~~
  - ~~i. — in so far as there are periods of employment referred to in paragraph 225A of the defence, it denies the allegations and refers to and repeats the matters set out at paragraph 211 of the defence;~~
  - ~~ii. — otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~
- ~~h. — in respect of sub-paragraph (h):~~
  - ~~i. — in so far as there are periods of employment referred to in paragraph 225A of the defence, the occupation is as specified therein or is otherwise not within the knowledge of the Respondent and is not admitted;~~
  - ~~ii. — otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~

~~i. in respect of sub-paragraph (i):~~

~~i. in so far as there are periods of employment referred to in paragraph 225A of the defence, it refers to and repeats the matters set out in sub-paragraph 225A of the defence;~~

~~ii. otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~

~~j. in respect of sub-paragraph (j) the Respondent does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations;~~

~~k. it refers to and repeats the matters set out in paragraph 216 of this defence.~~

~~218. The Respondent says in respect of paragraph 218 of the ASOC:~~

~~a. in so far as there are periods of employment referred to in paragraph 225A of the defence, it does not admit the allegations contained in paragraph 218 of the ASOC and says:~~

~~i. it refers to and repeats the matters set out in paragraph 216 of this defence; and~~

~~ii. it does not have a copy of the agreement by which the employers employed the Applicant in those periods; and~~

~~b. otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations.~~

~~219. The Respondent does not admit the allegations contained in paragraph 219 of the ASOC and refers to and repeats the matters set out in paragraph 78 of the defence.~~

~~220. The Respondent says in respect of paragraph 220 of the ASOC:~~

~~a. in so far as there are periods of employment referred to in paragraph 225A of the defence, it does not admit the allegations contained in paragraph 220 of the ASOC because it does not have a copy of the agreements referred to in paragraph 225A; and~~

~~b. otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations.~~

~~221. The Respondent says in respect of paragraph 221 of the ASOC:~~

~~a. in so far as there are periods of employment referred to in paragraph 225A of the defence, it does not admit the allegations contained in paragraph 221 of the~~

~~ASOC because it does not have a copy of the agreements referred to in paragraph 225A; and~~

~~b. otherwise it does not have any knowledge of the allegations contained in that sub-paragraph and does not admit those allegations.~~

~~222. The Respondent says in respect of paragraph 222 of the ASOC:~~

~~a. in so far as there are periods of employment referred to in paragraph 225A of the defence, it does not admit the matters set out in sub-paragraph (a) as those are matters which:~~

~~i. are not within its knowledge; and~~

~~ii. cannot be tested because the relevant superintendents are deceased;~~

~~b. in so far as there are periods of employment referred to in paragraph 225A of the defence, it does not admit the allegations contained in sub-paragraph (b) because it does not have a copy of the agreements referred to in paragraph 225A; and~~

~~c. otherwise it does not have any knowledge of the allegations contained in that paragraph and does not admit those allegations.~~

~~223. The Respondent says in respect of paragraph 223 of the ASOC:~~

~~a. in so far as there are periods of employment referred to in paragraph 225A of the defence, it does not admit the matters set out in paragraph 223 of the ASOC as:~~

~~i. those are not matters which are within its knowledge;~~

~~ii. it does not have a copy of the agreements referred to in paragraph 225A;~~

~~b. otherwise it does not have any knowledge of the allegations contained in that paragraph and does not admit those allegations.~~

~~224. The Respondent does not admit the allegations contained in paragraph 224 of the ASOC and refers to and repeats the matters set out at paragraph 207 of the defence.~~

~~225. The Respondent does not admit the allegations contained in paragraph 225 of the ASOC and refers to and repeats the matters set out at paragraph 207 of the defence.~~

~~225A. The Respondent says in respect of the allegations contained in paragraph 225A of the ASOC that it does not know and does not admit the allegations that the employment of the Applicant was as a driver or that the persons named in the following sub-paragraphs were head drivers and otherwise says in respect of paragraph 225A:~~

~~a. in respect of sub-paragraph (a):~~

- i. ~~it admits the allegations contained in sub-paragraph (a);~~
  - ii. ~~it says that that Mr Len Elmes was the employer of the Applicant pursuant to agreement number P20299;~~
  - iii. ~~it says that Mr Elmes paid the wages payable to the superintendent in respect of the employment; and~~
  - iv. ~~the wages paid to the superintendent in respect of this period of employment is noted on the Hopevale ledger card at £35/-;~~
- b. ~~it denies the allegations in sub-paragraph (b) and says:~~
- i. ~~Mr Wallace was the employer of the Applicant pursuant to agreement P22521 shown on the Hopevale ledger as from 31 January 1958 for a period of 17 days, but recorded on receipt number 91271 in the Hopevale receipts book as for the period between 13 January 1958 and 31 January 1958;~~
  - ii. ~~pursuant to that agreement, Mr Wallace was to pay the gross wage of £8/10/- per week, with pocket money of £1/- per week to the Applicant and £7/10/- to the superintendent;~~
  - iii. ~~Mr Wallace paid the wages payable to the superintendent in respect of that employment;~~
  - iv. ~~Mr Wallace was the employer of the Applicant pursuant to agreement P22522 shown on the Hopevale ledger as from 1 February 1958 for a period of 24 days, and recorded on receipt number 91272 in the Hopevale receipts book as for the period between 1 February 1958 and 28 February 1958;~~
  - v. ~~pursuant to that agreement, Mr Wallace was to pay the gross wage of £8/10/- per week, with pocket money of £1/- per week to the Applicant and £7/10/- to the superintendent;~~
  - vi. ~~Mr Wallace paid the wages payable to the superintendent in respect of that employment; and~~
  - vii. ~~the wages paid to the superintendent in respect of these two periods of employment are noted on the Hopevale ledger card at £51/5/-;~~
- c. ~~in respect of sub-paragraph (c):~~
- i. ~~it admits the allegations contained in sub-paragraph (c) save that the employment period is expressed to be from 30 January 1959 for a period of 24 days;~~

- ii. — ~~it says that Mr Wallace was the employer of the Applicant pursuant to agreement number P23497;~~
- iii. — ~~it says that Mr Wallace paid the wages payable to the superintendent in respect of the employment; and~~
- iv. — ~~the wages paid to the superintendent in respect of this period of employment is noted on the Hopevale ledger card at £30 /-;~~
- d. — ~~in respect of sub-paragraph (d):~~
  - i. — ~~it admits the allegations contained in sub-paragraph (d) save that the employment period is expressed to be from 8 April 1959 for a period of 20 days;~~
  - ii. — ~~it says that that Mr Len Elmes was the employer of the Applicant pursuant to agreement number P22568; and~~
  - iii. — ~~it says that Mr Elmes paid the wages payable to the superintendent in respect of the employment;~~
- e. — ~~in respect of sub-paragraph (e):~~
  - i. — ~~it admits the allegations contained in sub-paragraph (e) save that:~~
    - 1. — ~~the employment period is expressed to be from 1 May 1959 for a period of 17 days;~~
    - 2. — ~~the gross wage payable was £9/10/- per week, not £8/10/- per week as alleged therein;~~
  - ii. — ~~it says that that Mr Len Elmes was the employer of the Applicant pursuant to agreement number P22574;~~
  - iii. — ~~it says that Mr Elmes paid the wages payable to the superintendent in respect of the employment; and~~
  - iv. — ~~the wages paid to the superintendent in respect of the period of employment at sub-paragraph (d) of the defence and this period of employment is noted on the Hopevale ledger card at £52/8/4;~~
- f. — ~~in respect of sub-paragraph (f):~~
  - i. — ~~it admits the allegations contained in sub-paragraph (f) save that:~~
    - 1. — ~~the employer is a C King;~~
    - 2. — ~~the employment period is expressed to be from 1 July 1959 for a period of 10 days;~~

- ii. ~~it says that that C King was the employer of the Applicant pursuant to agreement number P23522;~~
- iii. ~~it says that C King paid the wages payable to the superintendent in respect of the employment; and~~
- iv. ~~the wages paid to the superintendent in respect of this period of employment is noted on the Hopevale ledger card at £12/10/-;~~
- g. ~~in respect of sub-paragraph (g):~~
  - i. ~~it admits the allegations contained in sub-paragraph (g) save that the employment period is expressed to be from 4 November 1959 for a period of 15 days;~~
  - ii. ~~it says that that LC. Chisholm was the employer of the Applicant pursuant to agreement number P24204;~~
  - iii. ~~it says the employment was stock work;~~
  - iv. ~~it says that L.C. Chisholm paid the wages payable to the superintendent in respect of the employment; and~~
  - v. ~~the wages paid to the superintendent in respect of this period of employment is noted on the Hopevale ledger card at £18/15/-;~~
- h. ~~Mr Wallace was the employer of the Applicant pursuant to agreement P22575:~~
  - i. ~~shown on the top of the Hopevale ledger as from 2 May 1959 for a period of 13 days but in the body of the Hopevale ledger as from 21 May 1959 to 4 June 1959;~~
  - ii. ~~pursuant to that agreement, Mr Wallace was to pay the gross wage of £9/10/- per week, with pocket money of £2/- per week to the Applicant and £7/10/- to the superintendent;~~
  - iii. ~~Mr Wallace paid the wages payable to the superintendent in respect of that employment; and~~
  - iv. ~~the wages paid to the superintendent in respect of this period of employment is noted on the Hopevale ledger card as for the period 21.05.59 — 04.06.59 in the amount of £16/5/-.~~

## **G. Move to Innisfail**

226. The Respondent says in respect of paragraph 226 of the ASOC that:
- a. the Applicant was exempt from the 1939 Act on 18 January 1962; and

- b. it does not otherwise plead to the allegations in paragraph 226 of the ASOC as it contains no allegations against it.

227. The Respondent says in respect of paragraph 227 of the ASOC that:

- a. the Applicant was exempt from the 1939 Act on 18 January 1962; and
- b. it does not otherwise plead to the allegations in paragraph 227 of the ASOC as it contains no allegations against it.

228. The Respondent says in respect of paragraph 228 of the ASOC that:

- a. the Applicant was exempt from the 1939 Act on 18 January 1962; and
- b. it does not otherwise plead to the allegations in paragraph 228 of the ASOC as it contains no allegations against it.

#### **H. Exemption under the 1939 Act**

229. The Respondent admits the allegation contained in paragraph 229 of the ASOC and says further that at 18 December 1961 the Applicant had £17/0/0 to his credit in the Palm Island Savings Bank Applicant's savings account.

230. As to paragraph 230 of the ASOC: ~~The Respondent admits the allegation contained in paragraph 230 of the ASOC;~~

- a. admits the Applicant's exemption was granted on or about 18 January 1962 and further says that there were no conditions on the certificate of exemption; and
- b. does not know when the Applicant was informed of the grant of the exemption and so cannot admit the balance of the allegations contained in that paragraph.

231. The Respondent denies the allegation contained in paragraph 231 of the ASOC and ~~refers to and repeats the matters set out at paragraph 195 of the defence.~~ says:

- a. that as at 16 February 1962 the Applicant was working at Kalinga Station;
- b. the Applicant left the Palm Island settlement in September 1961;
- c. the Applicant travelled from Coen to Cooktown on 19 December 1961; and
- c. it has no knowledge of the terms or basis of the employment of the Applicant at Kalinga Station as the Applicant was unconditionally exempt from the 1939 Act on 18 January 1962.

232. The Respondent denies the allegation contained in paragraph 232 of the ASOC and refers to and repeats the matters set out at paragraph ~~195~~ 231 of the defence.

## I. Wages paid

233. The Respondent denies the allegations contained in paragraph 233 of the ASOC and says:

- a. that wages were paid to the superintendent on account of the employment of the Applicant under the 1939 Act in the period from 1954 to his exemption on 18 January 1962, as set out in this defence, and as itemised in the table below.

Date of Employment	Employer	Wages paid to superintendent (in pounds)
19.05.54 – 20.09.54	Starcke Graziers	£67/1/8
1.10.54 for 26 days	Starcke Graziers	£15/3/4
28.06.55 – 15.08.55	Mr Elmes	£35/-/-
28.12.55 – 31.12.55	Starcke Graziers	£4/-/-
02.01.56 for a period of 9 days 21.02.56 for a period of 35 days	Starcke Graziers	£44/10/-
02.04.56 for a period of 45 days	Starcke Graziers	£45/-/-
04.04.57 for a period of 23 days 01.05.57 for a period of 27 days	Mossman Butchering Company	£33/3/4
01.06.57 for a period of 22 days	Mossman Butchering Company	£14/13/4
24.12.57 or a period of 7 days 27.12.57 for a period of 14 days	Starcke Graziers	£7/-/-
	Starcke Graziers	£17/10/-
13.01.58 for a period of 17 days 01.02.58 for a period of 24 days	Mr Wallace	£51/5/-
22.03.58 for a period of 6 days	Starcke Graziers	£7/10/-
25.06.58 for a period of 5 days	Mossman Butchering Company	£6/5/-
01.07.58 for a period of 27 days	Mossman Butchering Company	£33/15/-
01.08.58 for a period of 18 days	Mossman Butchering Company	£22/10/-
30.01.59 for a period of 24 days	Mr Wallace	£30 /-/-
08.04.59 for a period of 20 days	Mr Elmes	£52/8/4
01.05.59 for a period of 17 days		
21.05.59 - 04.06.59	Mr Wallace	£16/5/-
01.07.58 for a period of 10 days	C. King	£12/10/-
04.11.59 for a period of 15 days	L.C. Chisholm	£18/15/-
Financial year ending 30.06.60	N.V and A.R. Rose of Hughenden	£65/-/-
05.09.61 – 18.12.61	Rokeyby Cattle Co	£101/3/-
<b>TOTAL:</b>		<b>£700/8/-</b>

- b. Further:

- i. no taxation returns were lodged for the Applicant in respect of any of the years other than that of the financial year ended 30 June 1960;
- ii. the taxation record for the financial year ended 30 June 1960 is noted recorded as '1st return';
- iii. the Applicant's name does not appear in the lists of income tax returns lodged by the Superintendent of Palm Island for the financial years ending 30 June 1961 and 30 June 1962;
- iv. there was an obligation on an Aboriginal to pay income tax in any financial year where their nett income exceeded £104 after deductions; and
- v. it can be inferred from the fact that no taxation returns were lodged that in none of the financial years ended 30 June 1954, 30 June 1955, 30 June 1956, 30 June 1957, 30 June 1958, 30 June 1959, 30 June 1961 and 30 June 1962 did the Applicant earn nett income exceeding £104 after deductions in any of those financial years.

233A. The Respondent further says that the following amounts were accredited to the Applicant on account of interest as recorded in the Hopevale ledger cards for the period 31 August 1954 – 28 February 1962.

31/07/1955	30 June 1955	£-/10/7
31/07/1956	30 June 1956	£-/4/6
31/07/1957	30 June 1957	£-/2/9
31/07/1959	30 JNE 1959	£-/2/9
31/07/1960	30 Jun 1960	£-/12/-
	<b>Total =</b>	£1/12/7

234. The Respondent denies the allegations contained in paragraph 234 of the ASOC and says:
- a. the superintendents of Hopevale and Palm Island were not paid on behalf of the Applicant the amounts alleged in paragraph 233 of the ASOC;
  - b. the multiplying factor used to calculate the present day value comprises both an allowance for inflation and an allowance for a return and, as such, does not accurately calculate a present day value.

### **J. Withdrawal of money by the Applicant**

235. The Respondent says in respect of the allegations contained in paragraph 235 of the ASOC:
- a. it has no knowledge of the matters contained in that paragraph;

ab. there was a store at the Hopevale Mission where Aboriginals could acquire goods:

- b. all the superintendents from the Hopevale Mission in the period to 1962 are deceased; and
- c. it does not admit the allegations contained therein.

236. [Blank]

237. The Respondent denies the allegations contained in paragraph 237 of the ASOC and says:

- a. it was the practice at the Hopevale Mission to maintain withdrawals books and to have Aboriginals sign for withdrawals which were then witnessed and cross referenced, by sheet number, to the ledger card for the Aboriginal in question;
- b. the Withdrawals book for the Hopevale Mission from December 1956 – January 1958 contains the following withdrawals which total £42/10/- for the year 1957 and which have been signed for by the Applicant and witnessed:

i.	month ended 31.01.57	Sheet no 3	£10/-/-
ii.	month ended 31.01.57	Sheet no 7	£2/-/-
iii.	month ended 28.02.57	Sheet no 12	£2/-/-
iv.	month ended 30.06.57	Sheet no 45	£2/10/-
v.	month ended 31.07.57	Sheet no 49	£10/-/-
vi.	month ended 31.07.57	Sheet no 50	£2/-/-
vii.	month ended 31.08.57	Sheet no 55	£5/-/-
viii.	month ended 30.09.57	Sheet no 64	£4/-/-
ix.	month ended 31.10.57	Sheet no 70	£4/-/-
x.	month ended 31.10.57	Sheet no 81	£1/-/-

- c. the Withdrawals set out in sub-paragraph (b) coincide with corresponding entries made in the Hopevale Protectorate Ledger card for 1957 by reference to the notation “Sh” and the number in the Particulars column;
- d. the Withdrawals book for the Hopevale Mission from December 1956 – January 1958 also contains a withdrawal on account of the Applicant on Sheet No 57 for the month ended 31 August 1957 of £3/4/7 ~~noted~~ recorded “As per order form”. As set out in paragraph 248(j) of this defence, this withdrawal coincides with a corresponding entry in the Hopevale Protectorate Ledger Card for 1957 by

- reference to the notation “57” in the Particulars column. It was the practice that Aboriginals would sign orders at the time the orders were filled;
- e. the Hopevale Protectorate ledger cards contain entries for withdrawals by reference to the notation “Sh” and a number in the Particulars column:
- i. for 1954 totalling £31/0/9
  - ii. for 1955 totalling £61/5/11
  - iii. for 1956 totalling £56/18/2
  - iv. for 1958 totalling £85/19/3
  - v. for 1959 totalling £118/-/-
  - vi. for 1960 totalling £37/3/-
- f. in accordance with the practices set out at sub-paragraphs (c) and (d), it can be inferred from these entries that the matters set out in sub-paragraph (e) were withdrawals by the Applicant or on his behalf based on the filling of order forms;
- g. section 12(9) of the 1939 Act provided for regulation making power for the establishment of a welfare fund for the general benefit of Aboriginals and the maintenance of such fund by, relevantly, contributions by Aboriginals as may from time to time be prescribed;
- h. section 6 of the 1945 regulation required all Aboriginals employed under the 1939 Act and who are earning wages to contribute from their gross earnings to a welfare fund on the scale of, relevantly, when residing on a settlement or a mission reserve or whose employment is controlled from a settlement or a mission reserve:
- i. at the rate of 5% of their gross earnings if they have no dependants;
  - ii. at the rate of 10% of their gross earnings if they have dependants on any settlement or mission reserve;
- i. the practice at the Hopevale Mission was that after the superintendent banked the wages received on behalf of the Applicant, the superintendent made deductions as required by the 1945 regulations and noted those deductions by a sheet number and with the letters ‘APF’;
- j. in respect of the Applicant the date, sheet number and amount of APF deductions were:

<b>Date</b>	<b>Particulars</b>	<b>Withdrawal</b>
30/09/1954	[indecipherable] A.P.F	£1/4/8

30/11/1954	Sh 50 A.P.F	£2/12
31/03/1955	Sh 15 A.P.F	£-/14/4
31/10/1955	Sh 25 A.P.F	£2/9/-
31/05/1956	Sh 31 A.P.F	£-/4/8
31/08/1956	Sh 34 A.P.F	£2/11/11
31/10/1956	Sh 56 A.P.F	£2/12/6
31/08/1957	Sh 48 A.P.F	£2/1/8
30/11/1957	Sh 1 A.P.F	£-/18/4
31/05/1958	Sh 13 A.P.F	£-/8/9
31/07/1958	Sh 15 A.P.F	£-/19/10
31/07/1958	Sh 15 A.P.F	£-/8/6
31/07/1958	Sh 14 A.P.F	£2/18/1
31/12/1958	Sh 19 A.P.F	£3/10/10
31/01/1959	Sh 24 A.P.F	£1/14/-
31/08/1959	Sh 29 A.P.F	£1/0/7
30/09/1959	Sh 29 A.P.F	£2/18/7
30/11/1959	Sh 31 A.P.F	£-/14/2
31/01/1960	Sh 33 A.P.F	£1/1/3
<b>TOTAL</b>		<b>£31/3/8</b>

- k. the following further deductions are noted recorded on the Hopevale ledger cards as having been made for the benefit of the Applicant:

Date	Particulars	Withdrawal
31/03/1956	Ref to Y'bah s 54	£10/-
30/06/1956	Ref Mareeba s 75	£10/-
30/09/1956	[indecipherable] s 100	£5/-
30/04/1959	Ref Cairns J90	£6/-
30/09/1959	Boat fare T13	£2/10/-
January 1960	Meals Aitkenvale V91	£-/18/-
30/04/1960	Meals Hughenden CB4	£1/8/-
30.06.1960	Meals Cairns V589	£-/6/-
<b>TOTAL</b>		<b>£36/2/-</b>

238. The Respondent says in relation to the allegation contained in paragraph 238 of the ASOC:
- it denies the allegations concerning Laura Station as set out therein;
  - it was the practice for Aboriginals when in another district to obtain withdrawals from the superintendents or protectors in that district;
  - the Hopevale Ledger Card for 1956 contains a withdrawal for May 31 1956 with the notation "Ref Laura J-182" in the amount of £22/11/6;
  - the Hopevale Ledger Card for 1958 contains a withdrawal for August 31 1958 with the notation "Ref Laura J25" in the amount of £13/7/-;

- e. the Applicant was working for Mossman Butchering Company at Laura as set out in paragraph ~~158A~~ 69 in August 1958;
- f. in accordance with the practice set out at sub-paragraph (b), it can be inferred from:
  - i. the entries in sub-paragraphs (c) and (d); and
  - ii. the fact of the Applicant's employment in the District of Laura as set out in sub-paragraph (e)

that these were withdrawals by the Applicant made through the District of Laura; and

- g. it has no knowledge of and does not admit the allegations in respect of Rokeby Station.
239. The Respondent does not plead to the allegations in paragraph 239 of the ASOC as it contains no allegations against it.
240. As to the allegations in paragraph 240 of the ASOC the Respondent:
- a. refers to and repeats the matters set out at paragraph 238 of the defence; and
  - b. does not otherwise plead to the allegations in paragraph 240 of the ASOC as it contains no allegations against it.
241. The Respondent denies the allegations contained in paragraph 241 of the ASOC and says:
- a. the withdrawals made by the Applicant were as follows:
 

i. for 1954	£31/0/9
ii. for 1955	£61/5/11
iii. for 1956	£56/18/2
iv. for 1957	£55/14/7
v. for 1958	£85/19/3
vi. for 1959	£118/-/-
vii. for 1960	£37/3/-
viii. TOTAL:	£446/1/8
  - b. the withdrawals made by the Applicant in the District of Laura as set out at paragraph 238 of the defence total £35/18/6.
  - c. the Applicant made withdrawals at Palm Island in 1960 as follows:

- |      |                         |       |
|------|-------------------------|-------|
| i.   | as at 31 March 1960:    | £3/-  |
| ii.  | as at 30 April 1960:    | £5/-  |
| iii. | as at 30 April 1960:    | £5/-  |
| iv.  | as at 31 May 1960:      | £7/-  |
| v.   | as at 31 December 1960: | £3/-  |
| vi.  | TOTAL:                  | £23/- |
- d. other withdrawals from the Applicant's ledger for deductions made in accordance with the requirements of the 1945 regulations as set out at paragraph 237(j) above and totalling £31/3/8 were made;
- e. other withdrawals from the Applicant's ledger for deductions for the benefit of the [Applicant](#) as set out at paragraph 237(k) above and totalling £36/2/- were made; and
- f. it does not know the extent to which further withdrawals were made for the benefit of the Applicant or his wife and children.

241A. The Respondent says further that by the passage of time significant evidence has been lost in respect of persons who could address the claims of the Applicant made in the ASOC in that:

- a. all the senior staff of the Director of Native Affairs Office (including the Directors and their subordinates) to whom the superintendents at Hopevale and Palm Island would have reported in the period from 1954 to 18 January 1962 are deceased;
- b. all the Hopevale superintendents in the period from 1954 to 18 January 1962 are deceased;
- c. all the Palm Island superintendents in the period from 1954 to 18 January 1962 are deceased;
- d. all the persons identified as working on Starcke Station proximate to the times alleged in the ASOC are deceased other than a Phillip Wallace (who was born on 4 July 1930). It will require extensive searches, [including a court application in New Zealand](#), to see if this person can be located or confirmed as deceased;
- e. all the persons identified in the ASOC as employers of the Applicant are deceased.

241B. The Respondent says further in respect of the Applicant's claims that:

- a. the Department of Aboriginal and Islander Advancement kept a centralised and comprehensive record keeping system using a uniform filing system, with central records created in the Brisbane office for Aboriginals other than Aboriginals in the Somerset region and in the Thursday Island Office in respect of Islanders and Aboriginals in the Somerset Region.;
- b. the types of records generally created on each individual or family group included, relevantly:
  - i. wages and savings ledger cards;
  - ii. taxation cards;
  - iii. withdrawal registers;
  - iv. general cash books;
  - v. records of marriages, deaths exemptions and removals; and
  - vi. general administrative files;
- c. a parallel record keeping system was generally maintained in the protectorates, the government settlements and, to a lesser extent, the Church managed missions. The settlement administrators also maintained, relevantly:
  - i. wages and savings registers;
  - ii. child endowment ledger cards; and
  - iii. collections summary, deposit and withdrawals sheets.
- d. by the passage of time significant evidence has been lost in respect of documents which could address the claims of the Applicant made in the ASOC in that:
  - i. financial records were regularly disposed or under the authority of:
    1. the Auditor-General until 23 June 1977;
    2. from 23 June 1977 the Treasurer's Instructions;
  - ii. on the settlements non-current records were typically incinerated; and
  - iii. other records may have been destroyed through problems associated with inadequate storage, such as mould, water damage by flood or storm or white ant infestation;
- e. the Auditor General authorised in October 1962 the destruction of general financial records including bank deposit books, savings bank withdrawal returns, employment agreements and permits dating from July 1944 to June 1960;

- f. pursuant to the Treasurer's instructions number 332 a number of records including the following financial records were destroyed:
- i. Collection Summary Sheets (all prior to 30 June 1978) on 23 May 1983;
  - ii. savings bank balance lists (all prior to 30 June 1978) on 23 May 1983;
  - iii. transfer and payment vouchers (prior to 30 June 1978) on 23 May 1983;
  - iv. cash per post books, bank deposit books and bank statements (all prior to 30 June 1980) on 13 July 1982;
- g. the Auditor General authorised on 13 April 1964 the destruction of the following records at Hopevale:
- i. wages collection books from September 1957 – 31 December 1961;
  - ii. withdrawal sheet books from May 1959 – 31 December 1961;
  - iii. bank deposit books from 19 November 1958 – 31 December 1961;
  - iv. account books from 15 August 1958 – 30 November 1961;
  - v. receipt books (thumb) from 1 June 1958 – 31 December 1961;
  - vi. Savings Bank and Child Endowment Balance Notices to 31 December 1961;
  - vii. DNA Savings Account memos to 31 December 1961;
  - viii. permit books from 9 June 1958 – 31 December 1961.

## **K. Establishment of the Trust**

242. The Respondent admits the allegation contained in paragraph 242 of the ASOC and says further:
- a. on or about 31 May 1933 Saving Account No S031 was opened at the Commonwealth Savings Bank for the accounts of operations at Brisbane and the settlements of Cherbourg, Palm Island and Woorabinda;
  - b. that on 12 May 1933 Saving Account Chief Protector of Aboriginals – Queensland Aboriginals Account No S2127 was opened at the Commonwealth Savings Bank for the accounts of the country protectors;
  - c. at this time, the Torres Strait Aboriginal Employees Account (section 521) continued in operation.
243. The Respondent admits the allegation contained in paragraph 243 of the ASOC and says further that the purpose of the savings accounts was also:
- a. as prescribed by section 12(10) of the 1939 Act for the control of the savings of Aboriginals; and

- b. to make available for investment the moneys held in savings bank accounts of Aboriginals in the state.

244. The Respondent admits that the details of the two accounts referred to in paragraph 242 of the ASOC are those details set out in paragraph 244 of the ASOC but says S2127 was not used for payments for Aboriginals domiciled in the Somerset District, Thursday Island other than as set out in paragraph 245A of the defence.

245. The Respondent ~~does not~~ admits the allegation contained in paragraph 245 of the ASOC and it is not relevant to the Applicant save that payments in addition to wages were also paid into account number S031 in respect of Aboriginals domiciled in Cherbourg, Palm Island and Woorabinda.

245A. The Respondent says in respect of paragraph 245A of the ASOC that:

- a. it admits the allegation that in about July 1941 account number S031 was incorporated into S2127 and further says that this occurred on 14 July 1941;
- b. it denies the balance of the allegations contained therein and says:
  - i. Aboriginals living on missions in the Somerset District had their wages paid into a bank account which:
    - A. in the period from the commencement of the Islander Act to approximately 1942 was called the Torres Strait Aboriginal Employees Account (S521) and was under the control of the Protector on Thursday Island and was held at the Commonwealth Savings Bank of Australia in Cairns;
    - B. following evacuation of the Thursday Island Office during World War 2, on an unknown date in or about March 1942 was transferred to the Head Office in Brisbane as an emergency measure and operated through account S2127;
    - C. was transferred back to Thursday Island on 7 July 1947 with the bank account being kept at the Commonwealth Bank Cairns (account number S1934 and called the Torres Strait Natives and Island Fund Account); and
    - D. on 17 May 1967 became called the Torres Strait and Cape York Trust Account (S1934) held at the Commonwealth Bank Cairns.
  - ii. collections of wages of Aboriginals other than those living on missions in the Somerset Region were made by protectors throughout the protectorates in Queensland;

- iii. such wages were paid into accounts maintained at banks throughout Queensland which had operating branches or agencies in the country towns in which the protectors were located, or in the towns which were proximate to where the protectors operated; and
- iv. regular transfers were made to account S2127.

246. The Respondent admits the allegation contained in paragraph 246 of the ASOC.

~~247. [Blank] The Respondent admits the allegations contained in paragraph 247 of the ASOC.~~

248. The Respondent ~~admits~~ denies the allegation contained in paragraph 248 of the ASOC in so far as they relate to an Islander wage earner on the basis that the savings accounts as defined in paragraph 245 of the ASOC did not apply to an Islander wage earner and, in respect of Aboriginal wage earners says further the practice of the Respondent:

- a. through the Superintendents and Protectors was to issue receipts to employers for all monies collected on account of wages paid to them pursuant to employment agreements for Aboriginals;
- b. through the Superintendents and Protectors was to bank all collections of wages in the manner set out in subparagraphs 245Abiii;
- c. through the Superintendents and Protectors was to require all wages collected to be posted into remittance books;
  - ca. was for regular transfers to be made to:
    - i. account No S2127 for those individuals who had ledgers within that account; and
    - ii. account No S031 for those individuals who had ledgers within that account; and
    - iii. the accounts referred to in paragraph 245A(b)(i) for those individuals who had ledgers within those accounts;
- d. through the Superintendents and Protectors was that at the end of the month the original completed remittance sheet would be forwarded to the central office of the Department in Brisbane or, in respect of the account referred to in paragraph 245A(b)(i) to Thursday Island (other than during World War 2 as set out at paragraph 245A(b)(i)(B));
- e. was to reconcile the original completed remittance sheets and the deposits;

- f. through the Superintendents and Protectors was to require payment of accounts by cheque;
- g. through the Superintendents and Protectors was to require payments to Aboriginals of up to an amount in cash on an advance account and thereafter by cheque. The amounts in respect of cash were:
  - i. £2/-/- from 1933 – 22 April 1945;
  - ii. £10/-/- from 23 April 1945 – 10 June 1955;
  - iii. £20/-/- from 11 June 1955 – 18 January 1962 (being the date the Applicant was exempt from the 1939 Act;
- h. through the Superintendents and Protectors was to require all cheques drawn to be posted to the Withdrawal book;
- i. was to require original sheets to be forwarded at the end of the month, supplying details required;
- j. through the Superintendents and Protectors to require vouchers paid for by cheque on account of Aboriginals for good supplied to be certified to as correct, with the signature of the Aboriginal required as receiving the goods with an independent witness where possible;
- k. through the Superintendents and Protectors to require cheques issued to Aboriginals to be drawn to order;
- l. through the Superintendents and Protectors to require cheques drawn to order for Aboriginals who cannot sign their names to make their mark on the back of the cheque together with the signature of independent witnesses as required by the Bank;
- m. was to require the duplicate of every agreement issued for the employment of an Aboriginal to be sent to the Director;
- n. through the Superintendents and Protectors to require when wages are paid by an employer to show in the column in the wages collections register the amount of the ~~W~~welfare ~~F~~fund ~~deducted~~ deductions;
- o. if in doubt on any matter to require communication, if necessary by wire, with the Director; and
- p. to conduct audits approximately annually at the central office in Brisbane of head office accounts, at the office on Thursday Island of those accounts based in Thursday Island and on the reserves and settlements of all relevant local records in the period from 1954 to 1962.

## 249. The Respondent:

- a. ~~does not~~ admits the allegations contained in paragraph 249 of the ASOC;
- b. and further says they are not relevant to the Applicant. the bank account into which wages of Islanders were deposited:
  - i. in the period from the commencement of the Islander Act to approximately 1942 – 1943 was the account referred to in paragraph 242c of the defence and was under the control of the Protector on Thursday Island and was held at the Commonwealth Savings Bank of Australia in Cairns;
  - ii. in the period 1942 – 43 became the Torres Strait Natives and Island Fund account (S521) and, following evacuation of the Thursday Island Office during World War 2, on 14 July 1942 was transferred to the Head Office in Brisbane as an emergency measure and operated through a bank account opened at the Commonwealth Bank in Brisbane (S2788);
  - iii. was transferred back to Thursday Island by 1947 to the control of the Protector on Thursday Island and held in account number S1934 at the Commonwealth Bank, Cairns ;
  - iv. on 17 May 1967 became called the Torres Strait and Cape York Trust Account (S1934) held at the Commonwealth Bank Cairns;
- c. further says that in so far as the particulars are embarrassing and prejudicial in that they are not particulars and purport to utilise as particulars inadmissible statements of opinion. The Respondent maintains this objection in respect of each and every subsequent reference to the Final Report into the Investigation of the Aborigines Welfare Fund and the Aboriginal Accounts prepared by The Consultancy Bureau dated March 1991 at each place where it appears in the particulars to allegations in the ASOC namely paragraphs 265(d)(i), 265(d)(ii), 265(d)(iii), 265(d)(v), 265(d)(vi), 265(d)(vii), 265(e), 265(f), 265(i), 265(j), 265(k), 265(l), 270(d)(i), 270(d)(ii), 270(d)(iii), 270(d)(v), 270(d)(vi), 270(d)(vii), 270(d)(viii), 270(e), 270(f), 270(i), 270(j), 270(k), 270(l) and 271A.

249A. The Respondent says in respect of paragraph 249A of the ASOC:

- a. as to sub-paragraph (a):
  - i. section 11(1) of the Islander Act provided for every island reserve to be governed by a council of not more than five members;

- ii. section 16 of the Islander Act provided: “The protector shall establish a fund, to be called the “Island Fund” which shall consist of all moneys received in respect of fees, charges, fares, rents, dues, fines imposed by the island court and grants (if any) and be applied to expenditure incurred by the council in the exercise and performance of the functions of island government under this Act”:
  - iii. section 17 of the Islander Act provided:
    - A. in s 17(i) for each island council to frame a budget for the Island Fund each year:
    - B. in s 17(iii) for the island council to adopt the budget:
    - C. in s 17(iv) for the island council to have power to make and levy a tax (referred to as the “island tax”) and to impose fees, charges, fares rents and dues in respect of any property service matter and thing for the purpose of enabling it to exercise and perform its functions:
    - D. in s 17(v) for the island tax to be founded on the budget, made and levied by the island council by resolution and collected by the council:
    - E. further, in s 17(v), if required by the island council, for the protector to, as far as practicable, collect the island tax by deductions from the earnings of Islanders:
  - iv. in accordance with the Islander Act, each of the island councils was able to determine the rate for deductions from Islanders’ wages to be paid into the Island Fund:
  - v. further, in accordance with the Islander Act, the protector was, from time to time, required to collect the island tax by deductions from the earnings of Islanders:
  - vi. Islanders were not required to make any contributions to the Welfare Fund:
  - vii. Islanders did not make any contributions to the Welfare Fund:
  - viii. Aboriginals in the Somerset Region did not make any contributions to the Welfare Fund:
  - ix. Aboriginals in the Somerset Region contributed to a welfare fund in the manner set out at paragraph 63 of the defence:
  - x. in the premises of (a) – (ix) the Respondent denies the allegations contained in sub-paragraph (a):
- b \_\_\_\_\_ it admits the allegations contained in sub-paragraph (b); and:

c. it admits the allegations contained in sub-paragraph (c).

250. The Respondent says in respect of the allegations in paragraph 250 of the ASOC that:

a. so far as they relate to a Group Member under the Islander Act, ~~or the 1965 Act and regulations:~~

i. ~~they are not relevant to the Applicant; and~~

ii. ~~It does not admit them;~~

b. ~~in so far as they relate to~~ the Applicant or a Group Member under the 1939 Act, ~~or a Group Member under the 1965 Act.~~ it denies the allegations contained therein and refers to and repeats the allegations set out at paragraph 252 of the defence.

251. ~~[Blank] The Respondent says in respect of the allegations in paragraph 251 of the ASOC that:~~

a. ~~so far as they relate to money received by a protector or superintendent into islander accounts or any other account (which is not specified or pleaded anywhere in the ASOC in respect of the Applicant) or invested in some other way (which is not specified or pleaded anywhere in the ASOC in respect of the Applicant):~~

i. ~~they are not relevant to the Applicant; and~~

ii. ~~it does not admit them;~~

b. ~~in so far as they relate to the accounts referred to in paragraph 248 of the defence it denies the allegations contained therein and refers to and repeats the allegations set out at paragraph 252 of the defence;~~

c. ~~in so far as they relate to money paid to a protector or superintendent by an employer pursuant to an employment agreement made under the Islander Act or the 1965 Act and regulations:~~

i. ~~they are not relevant to the Applicant; and~~

ii. ~~it does not admit them;~~

d. ~~in so far as they relate to money paid to a protector or superintendent by an employer pursuant to an employment agreement made under the 1939 Act it denies the allegations contained therein and refers to and repeats the allegations set out at paragraph 252 of the defence.~~

252. The Respondent says in respect of paragraph 252 of the ASOC that it denies the creation of a 'trust' as alleged and further says:

- a. as to sub-paragraph (a):
- i. so far as the allegations relate to regulation 5 of the 1966 regulation:
    - A. they are not relevant to the Applicant who was exempt from the 1939 Act on 18 January 1962; and
    - B. it does not admit them they do not relate to Group Members who were Islanders under the Islander Act or Aboriginals under the 1939 Act who were exempt prior to 28 April 1966;
    - C. otherwise it admits section 5(i) of the 1966 regulation provides as alleged save that the words used are not Aboriginals but assisted persons; and
    - D. further says the regulations provide for the administration of that part of the property of assisted persons in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
  - ii. in so far as the allegations relate to section 12 of the 1945 regulations:
    - A. it admits section 12(1) of the 1945 regulations provides as alleged save that the word used in the 1939 Act is not aborigine but Aboriginal which has a defined meaning in the 1939 Act; and
    - B. it says the regulations provide for the administration of that part of the property of Aboriginals in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
    - C. it says the 1945 regulations did not apply to Islanders under the Islander Act or to assisted Aboriginals or assisted Islanders under the 1965 Act;
- b. as to sub-paragraph (b):
- i. there are no allegations which are relevant to the Applicant ~~and it does not admit the allegations in sub-paragraph (b);~~
  - ii. it says that section 21 of the Islander Act provided, relevantly, that subsections two and three of section six, sections fourteen to seventeen, both inclusive, subsection one of section eighteen, paragraphs (a) and (d) of subsection one of section nineteen, section twenty, sections twenty-three to twenty-eight, both inclusive operated as alleged;
- c. as to sub-paragraph (c):

- i. it admits section 12(3) of the 1945 regulations provides as alleged save that the word used in the 1945 regulations is not aborigine but Aboriginal which has a defined meaning in the 1939 Act but it says the regulations provide for the administration of that part of the property of Aboriginals in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
  - ii. there are no allegations which relate to Group Members who are Islanders as the 1945 regulations did not apply to Islanders;
  - iii. there are no allegations which relate to Group Members under the 1965 Act as the 1945 regulation was repealed on the commencement of the 1965 Act;
- d. as to sub-paragraph (d):
- i. there are no allegations which are relevant to the Applicant who was exempt from the 1939 Act on 18 January 1962 ~~and it does not admit the allegations in sub-paragraph (d);~~
  - ii. they do not relate to Group Members who were Islanders under the Islander Act or Aboriginals under the 1939 Act who were exempt prior to 28 April 1966;
  - iii. it admits section 5(3) of the 1966 regulation provides relevantly: "*The Director in his capacity as trustee for any assisted person on whose behalf money is held may withdraw from such fund or funds such sums as are required by the said assisted person or are necessary for payment of just debts, payment of which has been duly authorised by the Director or a District Officer*";
  - iv. further says the regulation provides for the administration of that part of the property of assisted persons in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
- e. as to sub-paragraph (e):
- i. there are no allegations which are relevant to the Applicant who was exempt from the 1939 Act on 18 January 1962 ~~and it does not admit the allegations in sub-paragraph (e);~~
  - ii. they do not relate to Group Members who were Islanders under the Islander Act or Aboriginals under the 1939 Act who were exempt prior to 28 April 1966;

- iii. it admits section 73 of the 1966 regulation provides as alleged therein:
  - iv. further says the regulation provides for the administration of that part of the property of assisted persons in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles):
- f. as to sub-paragraph (f):
- i. it admits section 5(3) of the 1939 Act uses the phrase 'held in trust' as alleged save that the word used in the 1939 Act is not aborigine but Aboriginal which has a defined meaning in the 1939 Act but it says the 1939 Act provides for the administration of that part of the property of Aboriginals in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
  - ii. it denies the allegations relate to Group Members who are Islanders under the Islander Act as section 5(3) of the 1939 Act did not apply to Islanders:
  - iii. it denies the allegations relate to Group Members under the 1965 Act as the 1939 Act was repealed on the commencement of the 1965 Act:
- g. as to sub-paragraph (g):
- i. there are no allegations which are relevant to the Applicant ~~and it does not admit the allegations in sub-paragraph (g);~~
  - ii. it denies the allegations relate to Group Members under the 1939 Act as the Islander Act did not apply to them:
  - iii. it denies the allegations relate to Group Members under the 1965 Act as the Islander Act was repealed on the commencement of the 1965 Act:
  - iv. it says section 23(1) of the Islander Act provided: 'Notwithstanding anything contained in this Act or any other Act or law, any vessel or other plant the property of any islander or islander used by such islander or islanders for the purpose of engaging in any industry shall be deemed to be vested in the protector as trustee for the islander or islanders concerned upon the following trusts, namely:
    - 1. to direct the working of such vessel or plant by such islander or islanders in the manner deemed by him to be to the best advantage of such islander or islanders:
    - 2. to sell or authorise the sale on behalf of such islander or islanders of such vessel, plant or the produce of such vessel or plant":

- v. further says the provision provides for the administration of that part of the property of Islanders in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles):
- h. as to sub-paragraph (h):
  - i. it admits section 12(10) of the 1945 regulations stated as alleged but says that the provision enabled the control of savings as an exercise of governmental functions and did not create a true trust (according to private law principles);
  - ii. it denies the allegations relate to Group Members who are Islanders under the Islander Act as the 1945 regulations did not apply to Islanders;
  - iii. it denies the allegations relate to Group Members under the 1965 Act as the 1939 Act was repealed on the commencement of the 1965 Act;
- i. as to sub-paragraph (i):
  - i. there are no allegations which are relevant to the Applicant who was exempt from the 1939 Act on 18 January 1962 ~~and it does not admit the allegations in sub-paragraph (i);~~
  - ii. it denies the allegations in respect of Group Members who were Islanders under the Islander Act or Aboriginals under the 1939 Act who were exempt prior to 28 April 1966 as the 1965 Act did not apply to them;
  - iii. it admits section 60(16) of the 1965 Act uses the words set out therein, but says further that section 60 of the 1965 Act conferred a power to make regulations;
  - iv. further says the 1965 Act provides for the administration of that part of the property of assisted persons in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
- j. as to sub-paragraph (j):
  - i. it denies the allegations contained therein on the basis that the phrase 'protection and care' was not so used;
  - ii. it further denies the allegations relate to Group Members who are Islanders under the Islander Act as the 1945 regulations did not apply to Islanders;

- iii. it denies the allegations relate to Group Members under the 1965 Act as the 1939 Act and the 1945 regulations were repealed on the commencement of the 1965 Act;

ja. As to subparagraph (ja):

- i. it denies the allegations therein in respect of Group Members who were Islanders under the Islander Act as the 1945 regulations did not apply to Islanders;
- ii. it denies the allegations relate to Group Members under the 1965 Act as the 1939 Act and the 1945 regulations were repealed on the commencement of the 1965 Act;
- iii. it admits, in respect of the Applicant and Group Members under the 1939 Act that section 16(1) contains the words set out therein but denies it imposed any liability as alleged and says further that section 16(1) of the 1939 Act provides for the administration of that part of the property of assisted persons in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);

k. as to sub-paragraph (k):

- i. it admits section 16(3)(d) of the 1939 Act provides as alleged save that the word used in the 1939 Act is not aborigine but Aboriginal which has a defined meaning in the 1939 Act but it says the 1939 Act provides for in the administration of that part of the property of Aboriginals in the exercise of its governmental functions and did not create a true trust (according to private law principles);
- ii. it denies the allegations therein in respect of Group Members under the 1965 Act as the 1939 Act was repealed on the commencement of the 1965 Act;

l. as to sub-paragraph (l):

- ~~i. in so far as the allegations refer to an islander they are not relevant to the Applicant and are not admitted;~~
- ii. it denies the allegations contained therein as in so far as the wages were earned pursuant to a permit for casual employment as no such direction as alleged therein was given by the employed Aboriginal or Islander;

- iii. it denies the allegations contained therein as in so far as the wages were paid to certain Aboriginals employed on vessels after 5 April 1951 because section 3(e) of the Islander regulations provided that Aboriginals discharged at Cairns were to be paid wages in the presence of the Protector of Aboriginals Cairns or his representative and Aboriginals discharged at ports south of Cairns were to be paid off in the presence of the Protector of Aboriginals in that town or his accredited representative;
- iv. in respect of the balance of the allegations denies such a direction was given;
- m. as to sub-paragraph (m):
  - ~~i. in so far as the allegations refer to an islander they are not relevant to the Applicant and are not admitted;~~
  - ii. it denies the ~~balance of the~~ allegations contained therein and says that savings were controlled in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
- n. as to sub-paragraph (n):
  - ~~i. in respect of all persons other than the Applicant:
 
    - ~~1. it does not know the identity of any person who is a Group Member and so it cannot admit the allegations contained in paragraph 4 of the ASOC and;~~
    - ~~2. it does not admit the allegations contained in this sub-paragraph;~~~~
  - ii. in respect of the Applicant and Group Members who were Aboriginals under the 1939 Act, it denies the allegations and says that the scheme created by the 1939 Act had the purpose of *'the preservation and protection of aboriginals in the State of Queensland'* and was in the exercise of the Respondent's governmental functions and did not create a true trust (according to private law principles);
  - iii. in respect of Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred

- upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary;
- iv. in respect of Group Members who were Aborigines or Islanders under the 1965 Act and regulations, it denies the allegations and says that:
- A. the 1965 Act provided for the cessation of the appointment of all protectors and superintendents as protectors or superintendents;
- B. the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and consequently the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary;
- o. as to sub-paragraph (o) it denies the allegations and says:
- i. that the scheme created by the 1939 Act had the purpose of *'the preservation and protection of aboriginals in the State of Queensland'*;
- ii. that pursuant to section 12(3) of the 1945 regulations it had power to withdraw from the relevant account such sums as were required by the said Aboriginal or were necessary for the payment of the Aboriginal's debts;
- iii. from 15 September 1956 pursuant to section 12(5) of the 1945 regulations it had power to withdraw from the relevant account for the purpose of investment of the same by the Treasurer on his behalf in such manner as the Treasurer shall think fit, whether by loan to the Crown, any Crown instrumentality, any local body or otherwise;
- iv. that the scheme created by the Islander Act had the purpose of provision for the Government of the Native Inhabitants of the Islands of Torres Strait and, in respect of employment and property, preservation and protection;
- v. that pursuant to section 16 of the 1939 Act, as adopted by section 21 of the Islander Act it:
- A. was required to undertake the protection and management of the property of all Islanders in the District as that term was defined in section 21 of the Islander Act;

- B. had power to take possession of, retain, sell or dispose of any property of an Islander;
  - C. had power, relevantly, to receive in its own name, sue for, recover or receive any money or other property due or belonging to an Islander;
  - D. had power to exercise in the name of an Islander any power which the Islander might exercise for his own benefit;
- vi. that the scheme created by the 1965 Act had the purpose to promote the well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders;
- vii. that pursuant to section 27 of the 1965 Act, through a district officer, it had power to undertake and maintain the management of the property of any assisted Aborigine or assisted Islander who usually resided within the district where:
- A. a request was made in that behalf by the assisted Aborigine or assisted Islander concerned; or
  - B. if the district officer was satisfied that the best interests of the assisted Aborigine or assisted Islander or any member of the family of such a person who should be supported by the officer required it;
- viii. when maintaining the management of the property of an assisted Aborigine or an assisted Islander, pursuant to section 28 of the 1965 Act it had powers to, relevantly:
- A. take possession of, retain, sell or otherwise dispose of any such property;
  - B. in his own name sue for and recover, or receive any property to which such assisted Aborigine or assisted Islander is entitled;
  - C. exercise in the name of the assisted Aborigine or assisted Islander any power which such assisted person may exercise for his benefit;
- ix. when maintaining the management of the property of an assisted Aborigine or an assisted Islander, pursuant to section 5(3) of the 1965 regulations it had powers to, relevantly:

- A. as trustee, withdraw from such fund or funds such sums as are required by the said assisted person or are necessary for payment of his just debts;
- x. at all material times, the Respondent acted in the exercise of its statutory governmental functions and its statutory functions and obligations did not create a true trust (according to private law principles).
253. The Respondent says in respect of the allegations in paragraph 253 of the ASOC:
- a. in so far as paragraph 253 refers to wages which ought to have been paid it is prejudicial and embarrassing on the basis that it is inconsistent with the facts pleaded in paragraph 250 of the ASOC; so far as they relate to islanders, the Islander Act and regulations or the 1965 Act and regulations:
- i. ~~they are not relevant to the Applicant; and~~
- ii. ~~it does not admit them;~~
- b. otherwise in so far as they relate to the 1939 Act and regulations, the Islander Act and regulations or the 1965 Act and regulations, it denies the allegations and refers to and repeats the matters set out at paragraph 252 of the defence.
254. The Respondent ~~says in respect of~~ denies the allegations in paragraph 254 of the ASOC and repeats and relies on paragraphs 250 and 252 of the defence.:
- a. ~~so far as they relate to islanders:~~
- i. ~~they are not relevant to the Applicant; and~~
- ii. ~~it does not admit them;~~
- b. ~~in so far as they relate to aboriginals as that term is defined in the 1939 Act:~~
- i. ~~it refers to and repeats paragraph 252 of the defence;~~
- ii. ~~it was the policy of the Respondent, through the Directors, superintendents and protectors, to safeguard the wages of aboriginal persons paid to it but not to deprive the aboriginals of:~~
- A. ~~reasonable and appropriate access to those wages in accordance with the requirements of the 1945 regulations whilst the aboriginal was under the protection of the 1939 Act; and~~
- B. ~~the amount of those wages (to the extent not already paid to aboriginal persons) upon the aboriginal becoming relevantly, unconditionally exempt from the 1939 Act.~~
255. ~~The Respondent says in respect of the allegations in paragraph 255 of the ASOC:~~

- a. ~~so far as they relate to islanders, the Islander Act and regulations or the 1965 Act and regulations:~~
- i. ~~they are not relevant to the Applicant; and~~
  - ii. ~~it does not admit them;~~
- b. ~~in so far as they relate to the 1939 Act and regulations:~~
- i. ~~it admits the aboriginal person whose wages were held in one (or more) of the accounts referred to in paragraph 248 was entitled to:~~
    - A. ~~subject to the terms of legislation, have those wages used for their benefit; or~~
    - B. ~~have parts of those wages provided to them from time to time upon request of the Superintendent or Protector subject to the terms of the 1939 Act;~~
    - C. ~~if provided with an unconditional exemption pursuant to the 1939 Act, to have the balance then held in the relevant account in their ledger paid to them;~~
  - ii. ~~it was the practice that the administration of the 1939 Act and regulations occurred in accordance with sub-paragraph (i) hereof; and~~
  - iii. ~~actions and steps taken as set out in this sub-paragraph were in the exercise of the Respondent's governmental functions and did not create a true trust.~~

## L. Trustee's Duties

256. The Respondent says in respect of the allegations in paragraph 256 of the ASOC:
- a. that it denies the existence of a trust or trust duties as alleged in the ASOC and repeats and refers to the matters at paragraph 252 of the defence;
  - b. as to the assertions of a continuing duty (in the particulars to the paragraph), it says that the duties set out in ~~the~~ sub-paragraphs ~~below~~ (a), (c), (e), (j), (k), (l), (m) and (n) arose only whilst:
    - i. an Aboriginal person was under the 1939 Act and ceased upon the unconditional exemption of an Aboriginal person from the 1939 Act; or
    - ii. an Islander was under the Islander Act; or
    - iii. an Aboriginal person or Islander person was an Assisted Aborigine or Assisted Islander within the meaning of the 1965 Act at the time of the commencement of that Act, or was declared to be so in accordance with

the 1965 Act, and ceased upon that person ceasing to be an Assisted Aborigine or Assisted Islander; and

c. it further says in respect of each of the sub-paragraphs of paragraph 256 of the ASOC: in respect of sub-paragraphs (aa)(i)-(v):

- i. it denies the allegations contained therein and says that Respondent had no such obligations in respect of the employment of the Applicant or each of the Group Members:
- ii. further, it denies the allegations in sub-paragraph (aa)(ii) so far as it relies on paragraphs 42, 43, 46, 46A and 47 of the ASOC because the 1945 regulations did not apply to Islanders:
- iii. further it denies the allegations in sub-paragraph (aa)(iii) in so far as it relies on paragraph 46A of the ASOC because the 1945 regulation did not apply to Islanders:

ca. in respect of sub-paragraph (aa)(vi):

- i. in so far as the matters alleged therein relate to the Applicant and Group Members who were Aborigines under the 1939 Act and regulations, it denies the allegations contained therein and says that:
  - A. the Respondent had no such obligation; but
  - B. says further that from 23 April 1945 onwards, s 13 of the 1945 regulations provided that “No withdrawal of cash from an aboriginal’s Savings Bank Account in any one sum exceeding the amount of £10 shall be made without the approval of the Director being first obtained. The reason for any withdrawal exceeding the sum of £2 must be stated when reporting the transaction to Head Office”; and
- ii. in so far as the matters alleged therein relate to Group Members who were Islanders under the Islander Act and regulations, it denies the allegations contained therein and says that:
  - A. the Islander Act contained no such obligation;
  - B. the Islander regulation contained no such obligation;
  - C. the 1945 regulations did not apply to Islanders; and
  - D. the Respondent had no such obligation;

- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations as the allegation relates to matters arising before the enactment of that legislation; and
- cb. in respect of sub-paragraph (aa)(vii):
- i. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations contained therein and says that:
- A. the Respondent had no such obligation; but
- B. says further that from 11 June 1955 onwards, s 13 of the 1945 regulations, as amended, provided that “No withdrawal of cash from an aboriginal’s Savings Bank Account in any one sum exceeding the amount of £20 shall be made without the approval of the Director being first obtained. The reason for any withdrawal exceeding the sum of £10 must be stated when reporting the transaction to Head Office”:
- C. s 13 of the 1945 regulations was repealed with effect from 28 April 1966; and
- ii. in so far as the matters alleged therein relate to Group Members under the Islander Act and regulations, it denies the allegations contained therein and says that:
- A. the Islander Act contained no such obligation;
- B. the Islander regulation contained no such obligation;
- C. the 1945 regulations did not apply to Islanders; and
- D. the Respondent had no such obligation
- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations as that legislation imposed no such obligation; and
- cc. in respect of sub-paragraph (ab) it denies the allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the Applicant and those of the Group Members who were under the 1939 Act until they were exempt from the 1939 Act, the Islander Act and regulations in respect of those Group Members who were Islanders under the Islander Act and the 1965 Act and regulations in respect of those Group Members who were an Assisted Aborigine or Assisted Islander

under the 1965 Act until a person ceased to be an Assisted Aborigine or Assisted Islander in respect of the management of the balance in the accounts referred to in paragraph 248 of the defence; and

- cd.
- i. in respect of sub-paragraph (a):
    1. in so far as the matters alleged therein relate to islanders or obligations said to be owed under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations contained therein and says that any record making or keeping requirements are the requirements to make or keep records which are contained in the Islander Act and regulations;
    2. in so far as the matters alleged therein relate to the 1939 Act and regulations it denies the allegations contained therein and says that any record making or keeping requirements are the requirements to make or keep records which are contained in the 1939 Act and the 1945 regulations; and
    - 2A. in so far as the matters alleged therein relate to the 1965 Act and regulations it denies the allegations contained therein and says that any record making or keeping requirements are the requirements to make or keep records which are contained in the 1965 Act and regulations; and
    3. it refers to and repeats the matters referred to in paragraphs 241A and 241B of the defence;
  - d. in respect of sub-paragraph (b):
    - i. in so far as the matters alleged therein relate to islanders or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it admits the obligation was as prescribed by section 16(1)(b) of the 1939 Act as applied by section 21 of the Islander Act;
    - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and 1945 regulations it admits the obligation was as prescribed by section 12(1) of the 1945 regulations; and

- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it admits the obligation was as prescribed by section 5(1) of the 1966 regulations; and
- iv. it otherwise denies the allegations contained therein;
- e. in respect of sub-paragraph (c):
  - i. in so far as the matters alleged therein relate to islanders or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the management of the balance in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the management of the balance in the accounts referred to in paragraph 248 of the defence; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the management of the balance in the accounts referred to in paragraphs 248 and 249 of the defence;
  - iv. it otherwise denies the allegations contained therein;
- f. in respect of sub-paragraph (d):
  - i. in so far as the matters alleged therein relate to islanders or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the investing of the balance in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements

- of the 1939 Act and the 1945 regulations in respect of the investing of the balance in the accounts referred to in paragraph 248 of the defence; and
- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the investing of the balance in the accounts referred to in paragraphs 248 and 249 of the defence;
- iv. it otherwise denies the allegations contained therein;
- g. in respect of sub-paragraph (e):
- i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the accounting to any Islander for the balance in that Islander's name in the accounts referred to in paragraph 249 of the defence;
- ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the accounting to any Aboriginal for the balance in that Aboriginal's name in the accounts referred to in paragraph 248 of the defence;
- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the accounting to any Aboriginal or Islander for the balance in that Aboriginal or Islander's name in the accounts referred to in paragraphs 248 and 249 of the defence;
- iv. it otherwise denies the allegations contained therein;
- h. in respect of sub-paragraph (f):
- i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the

- Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the investing of the balance in the accounts referred to in paragraph 249 of the defence;
- ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies those allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the investing of the balance in the accounts referred to in paragraph 248 of the defence; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the investing of the balance in the accounts referred to in paragraphs 248 and 249 of the defence;
  - iv. it otherwise denies the allegations contained therein;
- i. in respect of sub-paragraph (g):
    - i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the investing of the balance in the accounts referred to in paragraph 249 of the defence;
    - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies those allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the investing of the balance in the accounts referred to in paragraph 248 of the defence; and
    - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the investing of the balance in the accounts referred to in paragraphs 248 and 249 of the defence;
    - iv. it otherwise denies the allegations contained therein;

- j. in respect of sub-paragraph (h):
- i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director and the superintendents were required to act in accordance with the requirements of the Islander Act and regulations in respect of the duties and powers conferred upon them under the Islander Act and regulations;
  - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations and says the Director and the superintendents were required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the duties and powers conferred upon them under the 1939 Act and the 1945 regulations; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says the Director and the managers were required to act in accordance with the requirements of the 1965 Act and regulations in respect of the duties and powers conferred upon them under the 1965 Act and regulations;
  - iv. it otherwise denies the allegations contained therein;
- k. in respect of sub-paragraph (i):
- i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the investing of the balance in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies those allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the investing of the balance in the accounts referred to in paragraph 248 of the defence; and

- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the investing of the balance in the accounts referred to in paragraphs 248 and 249 of the defence;
  - iv. it otherwise denies the allegations contained therein;
- l. in respect of sub-paragraph (j):
- i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the accounting to any Islander for the balance in that Islander's name in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant or Group Members under the 1939 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the accounting to any Aboriginal for the balance in that Aboriginal's name in the accounts referred to in paragraph 248 of the defence; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the accounting to any Aboriginal or Islander for the balance in that Aboriginal or Islander's name in the accounts referred to in paragraphs 248 and 249 of the defence;
  - iv. it otherwise denies the allegations contained therein;
- m. in respect of sub-paragraph (k):
- i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the payment to any Islander of

- amounts in that Islander's name in the accounts referred to in paragraph 249 of the defence;
- ii. in so far as the matters alleged therein relate to the Applicant or Group Members under the 1939 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the payment to aAboriginals of amounts in that aAboriginal's name in the accounts referred to in paragraph 248 of the defence; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the payment to any Aboriginal or Islander of amounts in that Aboriginal or Islander's name in the accounts referred to in paragraphs 248 and 249 of the defence;
  - iv. it otherwise denies the allegations contained therein;
- n. in respect of sub-paragraph (l):
- i. in so far as the matters alleged therein relate to islanders or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the payment to any Islander of amounts in that Islander's name in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the payment to aAboriginals of amounts in that aAboriginal's name in the accounts referred to in paragraph 248 of the defence; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the payment to any Aboriginal or Islander of amounts in that Aboriginal or Islander's name in the accounts referred to in paragraphs 248 and 249 of the defence;

- iv. it otherwise denies the allegations contained therein:
- o. in respect of sub-paragraph (m):
  - i. in so far as the matters alleged therein relate to ~~Islanders~~ or obligations said to be owed to Group Members under the Islander Act and regulations ~~or the 1965 Act and regulations, those matters are irrelevant to the Applicant and are not admitted~~ it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the investment and use of money held in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant and Group Members under the 1939 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the investment and use of money held in the accounts referred to in paragraph 248 of the defence-; and
  - iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the investment and use of money held in the accounts referred to in paragraphs 248 and 249 of the defence;
  - iv. it otherwise denies the allegations contained therein;
- p. in respect of sub-paragraph (n):
  - i. in so far as the matters alleged therein relate to Islanders or obligations said to be owed to Group Members under the Islander Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the Islander Act and regulations in respect of the management of the balance in the accounts referred to in paragraph 249 of the defence;
  - ii. in so far as the matters alleged therein relate to the Applicant or Group Members under the 1939 Act and regulations it denies the allegations and says the Director was required to act in accordance with the requirements of the 1939 Act and the 1945 regulations in respect of the management of the balance in the accounts referred to in paragraph 248 of the defence; and

- iii. in so far as the matters alleged therein relate to Group Members under the 1965 Act and regulations it denies the allegations and says that the Director was required to act in accordance with the requirements of the 1965 Act and regulations in respect of the management of the balance in the accounts referred to in paragraphs 248 and 249 of the defence;
- iv. it otherwise denies the allegations contained therein.

### M. Fiduciary Duty

257. The Respondent says in respect of the allegations in paragraph 257 of the ASOC:

- a. ~~so far as they relate to islander workers or aboriginal workers under the 1965 Act and regulations:~~
  - i. ~~they are not relevant to the Applicant; and~~
  - ii. ~~it does not admit them;~~
- b. in so far as they relate to the Applicant and Group Members who were ~~a~~Aboriginal workers under the 1939 Act and regulations it denies the allegations contained therein and says it was required, through its servants and agents, to act in accordance with the terms of the 1939 Act and the 1945 regulations as set out at paragraph 256 of the defence and not as a fiduciary;
  - ba. in so far as they relate to Group Members who were Islander workers under the Islander Act and regulations it denies the allegations contained therein and says it was required, through its servants and agents, to act in accordance with the terms of the Islander Act and regulations as set out at paragraph 256 of the defence and not as a fiduciary;
  - bb. in so far as they relate to Group Members who were assisted Aborigines or assisted Islanders under the 1965 Act and regulations it denies the allegations contained therein and says it was required, through its servants and agents, to act in accordance with the terms of the 1965 Act and regulations as set out at paragraph 256 of the defence and not as a fiduciary;
- c. in the premises no fiduciary duty arose.

258. The Respondent says in respect of the allegations in paragraph 258 of the ASOC:

- aa. in relation to sub-paragraph (aa) in so far as they relate to:
  - i. the Applicant and Group Members who were Aboriginal workers under the 1939 Act and regulations it denies the allegations and says that the express purpose of the 1939 Act was “the preservation and protection of aboriginals in the State of Queensland” and consequently the Respondent, the

Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the 1939 Act and the 1945 regulations and not as a fiduciary;

- ii. Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary;
- iii. Group Members who were Aborigines or Islanders under the 1965 Act and regulations it denies the allegations and says that:
  - 1. the 1965 Act provided for the cessation of the appointment of all protectors and superintendents as protectors or superintendents;
  - 2. the purpose of the 1965 Act was to promote the well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and consequently the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary;
- iv. in the premises no fiduciary duty as alleged arose from the statutory provisions:
  - a. in relation to sub-paragraph (a) in so far as they relate to:
    - i. ~~islander workers or aboriginal workers under the 1965 Act and regulations:~~
      - 1. ~~they are not relevant to the Applicant; and~~
      - 2. ~~it does not admit them;~~
    - ii. the Applicant and Group Members who were aAboriginal workers under the 1939 Act and regulations it denies the allegations and says that the express purpose of the 1939 Act was “the preservation and protection of aAboriginals in the State of Queensland” and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental

functions in the terms of the 1939 Act and the 1945 regulations and not as a fiduciary;

ii. Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary;

ii. Group Members who were Aborigines or Islanders under the 1965 Act and regulations, it denies the allegations and says that:

1. the 1965 Act provided for the cessation of the appointment of all protectors and superintendents as protectors or superintendents;

2. the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and consequently the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary;

iii. in the premises no relationship of trust and confidence as alleged arose;

b. in relation to sub-paragraph (b) in so far as they relate to:

~~i. islander workers or aboriginal workers under the 1965 Act and regulations;~~

~~1. they are not relevant to the Applicant; and~~

~~2. it does not admit them;~~

ii. the Applicant and Group Members who were aAboriginal workers under the 1939 Act and regulations it denies the allegations and says the express purpose of the 1939 Act was “the preservation and protection of aAboriginals in the State of Queensland” and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the 1939 Act and the 1945 regulations and not as a fiduciary;

- iii. Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection, and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary:
- iv. Group Members who were Aborigines or Islanders under the 1965 Act and regulations it denies the allegations and says that:
  - 1. the 1965 Act provided for the cessation of the appointment of all protectors and superintendents as protectors or superintendents;
  - 2. the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and consequently the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary:
- c. in relation to sub-paragraph (c) in so far as they relate to:
  - i. ~~islander workers or aboriginal workers under the 1965 Act and regulations:~~
    - 1. ~~they are not relevant to the Applicant; and~~
    - 2. ~~it does not admit them;~~
  - ii. the Applicant and Group Members who were aAboriginal workers under the 1939 Act and regulations it denies the allegations and says:
    - 1. that the express purpose of the 1939 Act was “the preservation and protection of aAboriginals in the State of Queensland”;
    - 2. whilst an aAboriginal person was under the 1939 Act and the 1945 regulations:
      - a. the Respondent, the Director the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the

1939 Act and the 1945 regulations and not as a fiduciary;  
and

- b. the ~~a~~Aboriginal person did not concurrently hold rights in equivalent terms;

iii. Group Members who were Islander workers under the 1939 Act and 1945 regulations as applied by the Islander Act and regulations, it denies the allegations and says:

1. that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection;

2. whilst an Islander person was under the Islander Act and regulations:

a. the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary; and

b. the Islander person did not concurrently hold rights in equivalent terms;

iv. Group Members who were Aborigines or Islanders under the 1965 Act and regulations it denies the allegations and says:

1. that the 1965 Act provided for the cessation of the appointment of all protectors and superintendents as protectors or superintendents;

2. that the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders;

3. whilst a person met the definition of assisted Aborigine or assisted Islander within the meaning of those terms in the 1965 Act:

a. the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary;

b. the assisted Aborigine or assisted Islander did not concurrently hold rights in equivalent terms;

d. in relation to sub-paragraph (d) in so far as they relate to:

- i. ~~islander workers or aboriginal workers under the 1965 Act and regulations:~~
  - 1. ~~they are not relevant to the Applicant; and~~
  - 2. ~~it does not admit them;~~
- ii. the Applicant and Group Members who were aAboriginal workers under the 1939 Act and regulations it denies the allegations and says the express purpose of the 1939 Act was “the preservation and protection of aAboriginals in the State of Queensland” and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the 1939 Act and the 1945 regulations and not as a fiduciary;
- iii. Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary;
- iv. Group Members who were Aborigines or Islanders under the 1965 Act and regulations it denies the allegations and says that the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and consequently the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary;
- e. ~~in relation to sub-paragraph (e) in so far as they relate to :~~
  - i. ~~islander workers or aboriginal workers under the 1965 Act and regulations:~~
    - 1. ~~they are not relevant to the Applicant; and~~
    - 2. ~~it does not admit them;~~



- iii. Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection, and the matters referred to in this sub-paragraph form an express part of the obligations conferred by the Respondent on the Director, the protectors and superintendents in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary;
- iv. Group Members who were Aborigines or Islanders under the 1965 Act and regulations it denies the allegations and says that the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and the matters referred to in this sub-paragraph form an express part of the obligations conferred by the Respondent on the Director, officers and managers in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary;
- h. in relation to sub-paragraph (h) in so far as they relate to:
  - i. ~~islander workers or aboriginal workers under the 1965 Act and regulations:~~
    - 1. ~~they are not relevant to the Applicant; and~~
    - 2. ~~it does not admit them;~~
  - ii. the Applicant and Group Members who were aAboriginal workers under the 1939 Act and regulations it denies the allegations and says the express purpose of the 1939 Act was “the preservation and protection of aAboriginals in the State of Queensland” and consequently the Respondent, the Director, the protectors and superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the 1939 Act and the 1945 regulations and not as a fiduciary.;
  - iii. Group Members who were Islander workers under the Islander Act and regulations, it denies the allegations and says that the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and, in respect of employment and property, preservation and protection, and consequently the Respondent, the Director, the protectors and

superintendents had obligations conferred upon them in the exercise of governmental functions in the terms of the Islander Act and regulations and not as a fiduciary;

- iv. Group Members who were Aborigines or Islanders under the 1965 Act and regulations it denies the allegations and says that the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders and consequently the Respondent, the Director, officers and managers had obligations conferred upon them in the exercise of governmental functions in the terms of the 1965 Act and regulations and not as a fiduciary.

259. The Respondent denies the allegations in paragraph 259 of the ASOC and says:
- a. the express purpose of the 1939 Act was the preservation and protection of aAboriginals in the State of Queensland; and
    - aa. the purpose of the Islander Act and regulations was provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants and for other purposes; and
    - ab. the purpose of the 1965 Act was to promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders; and
  - b. the way this was to be given effect to was in the manner prescribed by:
    - i. the 1939 Act and the 1945 regulations for the Applicant and Group Members under that Act;
    - ii. the Islander Act and regulations for Group Members under that Act; and
    - iii. the 1965 Act and regulations for Group Members under that Act.

## **N. Validity of payments to the Welfare Fund**

260. ~~The Respondent does not admit the allegations contained in~~ As to paragraph 260 of the ASOC ~~the Respondent;~~
- a. denies that “sections 6 to 11 of the Regulations” required payments to “the Welfare Fund”;
  - b. says that Regulations 6 to 11 of the 1945 Regulations required payments to the welfare funds as prescribed therein; and
  - c. admits that the payment of money from gross wages under Regulations 6 to 11 of the 1945 Regulations was a tax.

261. The Respondent denies the allegations contained in paragraph 261 of the ASOC and further says:

- a. the 1945 regulations were made pursuant to section 12(9) of the 1939 Act and were thereby authorised by parliament;
- b. the 1945 regulations formed part of the 1939 Act by operation of the definition of "This Act" in section 4(1) of the 1939 Act;
- c. alternatively, if the Court finds the 1945 regulations were not authorised by parliament, recovery of such payments cannot now be pursued by reason of:
  - i. s 10A of the *Limitation of Actions Act 1974*; or
  - ii. further and alternatively s 10(1)(d) of the *Limitation of Actions Act 1974*.

261A. The Respondent denies the allegations contained in paragraph 261A of the ASOC and says that payments of money from the gross wages of the Applicant or Group Members to the Welfare Fund or otherwise from the accounts to the Welfare Fund prior to the 1945 regulations coming into effect on 23 April 1945 were authorised by sections 14 and 16 of the 1939 Act on their proper construction "alternatively, recovery of such payments cannot now be pursued by reason of:

(a) s 10A of the *Limitation of Actions Act 1974*; or

(b) further and alternatively s 10(1)(d) of the *Limitation of Actions Act 1974*."

261B. The Respondent denies the allegations contains in paragraph 261B of the ASOC and says that, properly construed, section 6 of the 1945 regulations was intended to apply to any employment to which section 14 of the 1939 Act applied "alternatively, recovery of such payments cannot now be pursued by reason of:

(a) s 10A of the *Limitation of Actions Act 1974*; or

(b) further and alternatively s 10(1)(d) of the *Limitation of Actions Act 1974*."

261C. The Respondent denies the allegations in paragraph 261C of the ASOC and says that:

(a) section 12(9) of the 1939 Act, properly construed was intended to confer a legislative power that enabled section 6 of the 1945 regulations;

b) such section 6 of the 1945 regulations both authorised and required the deductions referred to therein; and

(c) repeats and relies on paragraph 261(c) above.

261D. The Respondent denies the allegations contained in paragraph 261D of the ASOC and repeats the matters stated in paragraph 261C and 261(c) above.

### **NA. Improper purpose and unlawful conduct**

261E. The Respondent denies the allegations contained in paragraph 261E of the ASOC and repeats the matters stated in paragraphs 261A, 261C and 261(c) of the defence.

261F. As to the allegations in paragraph 261F of the ASOC the Respondent says:

a. in respect of Group Members, the Respondent denies the allegations and repeats the matters stated in paragraphs 261A, 261C and 261(c) of the defence; and

b. in respect of the Applicant, in addition to (a), the Hopevale Ledger Cards do not contain any entries for such purposes.

261FA. "Recovery of the payments pleaded in paragraphs 261E and 261F cannot now be pursued by reason of:

(a) s 10A of the *Limitation of Actions Act 1974*; or

(b) further and alternatively s 10(1)(d) of the *Limitation of Actions Act 1974*."

### **NB. Slavery Abolition Act**

261G. The Respondent does not admit the allegations contained in paragraph 261G of the ASOC.

261H. The Respondent denies the allegations contained in paragraph 261H of the ASOC and says:

(a) the effect of section 20 of the *Supreme Court Act 1867* (Qld) was that the State of Queensland was taken to have received all laws and statutes within the realm of England as at 25 July 1828;

(b) the *Slavery Abolition Act 1833* did not take effect until 6 August 1834;

(c) in the premises of (a) and (b) the *Slavery Abolition Act 1833 (Imp)* was not incorporated into the laws of Queensland as alleged in paragraph 261H of the ASOC.

261I. The Respondent denies the allegations contained in paragraph 261I of the ASOC because the matters set out therein did not amount to slavery within the meaning of section XII of the *Slavery Abolition Act 1833 (Imp)*.

261J. The Respondent denies the allegations contained in paragraph 261J of the ASOC.

261K. The Respondent denies the allegations contained in paragraph 261K of the ASOC.

## O. Trust Fund – the Applicant

262. The Respondent says in respect of paragraph 262 of the ASOC:

- a. it denies the allegations contained in sub-paragraph (a) and refers to and repeats the matters set out at paragraphs 248 to 254~~5~~ of the defence;
- b. it denies the allegations contained in sub-paragraph (b) and refers to and repeats the matters set out at paragraphs 248 to 254~~5~~ of the defence.

~~263. The Respondent says in respect of paragraph 263 of the ASOC that it denies the allegations alleged therein and says:~~

- ~~a. that the money paid by the employers of the Applicant to the superintendent at Hopevale as set out in this defence on account of wages earned by the Applicant in accordance with the employment agreements set out in this defence was paid by the Superintendent into the savings accounts referred to in paragraph 248 of the defence;~~
- ~~b. it was the practice that the money paid by the employers of the Applicant to the superintendent at Palm Island as set out in this defence on account of wages earned by the Applicant in accordance with the employment agreements set out in this defence was paid by the Superintendent into the savings accounts referred to in paragraph 248 of the defence.~~

~~264. The Respondent says in respect of paragraph 264 of the ASOC that:~~

- ~~a. in respect of sub-paragraph (a), it does not admit the allegations and refers to and repeats the matters at paragraph 75 of the defence;~~
- ~~b. in respect of sub-paragraph (b) it admits the allegations;~~
- ~~c. in respect of sub-paragraph (c):~~
  - ~~i. in so far as allegations refer to the requirements of the 1966 regulations they are not relevant to the Applicant as he was exempt from the 1939 Act on 18 January 1962 and are not admitted;~~
  - ~~ii. in respect of the 1939 Act it does not admit the allegations and repeats and refers to the matters set out at paragraph 254 of the defence;~~
- ~~d. in respect of sub-paragraph (d) it admits the allegations in so far as they relate to instructions given prior to 18 January 1962 and otherwise the allegations are not relevant to the Applicant and are not admitted;~~
- ~~e. in respect of sub-paragraph (e) it admits the allegations;~~
- ~~f. in respect of sub-paragraph (f) it admits the allegations.~~

## P. Breach of Trust – the Applicant

265. ~~The Respondent denies~~ As to the allegations contained in paragraph 265 of the ASOC ~~the Respondent and says:~~

aa. in respect of sub-paragraph (aa):

- i. denies the allegation in (i) in respect of the Applicant's Employment as set out in paragraph 68 of the defence because each instance of the Applicant's Employment was permitted;
- ii. denies the allegation in (ii) and says that, in respect of the Applicant's Employment as set out in paragraph 68 of the defence, agreements and permits were entered into as stated therein;
- iii. denies the allegations in (iii) because the Applicant was not employed as alleged in each episode of employment and refers to and repeats the matters set out in paragraph 69 of the defence;
- iv. denies the allegation in (iv) and says:
  - A. the allegation is embarrassing as it does not arise from the trust alleged at paragraph 250 of the ASOC; and
  - B. that no appropriate or other recovery action was required as there was no failure by an employer to pay the Applicant's wages or pocket money in respect of the Applicant's Employment as set out in paragraph 69 of the defence;
- v. denies the allegation in (v) and says:
  - A. the allegation is embarrassing as it does not arise from the trust alleged at paragraph 250 of the ASOC; and
  - B. that there was no failure by an employer to pay the Applicant's wages or pocket money in respect of the Applicant's Employment as set out in paragraph 69 of the defence;
- vi. in respect of the allegation in (vi):
  - A. the allegation is embarrassing as it does not arise from the trust alleged at paragraph 250 of the ASOC;
  - B. denies the allegations in so far as it refers to all the Applicant's Employment other than in respect of Kalinga Station and says the Applicant was paid in respect of the Applicant's Employment as set out in paragraph 69 of the defence; and

C. says that it has no knowledge of the terms or basis of that employment as the Applicant was exempt from the operation of the 1939 Act on 18 January 1962 and does not admit the allegations in respect of Kalinga Station; and

vii. denies the allegation in (vii), and says:

A. the allegation is embarrassing as it does not arise from the trust alleged at paragraph 250 of the ASOC;

B. that in so far as the allegation is made in reliance on the absence of a deposit for work carried out by the Applicant for WH Wallace for a period of 24 days commencing 1 February 1958, there was no Permit number 225224; and

C. further the Applicant's wages for that period of time were credited to his account as part of a deposit of £51/ 5/-, on 31 July 1958, for work that the Applicant carried out between 13 January and 28 February 1958;

a. in respect of sub-paragraph (a) denies the allegations and says:

ia. in respect of (ia), it refers to and repeats the matters set out in paragraph 241B(e) of the defence and says that other than for Permit Number 22439, copies of these records cannot now be located;

- i. in respect of (i), this information is contained on the Hopevale ledger cards referred to in the particulars to paragraph 248 of the ASOC (**Hopevale Ledger Cards**), the Palm Island taxation record for the 1959/1960 financial year, the audit report for Palm Island for the year 23 May 1961 – 17 May 1962 and subsequent correspondence from the Palm Island superintendent to the Rokeby Cattle Co dated 13 June 1962, the letter from the Palm Island Superintendent to the Director of Native Affairs dated ~~9 July~~ **27 August** 1962 and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- ii. in respect of (ii), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- iii. in respect of (iii), this information is contained on the Hopevale Ledger Cards, the Palm Island taxation record for the 1959/1960 financial year, the audit report for Palm Island for the year 23 May 1961 – 17 May 1962

and subsequent correspondence from the Palm Island superintendent to the Rokeby Cattle Co dated 13 June 1962, the letter from the Palm Island Superintendent to the Director of Native Affairs dated ~~9 July~~ 27 August 1962 and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;

- iv. in respect of (iv), records relating to pocket money paid to the Applicant cannot be located however, with the death of the superintendents at Hopevale and Palm Island the payment of pocket money is a matter solely within the knowledge of the Applicant and cannot now be tested;
- v. in respect of (v), this information is contained on the Hopevale Ledger Cards, the Palm Island taxation record for the 1959/1960 financial year, the audit report for Palm Island for the year 23 May 1961 – 17 May 1962 and subsequent correspondence from the Palm Island superintendent to the Rokeby Cattle Co dated 13 June 1962, the letter from the Palm Island Superintendent to the Director of Native Affairs dated ~~9 July~~ 27 August 1962, the correspondence referred to at paragraph 273 of the ASOC and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- vi. in respect of (vi), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- vii. in respect of (vii), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- viii. in respect of (viii), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- ix. in respect of (ix), the information in respect of the Applicant is contained on the withdrawal sheets as referred to in paragraph 237b of this defence and the Hopevale Ledger Cards and whilst the practice was to keep withdrawal sheets and ledger cards at Palm Island which contained this information, these withdrawal sheets and ledger cards cannot now be

located. There was also a practice of providing written orders for the purchase of goods on all settlements and reserves but these documents cannot now be located;

- x. in respect of (x), the information in respect of the Applicant is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
  - xi. in respect of (xi), this information is contained on the Hopevale Ledger Cards in respect of the obligation conferred by section 12(1) of the 1945 regulation and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
  - xii. in respect of (xii), this information (other than, in some cases, the reason for the payment) is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located. The reason for any payment to the Applicant is within the knowledge of the Applicant;
  - xiii. in respect of (xiii), some parts of this information is contained within correspondence in 1962 and 1964 provided to the Applicant pursuant to an RTI application. Further it was the practice to keep ledger cards at Palm Island which contained this information, but these ledger cards cannot now be located;
- b. in respect of sub-paragraph (b) # denies the allegations ~~and refers to and repeats the matters set out at paragraphs 84, 128, 142, 158F, 194 and 225A of this defence;~~
  - c. in respect of sub-paragraph (c) # denies the allegations and refers to and repeats the matters set out at paragraphs 272 - 273 and 275 of this defence;
  - d. in respect of sub-paragraph (d) # denies the allegations and says further:
    - i. in respect of (i) money paid from the accounts particularised in paragraph 248 of the ASOC into the Welfare Fund was paid in accordance with the requirements of the 1945 regulations;
    - ii. in respect of (ii) # denies the allegations and refers to and repeats the matters at (i);
    - iii. in respect of (iii), # denies the allegations and says the Hopevale Ledger Cards do not contain any entries for such purposes;

- iv. ~~in respect of (iv), it denies the allegations and repeats and relies on paragraphs 248 and 272 – 275 of this defence;~~
- v. in respect of (v), # denies the allegations and says the Hopevale Ledger Cards do not contain any entries for such purposes and that interest was paid in accordance with the requirements of section 12(1) of the 1945 regulations;
- vi. in respect of (vi), # denies the allegations and says the Hopevale Ledger Cards contain credits of interest which were made in accordance with the requirements of section 12(1) of the 1945 regulations;
- vii. in respect of (vii), # denies the allegations and says that credits or interest were in accordance with requirements of sections 9(1) and 12(1) of the 1945 regulations;
- viii. in respect of (viii), it denies the allegations and refers to and repeats the matters pleaded in paragraphs 272 to 273 and 275 herein;
- e. in respect of sub-paragraph (e) # denies the allegations and, so far as the allegation is made based on the particulars alleged, it says that any such investment was expressly authorised by section 9(1) of the 1945 regulations;
- f. in respect of sub-paragraph (f) # denies the allegations and refers to and repeats the matters in this paragraph and paragraphs 272 to 273 and 275 of the defence;
- g. in respect of sub-paragraph (g) # denies the allegations and says that it can be inferred based on the matters pleaded in paragraphs 272 to 273 and 275 that the Applicant was paid what was owing to him in May 1964;
- h. in respect of sub-paragraph (h) # denies the allegations and refers to and repeats the matters in this paragraph and paragraphs 272 to 273 and 275 of the defence;
- i. in respect of sub-paragraph (i) # denies the allegations and refers to and repeats the matters at sub-paragraph (d);
- j. in respect of sub-paragraph (j) # denies the allegations and refers to and repeats the matters at sub-paragraph (d);
- k. in respect of sub-paragraph (k) # denies the allegations and says there is no allegation of misappropriation of any of the Applicant's money;
- l. in respect of sub-paragraph (l) says:
  - i. it denies the allegation and repeats and relies on paragraphs 248 and 272 – 273 and 275 of this defence; and

- ii. in so far as the allegation is made in reliance on the particulars in sub-paragraph A, it denies the allegation and refers to and repeats the matters pleaded in sub-paragraphs 265(aa)(ii) and (iii) of the defence; and
- iii. in so far as the allegation is made in reliance on the particulars in sub-paragraph B, denies the allegation because the Respondent had in place a system by which discrepancies in withdrawals were monitored and superintendents and protectors were notified of discrepancies in withdrawals; and
- iv. in so far as the allegation is made in reliance on the particulars in sub-paragraph C, denies the allegation because:
  - 1. the particularised withdrawal sheets contain no amount exceeding £10; and
  - 2. in the premises, the withdrawals recorded on the particularised withdrawal sheets complied with the requirements of the 1939 Act and 1945 regulations (as amended) and there was no requirement to state a reason for any of the withdrawals when reporting the transaction to Head Office;
- v. in so far as the allegation is made in reliance on the particulars in sub-paragraph D, the Respondent refers to and repeats the matters set out at paragraph 249(c); and
- vi. in so far as the allegation is made in reliance on the particulars in sub-paragraph E, denies the allegation and refers to and repeats the matters pleaded in paragraphs 265(aa) and 265(a) of the defence; and
- vii. the allegation is irrelevant because there is no allegation of misappropriation of any of the Applicant's money;
- m. in respect of sub-paragraph (m) denies the allegation;
- n. in respect of sub-paragraph (n) denies the allegations and refers to and repeats the matters at paragraphs 260 to 261F inclusive of the defence; and
- na. further says that all times material to the Claim Period:
  - i. the Respondent, through the Auditor General for the State of Queensland, conducted regular audits of individual protectorates, reserves, mission reserves and settlements, and of the Thursday Island and Head Office Operations of the Director;

ii. such audits considered, inter alia, the Respondent's compliance with the legislative requirements that applied in respect of the employment of Aboriginals and Islanders and Assisted Aboriginals and Assisted Islanders and the management of property of Aboriginals and Islanders and Assisted Aboriginals and Assisted Islanders; and

iii. the Director responded to and addressed issues raised in the audits:

o. in the premises, denies any continuing or repeated breach.

~~266. The Respondent denies the allegations contained in paragraph 266 of the ASOC and refers to and repeats the matters set out at paragraphs 272 to 275 of this defence.~~

~~267. The Respondent says in respect of paragraph 267 of the ASOC:~~

~~a. it refers to and repeats the matters set out at paragraphs 265(b), 265(d)(i), (d)(iii), (d)(v), (d)(vii) and (j) of the defence;~~

~~b. it refers to and repeats the matters set out at paragraph 265(d)(i) of the defence;~~

~~c. it refers to and repeats the matters set out at paragraph 265(d)(iii) of the defence;~~

~~d. it refers to and repeats the matters set out at paragraph 265(d)(iv) of the defence;~~

~~e. it refers to and repeats the matters set out at paragraph 265(d)(v) of the defence;~~

~~f. it refers to and repeats the matters set out at paragraph 265(d)(vi) of the defence;~~

~~g. it refers to and repeats the matters set out at paragraph 265(d)(ii) of the defence;~~

~~h. it refers to and repeats the matters set out at paragraph 265(d)(vii) of the defence;~~

~~i. it refers to and repeats the matters at paragraphs 233, 237, and 272 to 275 of the defence;~~

~~j. in the premises of the matters in sub-paragraphs (a) to (i) above, it denies the allegations in sub-paragraph (i) of the ASOC;~~

~~k. in the premises of the matters in sub-paragraphs (a) to (j) above, and paragraphs 279 to 320 here, it denies the allegations in sub-paragraph (j) of the ASOC; and~~

~~l. it denies engaging in any conduct which constituted equitable fraud.~~

~~268. The Respondent denies the allegations contained in paragraph 268 of the ASOC and refers to and repeats the matters set out at paragraphs 272 to 275 of the defence.~~

~~269. The Respondent says in relation to the allegations in paragraph 269 of the ASOC:~~

~~a. it does not admit the allegations in respect of bank books or bank statements because:~~

- ~~i. — it has no knowledge of these allegations;~~
- ~~ii. — the personnel who could attest to the truth of these allegations are all deceased, as set out in paragraph 241A of the defence;~~
- ~~iii. — it no longer retains records as set out in paragraph 241B of the defence;~~
- ~~b. — it further says that:~~
  - ~~i. — the Applicant has received the Hopevale Ledger Cards as set out at paragraph 265(a) above pursuant to an RTI application which contain the information specified in sub-paragraphs (a), (b), (d) and (e) of the ASOC in respect of Hopevale; and~~
  - ~~ii. — whilst the practice was to keep ledger cards at Palm Island which contained information specified in sub-paragraphs (a), (b), (d) and (e) of the ASOC in respect of Palm Island, these ledger cards cannot now be located.~~

269A. Further, the Respondent say the Applicant's claims of breach of trust, wilful default and for an account alleged in the ASOC are statute barred by sections 10 and 27 of the *Limitations of Actions Act 1974*, and, in so far as may be relevant, its predecessors.

269B. Further or alternatively to paragraph 269A the Respondent says ~~this claim is~~ these claims are wholly unmaintainable owing to the laches and delay of the Applicant which make it inequitable to grant the relief sought because:

- a. the Respondent's actions of which the Applicant complains in the ASOC occurred in or prior to 27 May 1964;
- b. the Applicant was exempted from the 1939 Act on 18 January 1962;
- c. the Applicant's claims made in the ASOC, in respect of wages other than the claims in respect of Rokeby Cattle Co accrued on or before 18 January 1962;
- d. the Applicant's claims in the ASOC in respect of Rokeby Station accrued on or about 27 May 1964;
- e. at the latest the Applicant knew of the existence of the matters pleaded in the ASOC in respect of wages other than the claims in respect of Rokeby Cattle Co by 18 January 1962;
- f. at the latest the Applicant knew of the existence of the matters pleaded in the ASOC in respect of Rokeby Cattle Co on or shortly after 27 May 1964;
- g. the Applicant made no complaint after receipt of the cheque referred to in paragraph 273 of the ASOC that he was still owed wages by the Respondent;

- h. the Applicant has first made these claims against the Respondent in the ASOC in this proceeding;
- i. the Applicant has received reparations in respect of the issues the substance of claims made in the ASOC as set out in paragraphs 310, 320E and 320I of the defence;
- j. the Applicant has entered into the Deed of Agreement referred to in paragraph 306 of this defence;
- k. notwithstanding the Applicant having brought a claim of unlawful discrimination on the basis of race under the *Racial Discrimination Act 1975* (Cth) against the Respondent concerning wages the Applicant alleged were earned by him and held on trust for him by the Respondent in January 2016, after bringing such a claim, the Applicant accepted the reparations payment referred to at paragraph 320I of this defence;
- l. the Respondent has been prejudiced by the Applicant's delay in bringing this action in the following particulars:
  - iv. witnesses who would have been called to give evidence in support of the defence have died as set out in paragraph 241A of the defence;
  - v. documents have been destroyed or lost in the ordinary course as set out in paragraph 242B of the defence;
- m. important evidence may have disappeared without anybody now knowing that it ever existed;
- n. the significance of a known fact or circumstance may be lost sight of because its relationship to other circumstances has been lost;
- o. these claims could have been brought many years ago.

#### **Q. Breach of Fiduciary Duty – the Applicant**

270. ~~The Respondent denies~~ As to the allegations contained in paragraph 270 of the ASOC the Respondent denies the allegations as it denies the fiduciary duty referred to, and further and says:

aa. in respect of sub-paragraph (aa), denies the allegations as the conduct alleged would only have amounted to the breach of prescriptive obligations which could not have been owed pursuant to a fiduciary duty alleged, and further, the duties alleged do not relate to care and control of money received from the Applicant's

employers, and repeats sub-paragraphs 265(aa)(i) to 265(aa)(vii) of the defence as to whether the conduct alleged in fact occurred;

ab. in respect of sub-paragraph (ab), denies the allegation in respect of the Applicant and repeats the matters pleaded in paragraphs 270(a)(vii) and 270(d) of the defence and in respect of Group Members the Respondent does not presently plead to those allegations and will address them in accordance with the order of 9 July 2018;

a. in respect of sub-paragraph (a) denies the allegations and says:

- i. A. In respect of (i), this information is contained on the Hopevale Ledger Cards, the Palm Island taxation record for the 1959/1960 financial year, the audit report for Palm Island for the year 23 May 1961 – 17 May 1962 and subsequent correspondence from the Palm Island superintendent to the Rokeby Cattle Co dated 13 June 1962 and the letter from the Palm Island Superintendent to the Director of Native Affairs dated ~~9 July~~ 27 August 1962 and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- B. refers to and repeats the matters referred to in paragraph 241A and 241B of the defence;

ia. in respect of (ia), refers to and repeats the matters referred to in paragraph 265(a)(ia) of the defence;

- ii. in respect of (ii), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- iii. in respect of (iii), this information is contained on the Hopevale Ledger Cards, the Palm Island taxation record for the 1959/1960 financial year, the audit report for Palm Island for the year 23 May 1961 – 17 May 1962 and subsequent correspondence from the Palm Island superintendent to the Rokeby Cattle Co dated 13 June 1962 and the letter from the Palm Island Superintendent to the Director of Native Affairs dated ~~9 July~~ 27 August 1962 and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;

- iv. in respect of (iv), records relating to pocket money paid to the Applicant cannot be located but, with the death of the superintendents at Hopevale and Palm Island the payment of pocket money is a matter solely within the knowledge of the Applicant and cannot now be tested;
- v. in respect of (v), this information is contained on the Hopevale Ledger Cards, the Palm Island taxation record for the 1959/1960 financial year, the audit report for Palm Island for the year 23 May 1961 – 17 May 1962 and subsequent correspondence from the Palm Island superintendent to the Rokeby Cattle Co dated 13 June 1962, the letter from the Palm Island Superintendent to the Director of Native Affairs dated ~~9 July~~ **27 August** 1962 and the correspondence referred to at paragraph 273 of the ASOC and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- vi. in respect of (vi), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- vii. in respect of (vii), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- viii. in respect of (viii), the Respondent says that money received from the Applicant's employers was paid into the accounts referred to in paragraph 248 of the defence as is evidenced by the Hopevale Ledger Cards and the Hopevale receipt book for 1957 being: as set out in paragraph 156 of the defence

A. the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that wages due to the Applicant from his employer Starcke Graziers under the Permit were paid;

B. Hopevale Mission Receipt number 91266 dated 17 March 1958 records the payment of £7/- in respect of the Applicant for the period from 24 December – 31 December 1957;

C. the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that wages due to the Applicant from his employer Starcke Graziers under the agreement number P22535 to employ the Applicant for 14 days from 27 December 1957 were paid;

- D. Hopevale Mission Receipt number 91274 dated 30 June 1958 records the payment of £17/10/- in respect of the Applicant for the period from 27 December 1957 – 11 January 1958;
- E. the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that wages due to the Applicant from his employer Starcke Graziers under the agreement number 22537 to employ the Applicant for 6 days from 22 March 1958 were paid;
- F. Hopevale Mission Receipt number 91274 dated 30 June 1958 records the payment of £7/10/- in respect of the Applicant for the period from 22 March 1958 – 28 March 1958;
- G. the ledger card for the Applicant at the Hopevale Protectorate for 1957 and 1958 records that a total of £22/- is recorded as banked comprising:
- I. £7/- for the period from 24 December – 31 December 1957;
- II. £17/10/- for the period from 27 December 1957 to 11 January 1958;
- III. £7/10/- for the period from 22 March 1958 to 28 March 1958; and

and this is reflective of both the practice at Hopevale for 1954 – 1956 and 1958 – 1960 and the practice at Palm Island but these records cannot now be located;

- ix. in respect of (ix), this information is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
- x. in respect of (x), the information in respect of the Applicant is contained on the withdrawal sheets as referred to in paragraph 237b of this defence and the Hopevale Ledger Cards and whilst the practice was to keep withdrawal sheets and ledger cards at Palm Island which contained this information, these withdrawal sheets and ledger cards cannot now be located. There was also a practice of providing written orders for the purchase of goods on all settlements and reserves but these documents cannot now be located;
- xi. in respect of (xi), the information in respect of the Applicant is contained on the Hopevale Ledger Cards and whilst the practice was to keep ledger

- cards at Palm Island which contained this information, these ledger cards cannot now be located;
- xii. in respect of (xii), this information is contained on the Hopevale Ledger Cards in respect of the obligation conferred by section 12(1) of the 1945 regulation and whilst the practice was to keep ledger cards at Palm Island which contained this information, these ledger cards cannot now be located;
  - xiii. in respect of (xiii), this information (other than, in some cases, the reason for the payment) is contained on the withdrawal sheets referred to in paragraph 237(b) of this defence, the Hopevale Ledger Cards and whilst the practice was to keep withdrawal sheets and ledger cards at Palm Island which contained this information, these withdrawal sheets and ledger cards cannot now be located. The reason for any payment to the Applicant is within the knowledge of the Applicant;
  - xiv. in respect of (xiv), some parts of this information is contained within correspondence in 1962 and 1964 provided to the Applicant pursuant to an RTI application. Further it was the practice to keep ledger cards at Palm Island which contained this information, but these ledger cards cannot now be located;
- b. in respect of sub-paragraph (b) ~~it~~ denies the allegations ~~and refers to and repeats the matters set out at paragraphs 84, 128, 142, 158F, 194 and 225A of this defence;~~
  - c. in respect of sub-paragraph (c) ~~it~~ denies the allegations and refers to and repeats the matters set out at paragraphs 272 to 273 and 275 of this defence;
  - d. in respect of sub-paragraph (d) it denies the allegations and says further:
    - i. in respect of (i) money paid from the accounts particularised in paragraph 248 of the ASOC into the Welfare Fund was paid in accordance with the requirements of the 1945 regulations;
    - ii. in respect of (ii) it denies the allegations and refers to and repeats the matters at (i);
    - iii. in respect of (iii), it denies the allegations and says the Hopevale Ledger Cards do not contain any entries for such purposes;
    - iv. ~~in respect of (iv), it denies the allegations and repeats and relies on paragraphs 248 and 272—275 of this defence;~~

- v. in respect of (v), it denies the allegations and says the Hopevale Ledger Cards do not contain any entries for such purposes;
  - vi. in respect of (vi), it denies the allegations and says the Hopevale Ledger Cards contain credits of interest which were made in accordance with the requirements of section 12(1) of the 1945 regulations;
  - vii. in respect of (vii), it denies the allegations and says the Hopevale Ledger Cards do not contain any entries for such purposes;
  - viii. in respect of (viii), it denies the allegations and says the Hopevale Ledger Cards do not contain any entries for such purposes;
- e. in respect of sub-paragraph (e) # denies the allegations and, so far as the allegation is made based on the particulars alleged, it says that any such investment was expressly authorised by section 9(1) of the 1945 regulations;
  - f. in respect of sub-paragraph (f) # denies the allegations and refers to and repeats the matters in this paragraph and paragraphs 272 to 273 and 275 of the defence;
  - g. in respect of sub-paragraph (g) # denies the allegations and says that on the available information, the proper inference is that the Applicant was paid what was owing to him in May 1964;
  - h. in respect of sub-paragraph (h) # denies the allegations and refers to and repeats the matters in this paragraph and paragraphs 272 to 273 and 275 of the defence;
  - i. in respect of sub-paragraph (i) # denies the allegations and refers to and repeats the matters at sub-paragraph (d) and paragraph 23(d) of the defence;
  - j. in respect of sub-paragraph (j) # denies the allegations and refers to and repeats the matters at sub-paragraph (d);
  - k. in respect of sub-paragraph (k) # denies the allegations and says there is no evidence of misappropriation of any of the Applicant's money;
  - l. in respect of sub-paragraph (l):
    - i. it denies the allegation and repeats and relies on paragraphs 248 and 272 – 275 of this defence; and
    - ii. in so far as the allegation is made in reliance on the particulars, the Respondent refers to and repeats the matters set out at paragraph 249(c); and
    - iii. says that the allegation is irrelevant because there is no allegation of misappropriation of any of the Applicant's money; and

m. in respect of sub-paragraph (m) denies the allegations and refers to and repeats the matters at paragraphs 260 to 261F inclusive of the defence; and

ma. further says that all times material to the Claim Period:

i. the Respondent, through the Auditor General for the State of Queensland, conducted regular audits of individual protectorates, reserves, mission reserves and settlements, and of the Thursday Island and Head Office Operations of the Director;

ii. such audits considered, inter alia, the Respondent's compliance with the legislative requirements that applied in respect of the employment of Aboriginals and Islanders and Assisted Aboriginals and Assisted Islanders and the management of property of Aboriginals and Islanders and Assisted Aboriginals and Assisted Islanders; and

iii. the Director responded to and addressed issues raised in the audits;

n. in the premises, denies any continuing or repeated breach.

270A. As to the allegations contained in paragraph 270A of the ASOC the Respondent denies the allegations as it denies the fiduciary duty referred to, and further it denies the allegations and refers to and repeats the matters set out at paragraphs 261H and 261I of the defence.

~~271. The Respondent denies the allegation contained in paragraph 271 of the ASOC and refers to and repeats the matters set out at paragraphs 272 to 275 of this defence.~~

271AA. Further, the Respondent says the Applicant's claims of breach of trust, fiduciary duty, wilful default, unjust enrichment and for an account alleged in the ASOC are statute barred by analogy by sections 10 and 27 of the *Limitations of Actions Act 1974*, and, in so far as may be relevant, its predecessors.

271BB. Further or alternatively to paragraph 271AA the Respondent says this claim is these claims and the claims alleging invalidity of provisions of the 1945 regulations, improper purpose and unlawful conduct and the payment of money without statutory authority wholly unmaintainable owing to the laches and delay of the Applicant which make it inequitable to grant the relief sought because:

- a. the Respondent's actions of which the Applicant complains in the ASOC occurred in or prior to 27 May 1964;
- b. the Applicant was exempted from the 1939 Act on 18 January 1962;
- c. the Applicant's claims made in the ASOC, in respect of wages other than the claims in respect of Rokeby Cattle Co accrued on or before 18 January 1962;

- d. the Applicant's claims in the ASOC in respect of Rokeby Station accrued on or about 27 May 1964;
- e. at the latest the Applicant knew of the existence of the matters pleaded in the ASOC in respect of wages other than the claims in respect of Rokeby Cattle Co by 18 January 1962;
- f. at the latest the Applicant knew of the existence of the matters pleaded in the ASOC in respect of Rokeby Cattle Co on or shortly after 27 May 1964;
- g. the Applicant made no complaint after receipt of the cheque referred to in paragraph 273 of the ASOC that he was still owed wages by the Respondent;
- h. the Applicant has first made these claims against the Respondent in the ASOC in this proceeding;
- i. the Applicant has received reparations in respect of the issues the substance of claims made in the ASOC as set out in paragraphs 310, 320E and 320I of the defence;
- j. the Applicant has entered into the Deed of Agreement referred to in paragraph 306 of this defence;
- k. notwithstanding the Applicant having brought a claim of unlawful discrimination on the basis of race under the *Racial Discrimination Act 1975* (Cth) against the Respondent concerning wages the Applicant alleged were earned by him and held on trust for him by the Respondent in January 2016, after bringing such a claim the Applicant accepted the reparations payment referred to at paragraph 320I of this defence;
- l. the Respondent has been prejudiced by the Applicant's delay in bringing this action in the following particulars:
  - ix. witnesses who would have been called to give evidence in support of the defence have died as set out in paragraph 241A of the defence;
  - x. documents have been destroyed or lost in the ordinary course as set out in paragraph 242B of the defence;
- m. important evidence may have disappeared without anybody now knowing that it ever existed;
- n. the significance of a known fact or circumstance may be lost sight of because its relationship to other circumstances has been lost;
- o. these claims could have been brought many years ago.

### QA. The Respondent's wilful default or neglect

271A. The Respondent denies the allegations contained in paragraph 271A of the ASOC and refers to and repeats the matters pleaded in paragraphs 265(aa)(iv), (aa)(v), (aa)(vi), (aa)(vii), (b), (c), (d), (e), (i), (k), (n) and (na) of the defence.

271B. As to paragraph 271B of the ASOC, the Respondent does not presently plead to those allegations and will address these allegations in accordance with the order of 9 July 2018.

### **R. Applicant's payout**

272. The Respondent denies the allegations contained in paragraph 272 of the ASOC and says:

- a. that by the communication of 8 May 1964 the DNA asked the Superintendent at Palm Island if a balance of £55/5/9 as at 31 January 1964 was correct;
- b. that balance was not correct because the Applicant had been advanced:
  - i. £10 on 2 April 1964; and
  - ii. £10 on 6 April 1964.

273. The Respondent denies the allegation contained in paragraph 273 of the ASOC and says:

- a. the Respondent caused the Applicant to receive a cheque dated 22 May 1964 for £26/15/2 on or shortly after that date;
- b. the amount included interest of £1/9/5;
- c. the cheque was provided to the Applicant after instructions from the DNA that balance of the Applicant's savings account was to be made available to him;
- d. it can be inferred from the matters set out in sub-paragraphs (a), (b) and (c) that the balance of the Applicant's savings account was paid to him in May 1964.

~~274. The Respondent denies the allegation contained in paragraph 274 of the ASOC and says:~~

- ~~a. the wages earned by the Applicant which were payable and paid to the Superintendents at Hopevale or Palm Island totalled £700/8/-;~~
- ~~b. the withdrawals made by the Applicant at Hopevale totalled £446/1/8;~~
- ~~c. the withdrawals made by the Applicant in the District of Laura totalled £35/18/6;~~
- ~~d. the withdrawals made by the Applicant at Palm Island in 1960 totalled £23;~~
- ~~e. the withdrawals made by the Applicant in other districts totalled £36/2/-;~~

- ~~f. the withdrawals made in pursuance of Section 6 of the 1945 regulation totalled £31/3/8;~~
- ~~g. the balance of the Applicant's savings account on his application for exemption as at 18 December 1961 was £17/-;~~
- ~~h. the Applicant was paid £30 by the Superintendent at Palm Island at or around the time of his exemption on 18 January 1962; and~~
- ~~i. the Applicant had a debit balance on the Hopevale Ledger Card of £1/11/5 which was cleared to nil by a transfer from Palm Island of that amount as at 28 February 1962;~~
- ~~j. the Applicant received cash advances as set out in paragraph 272(b) of this defence totalling £20 in April 1964;~~
- ~~k. the Respondent paid the Applicant £26/15/2 on or shortly after 22 May 1964.~~

275. The Respondent denies the allegation contained in paragraph 275 of the ASOC and says:

- ~~a. there was no discrepancy as alleged therein;~~
- b. after receiving the cheque referred to in paragraph 273 of the ASOC, the Applicant made no further complaint that he was owed wages by the Respondent pursuant to employment under the 1939 Act; and
- c. it repeats and relies on paragraph 273 of the ASOC.

### **S. Complaints by the Applicant**

276. The Respondent says in respect of paragraph 276 of the ASOC that it admits the Applicant called at the office of the protector in Innisfail in or about April 1964 seeking wages due for work on Rokeby Station whilst he was under the 1939 Act.

277. The Respondent says in respect of the allegations contained in paragraph 277 of the ASOC:

- a. it denies the allegations contained in sub-paragraph (a) and says further:
  - iii. in response to the complaint referred to at paragraph 276 of the ASOC it caused inquiries to be made of any amount due to the Applicant, directed that he be paid that amount and ultimately the cheque to be provided to the Applicant on or about 27 May 1964;
  - iv. it refers to and repeats the matters set out at paragraph 273 of the ASOC;

- b. it is unable to plead to the allegations contained in sub-paragraph (b) unless it is apprised of who on behalf of the Respondent it is alleged had the knowledge alleged or which classes of persons on behalf of the Respondent it is alleged had the knowledge alleged.

#### T. Applicant's **additional** loss

278. The Respondent denies the allegations contained in paragraph 278 and refers to and repeats paragraphs [261F, 261G to K, 271A](#) and 272 to 275 herein.

[278A. The Respondent denies the allegations contained in paragraph 278A of the ASOC and refers to and repeats the matters set out in paragraph 278 of the defence.](#)

#### U. Reparation scheme – general

279. The Respondent says in respect of the allegation contained in paragraph 279 of the ASOC:

- a. it denies that the Premier of Queensland announced a reparation scheme to pay compensation as alleged because the Premier of Queensland announced a “without prejudice” offer (**the offer**) in respect of the controls exercised under a series of Acts known as “The Protection Acts” over the wages and savings of Aboriginal and Torres Strait Islanders peoples;
- b. the Respondent will refer to and rely upon the Ministerial Statement at trial for its full meaning and effect.

280. The Respondent says in respect of the allegations contained in paragraph 280 of the ASOC:

- a. it admits that the offer pleaded in paragraph 279 of this defence contained the matters provided in sub-paragraphs (a), (b), (c), (d), (e), (f), (g) and (h);
- b. the Respondent will refer to and rely upon the Ministerial Statement at trial for its full meaning and effect.

280A. In or around May to June 2002 the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (“**QAILSS**”) was engaged and funded by the Respondent to conduct a consultation process with Aboriginal and Torres Strait Islander people across Queensland in respect of the offer pleaded in paragraph 279 of this defence to gauge the level of preparedness to accept the offer and to report to the Respondent on the said consultation by 9 August 2002.

280B. The consultation conducted by QAILSS occurred over the period 13 June 2002 to 9 August 2002.

- 280C. QAILSS established five consultation teams which travelled to and visited individuals and communities across the whole of Queensland.
- 280D. Each consultation team was established as far as possible to include an indigenous team leader, a qualified legal practitioner and two indigenous team members.
- 280E. Where possible, consultation meetings were arranged to be hosted by local or regional indigenous community organisations or by Aboriginal and Torres Strait Islander Commission representatives to provide ownership and control of the consultation process and decision-making to the local individuals or communities being consulted.
- 280F. The consultation teams travelled to and held consultations with some 78 Aboriginal and Torres Strait communities across Queensland.
- 280G. The consultations occurred by way of meetings in which information was provided to those present as to the nature of the offer and to invite those present to provide a non-binding response to the offer.
- 280H. It was the practice at each of the consultations for it to be stated that the consultation teams did not speak for the Respondent and were not employees of the Respondent and therefore could not explain the thinking or agenda or motivation behind the terms and conditions of the offer.
- 280I. The written information provided at consultation sessions consisted of:
- a. a document headed "URGENT!, ATTN: Chairpersons, Community Councillors and Community Members. Queensland Government Offer on Wages and Savings Accounts";
  - b. a document headed "Without Prejudice Queensland Government Offer";
  - c. a document headed "Reparations Amounts";
  - d. a document headed "Advice to Claimants if offer is REJECTED (what can happen if you say NO)";
  - e. a document headed "Letter of ACCEPTANCE/REJECTION";
  - f. a document headed "The Aboriginal Welfare Fund";
  - g. a letter to the Honourable the Premier from the National Aboriginal and Torres Strait Islanders Legal Services Secretariat Limited dated 9 February 2001.
- 280J. Consultation meeting attendees were advised that they were at all times free to either return the letter of Acceptance/Rejection duly executed to the consultation team before it departed the locality or they could if they so wished keep the letter and discuss it with

their families or communities or their own legal advisors after the consultation teams had departed without any pressure or duress.

- 280K. Consultation attendees were informed that the letters of Acceptance/Rejection were not in themselves a legally binding document in any way and that it was only the actual Queensland Government document which may be subsequently submitted for signature which would be legally binding.
- 280L. Consultation attendees were told that if the eligible persons filled in the letters provided in the consultation process rejecting the offer, such rejection did not preclude those persons claiming at a later date should the State Government implement the reparation scheme.
- 280M. Following the conduct of each consultation meeting, surplus consultation document sets were left with the host indigenous organisation or meeting convenor to enable those not able to be present for the meeting to have access to the consultation documents.
- 280N. Some elders or meeting convenors undertook to explain to those absent the consultation documents or to refer absent persons enquiring about the material to the QAILSS office in Brisbane.
- 280O. Those individuals and communities wishing to take documents away for independent assessment and decision-making were informed that they were free to do so and the Government deadline of 9 August 2002 was noted as being a deadline for the provision of a QAILSS report on the consultation held to date.
- 280P. The Respondent was apprised by QAILSS that the level of acceptance for the offer was on average around 95.92% based on the letters returned to QAILSS as at 9 August 2002.
- 280Q. In November 2002 the offer was confirmed by the Respondent.
281. The Respondent says in respect of the allegation contained in paragraph 281 of the ASOC:
- a. it admits that the Reparations Scheme that implemented the offer pleaded in paragraph 279 of this defence closed on 31 January 2006;
  - b. it says that 31 January 2006 was the closing date for lodgement of a claim pursuant to the Reparations Scheme;
  - c. the closing date of 31 January 2006 was an extension of the original closing date of 31 December 2005;
  - d. it otherwise denies paragraph 281 of the ASOC.

282. The Respondent says in respect of the allegations contained in paragraph 282 of the ASOC:
- a. in order for a person to successfully claim a payment under the Reparations Scheme, he or she was required to fit within the criteria set out in paragraph 280 of the ASOC;
  - b. the Respondent does not admit that the Reparations Scheme was not open to all Group Members as the Respondent is not aware of the identity of the Group Members.
283. The Respondent admits the allegation contained in paragraph 283 of the ASOC.
284. The Respondent admits the allegation contained in paragraph 284 of the ASOC.
285. The Respondent says in respect of the allegations contained in paragraph 285 of the ASOC:
- a. it denies the release was in the terms pleaded in paragraph 285 of the ASOC;
  - b. the release was in the following terms:

The Claimant acknowledges and agrees that he/she accepts the Payment in full and final satisfaction and discharge of all actions, suits, claims, costs and demands which the Claimant, and all other persons claiming by or through or under the Claimant may now have or could have, whether pursuant to common law or under the Protection Acts, against the State, its servants or agents, arising out of or in any way related to the Controls, and this Deed may be pleaded in bar to any such claim.
286. The Respondent says in respect of the allegation contained in paragraph 286 of the ASOC:
- a. it denies that the reference in the extract of the release set out in paragraph 285 of the ASOC to “Controls” is a reference to the matters pleaded in paragraph 286 of the ASOC;
  - b. the reference to “Controls” in the release contained in paragraph 4 of the Deed of Agreement was a reference to:

The Controls exercised by previous State Governments under or purportedly under the Protection Acts over the wages and savings of Aboriginal and Torres Strait Islander peoples.
  - c. the “Protection Acts” for the purposes of the “Controls” were defined in the Deed of Agreement as, relevantly:

- i. the 1939 Act;
  - ii. the Islander Act;
  - iii. the 1965 Act;
  - iv. the Aborigines Act 1971;
  - v. the Torres Strait Islander Act 1971;
  - vi. the Community Services (Aborigines) Act 1984;
  - vii. the Community Services (Torres Strait) Act 1984.
287. The Respondent admits the allegations contained in paragraph 287 of the ASOC.
288. The Respondent admits the allegations contained in paragraph 288 of the ASOC, save that the reference to “preparations” in the particulars to paragraph 288 ought to be a reference to “reparations”.
289. The Respondent says in respect of the allegations contained in paragraph 289 of the ASOC:
- a. it denies the allegations contained therein;
  - b. by the tender document Clause 3.2.3 independent legal advice was required to be provided to an eligible claimant by a legal practitioner on an individual basis whether by personal interview and/or telephone and/or letter of advice.
290. The Respondent says in respect of the allegations contained in paragraph 290 of the ASOC:
- a. it denies the allegations contained therein;
  - b. as a matter of practice, individual legal advice was given to eligible claimants;
  - c. each eligible claimant had access to two paid appointments with an independent lawyer;
  - d. after the first appointment the eligible claimant had the option to consider the offer for a minimum period of 24 hours and then make a second appointment if they wished to accept the offer and sign the Deed of Agreement;
  - e. an eligible claimant also had the option to waive their second appointment if they did not require the second appointment.
291. The Respondent says in respect of the allegations contained in paragraph 291 of the ASOC:
- a. it denies the allegations contained in paragraph 291;

- b. in addition to the matters pleaded in paragraph 289 above, Clause 3.2.4 the tender document stated:

The provision of legal advice to each eligible claimant will ensure that he or she:

- (a) understands her or his current rights.
  - (b) understands the contents and effect of the claim form, and in particular, the offer and deed of agreement.
  - (c) is fully informed as to (a) and (b), having regard to all the relevant circumstances (including culture and language requirements) of the claimant.
  - (d) where the claimant decides to enter into the deed of agreement he or she completes and executes the deed of agreement correctly.
- c. by Clause 3.2.6 the legal practitioner was not the servant or agent of the Respondent but at all times was to act as the independent legal advisor to eligible claimants. Upon receipt of legal advice claimants were to have a 24-hour grace period to consider the legal advice received before signing the Deed of Agreement;
- d. the Respondent set no limits on the scope of the independent legal advice.

292. The Respondent says in respect of the allegations contained in paragraph 292 of the ASOC:

- a. it denies the allegation that the tender document did not require the independent legal advice given to eligible claimants to include information on the matters set out in sub-paragraphs (a) to (j);
- b. the independent legal advice was to ensure that a claimant understood her or his current rights;
- c. the Respondent does not admit that the independent legal advice given to eligible claimants did not include information on the matters contained in sub-paragraphs (a) to (j) as it does not know, given that the advice provided was a matter known to the independent legal practitioner and the respective claimant to whom advice was given.

293. The Respondent says in respect of the allegation contained in paragraph 293 of the ASOC:

- a. the Respondent denies paragraph 293;
- b. the Respondent refers to and repeats paragraphs 291 and 292 of the defence.

294. The Respondent says in respect of the allegations contained in paragraph 294 of the ASOC:
- a. the Respondent admits paragraph 294;
  - b. available records were available on open access at the Queensland State Archives;
  - c. the Respondent had a dedicated officer on site at the Queensland State Archives to assist individuals in research of available records;
  - d. the Community and Personal Histories Branch of the Department of Aboriginal and Torres Strait Islander Policy undertook on request research of available records on behalf of Aboriginal persons who resided outside of Brisbane;
  - e. information as to the availability of the services pleaded in sub-paragraphs b, c and d herein was provided via the means pleaded in paragraphs 304A and 304B below;
  - f. it refers to and repeats the matters referred to in paragraphs 241A and 241B in the defence.
- 294A. The Respondent denies paragraph 294A of the ASOC and refers to and repeats paragraphs 287 to 294 of the defence.
295. The Respondent says in respect of the allegations contained in paragraph 295 of the ASOC:
- a. the Respondent admits that the time to make applications under the Reparations Scheme closed on 31 January 2006;
  - b. the Respondent denies that 8761 claims were received on the basis that 8772 claims were received;
  - c. the Respondent denies that 5413 claims were deemed to be eligible on the basis that 5553 claims were assessed as eligible;
  - d. the Respondent denies that \$19.11 million was paid out on the basis that \$19.6 million was paid out by the Respondent to eligible claimants.
296. The Respondent admits the allegations contained in paragraph 296 of the ASOC.
297. The Respondent admits the allegations contained in paragraph 297 of the ASOC.
298. The Respondent admits the allegations contained in paragraph 298 of the ASOC.
299. The Respondent admits the allegations contained in paragraph 299 of the ASOC.

## V. Reparation scheme – the Applicant

300. The Respondent says in respect of the allegation contained in paragraph 300 of the ASOC that:
- a. QAILSS conducted a consultation meeting in Townsville in mid-2002;
  - b. it does not admit that the Applicant and his wife attended the meeting on the basis that it does not know the truth or falsity of this allegation.
301. The Respondent says in respect of the allegations contained in paragraph 301 of the ASOC that it does not admit the number of attendees on the basis that it does not know the truth or falsity of this allegation.
302. The Respondent says in respect of the allegations contained in paragraph 302 of the ASOC that it does not admit the identity of the attendees on the basis that it does not know the truth or falsity of this allegation.
303. The Respondent is not required to plead to the allegations contained in paragraph 303 of the ASOC as it makes no allegation against the Respondent.
304. The Respondent says in respect of the allegations contained in paragraph 304 of the ASOC:
- a. it does not admit paragraph 304 on the basis that it does not know the truth or falsity of the allegations;
  - b. the practice at the consultation meetings was
    - i. to distribute the material pleaded in paragraph 280I herein;
    - ii. to inform attendees that if an eligible person filled in the letter provided at the consultation meeting rejecting the offer, such rejection did not preclude that person claiming at a later date should the State Government implement the Reparations Scheme.
- 304A. An:
- a. Indigenous Wages and Savings (1890s-1980s) Reparation Process Information Sheet dated February 2003; and
  - b. Wages and Savings of Indigenous Queensland 1897-1970s History Sheet, were published by the Respondent and made available to potential claimants by the Respondent.
- 304B. During 2003 the Respondent conducted information sessions across Queensland on the Reparations Scheme and the Information Sheet and History Sheet were distributed at these sessions.

- 304C. Over the period 2002 to 2003 the Reparation Scheme and its benefits and disadvantages was the subject of:
- a. the QAILSS Consultation process;
  - b. media discussion and commentary;
  - c. communications and statements by the Respondent.
- 304D. A person who wished to make an application for a payment under the Reparations Scheme was required to fill out an “Indigenous Wages and Savings Reparation Claim and Application Form”.
- 304E. The Indigenous Wages and Savings Reparation Claim and Application Form was assessed by the Respondent and a determination was made as to whether the claimant was eligible for a Reparations Payment.
- 304F. On or around 24 February 2003, the Applicant completed and sent into the North Queensland Regional Office of DATSIP an “Indigenous Wages and Savings Reparation Claim and Application Form.”
- 304G. The said form included the years, type of work and location of work alleged by the Applicant.
- 304H. The Application was assessed as eligible for a payment of \$4,000.00.
- 304I. On or around 24 September 2003 the Applicant was sent an eligibility letter in the following terms:

**Indigenous Wages and Savings Reparations**

Your claim under the Indigenous Wages and Savings Reparations Process has been assessed as eligible for a payment of \$4,000.00.

If you want to receive this payment, it is a requirement of the Offer that you sign a Deed of Agreement, after receiving independent legal advice about what that means. ...

- 304J. Roberts Nehmer McKee was one of the law firms that was on the panel of legal practitioners established by the Respondent.
- 304K. On 6 October 2003 the Applicant consulted with a solicitor employed by Roberts Nehmer McKee, Lynda Johnson.
305. The Respondent admits the allegation contained in paragraph 305 of the ASOC.
306. The Respondent says in respect of the allegations contained in paragraph 306 of the ASOC:

- a. it does not admit that the Applicant was not given any personal legal advice at the meeting pleaded in paragraph 300 of the ASOC, save for that which formed part of the meeting's general discourse, on the basis that it does not know the truth or falsity of those allegations;
- b. it was not the practice at the consultation meetings conducted by QAILSS for attendees to be provided with legal advice, personal or otherwise;
- c. the Respondent does not admit that the Applicant was not given any personal legal advice at the meeting with Ms Johnson on 6 October 2003 on the basis that it does not know the truth or falsity of this allegation;
- d. the Respondent says that personal legal advice was available to be given during the meeting or during a subsequent meeting;
- e. Ms Johnson explained the Deed of Agreement and its implications to the Applicant;
- f. Ms Johnson offered a second meeting to the Applicant;
- g. the Applicant declined a second meeting;
- h. Ms Johnson was of the opinion that the Applicant understood the explanation given as to the Deed of Agreement and its implications to the Applicant and the Deed of Agreement;
- i. the Applicant signed the Deed of Agreement which was witnessed by Ms Johnson.

~~307. [Blank] The Respondent does not admit the allegation contained in paragraph 307 on the basis that it does not know the truth or falsity of the allegations.~~

~~308. [Blank] The Respondent does not admit the allegation contained in paragraph 308 on the basis that it does not know the truth or falsity of the allegations.~~

309. The Respondent says in respect of the allegations contained in paragraph 309 of the ASOC:

ai. admits the Applicant signed the Deed of Agreement as set out in paragraph 306(i) of the defence;

- a. the Respondent does not admit the allegations contained in paragraph 309 on the basis that it does not know the truth or falsity of the allegations;
- b. the Respondent repeats and relies upon paragraph 306 in this defence;
- c. the Respondent says that the Applicant was able to assess what he alleged to be the true amount owing to him by the Respondent.

310. The Respondent says in respect of the allegations contained in paragraph 310 of the ASOC:
- a. ~~it denies that the Applicant received a cheque for \$4,000 as alleged;~~
  - b. it admits the Applicant received the sum of \$4,000 and further says on or about 16 October 2003 the Applicant's bank account was credited by direct credit payment the sum of \$4,000 by the Respondent.
311. The Respondent admits the allegation contained in paragraph 311 of the ASOC.
312. The Respondent admits the allegations contained in paragraph 312 of the ASOC.
313. The Respondent admits the allegations contained in paragraph 313 of the ASOC.
314. The Respondent says in respect of the allegations contained in paragraph 314 of the ASOC:
- a. the Respondent does not admit paragraph 314 of the ASOC on the basis that it does not know the truth or falsity of the allegations contained therein;
  - b. the Respondent refers to and repeats paragraph 306 in this defence;
  - c. the Applicant was in a position to assess what he alleged to be the true amount owing to him by the Respondent.
315. The Respondent says in respect of the allegation contained in paragraph 315 of the ASOC:
- a. the Respondent adopts the concession made by the Applicant;
  - b. the Respondent refers to and repeats paragraph 285 herein.
316. The Respondent does not admit paragraph 316 of the ASOC on the basis that it does not know the truth or falsity of the allegation.
317. The Respondent admits paragraph 317 of the ASOC.
318. The Respondent says in respect of the allegations contained in paragraph 318 of the ASOC:
- a. it denies paragraph 318 of the ASOC;
  - b. the Respondent will refer to and rely upon the text of the Advice at trial for its full meaning and effect.
319. The Respondent admits the allegation contained in paragraph 319 of the ASOC.
320. The Respondent says in respect of the allegations contained in paragraph 320 of the ASOC:

- a. it does not admit the Applicant attended the meeting and refers to and repeats paragraph 300 of the defence;

ab. the Respondent admits the Applicant attended the meeting in the solicitor's office referred to in paragraph 305 of the defence:

- b. the Respondent admits that the Applicant was 63 years old when he signed the Deed of Agreement;
- c. the Respondent does not admit that the Applicant's financial circumstances were poor at the time he signed the Deed of Agreement on the basis that it does not know the truth or falsity of the allegations;
- d. the Respondent denies paragraph 320(c) and refers to and repeats paragraph 16(1) of the defence;
- e. as to paragraph 320(d):
  - i. the Respondent denies paragraph 320(d);
  - ii. the Respondent refers to and repeats paragraphs 287 to 294A, 304A to 306, and 314(c) of the defence;
- f. as to paragraph 320(e):
  - i. the Respondent denies paragraph 320(e);
  - ii. the Respondent refers to and repeats paragraphs 287 to 294A, 306, 309(c) and 314(c) of the defence;
  - iii. the Respondent did not know and there was not a basis upon which it ought to know that the Applicant was unable to make a judgment as to his best interests.

320A. The Respondent says further that on 25 March 2008 the then Premier of Queensland, Anna Bligh, announced that claimants under the Indigenous Wages and Savings Reparations Scheme would receive a second and final payment.

320B. The Respondent says the amounts of the second payment were, relevantly:

- a. payment of \$3,000 would be made to people who had received a \$4,000 reparations payment;
- b. payment of \$1,500 would be made to people who had received a \$2,000 payment.

320C. The Respondent says that on or around 6 June 2008 the Applicant was sent a computer generated letter from the Assistant Director-General of DATSIP notifying him of his eligibility to receive a further payment of \$3,000 under the Reparations Scheme and

the requirement to fill in and return a form providing his bank account details. The letter stated that the further payment was “*part of the same settlement for which you signed a deed of release previously and will be paid on the same terms as that deed of release. The terms of the deed of release which you have already signed will continue to apply and will also apply to the further payment. By accepting this payment you agree to those terms*”. The Respondent will refer to the letter at trial for its full force and effect.

- 320D. On or around 12 June 2008 the Applicant completed and sent to the Department of Communities an Indigenous Wages and Savings Reparations Process Round 2 Electronic Funds Transfer Application form.
- 320E. Between 30 June 2008 and 1 July 2008 the amount of \$3,000 was electronically deposited into the Applicant’s nominated bank account by the Respondent.
- 320F. On 18 December 2015 the Treasurer of Queensland, Curtis Pitt, announced top up payments would be made to previously successful claimants.
- 320G. On or around 27 January 2016 the Applicant was sent a letter from the Treasurer confirming the Applicant was “eligible for a top up payment of \$2,200”.
- 320H. On or around 28 January 2016 the Applicant was sent a letter from the Director of the Reparations Unit, DATSIP, notifying him that he had been assessed of his eligibility to receive a payment of \$2,200.
- 320I. On or around 3 May 2016 the Respondent deposited \$2,200 electronically into the Applicant’s nominated bank account.

## **W. Effect of the release**

321. The Respondent denies the allegations contained in paragraph 321 of the ASOC and refers to and repeats paragraphs 287 to 294A, 304A to 306, 309(c), 314(c) and 320 of the defence.
- 321A. The Respondent denies the allegation contained in paragraph 321A of the ASOC and refers to and repeats paragraphs 287 to 294A, 304A to 306, 309(c), 314(c) and 320 of the defence.
322. The Respondent says in respect of the allegation contained in paragraph 322 of the ASOC:
- a. the terms of the Release given by the Applicant apply to:
    - i. each of the Applicant’s claims of breach of trust, breach of fiduciary duty, wilful default, an account, unjust enrichment and claims alleging invalidity of

provisions of the 1945 regulation, improper purpose and unlawful conduct and the payment of money without statutory authority, pleaded in the ASOC; and

ii. his claim under the RD Act pleaded in paragraphs 338A to 338E of the ASOC;

b. pursuant to the Release, the Applicant is barred from bringing and/or continuing with the said claims.

322A. Further, the Respondent says that if it is found that the Applicant is owed money by the Respondent on account of breach of trust (which is denied) or breach of fiduciary duty (which is denied), wilful default (which is denied), an account (which is denied), unjust enrichment (which is denied), and claims alleging invalidity of provisions of the 1945 regulations, improper purpose, and unlawful conduct and the payment of money without statutory authority (each and all of which are denied), the Respondent says that it is entitled to set off against any amount so owed the amount of \$9,200 paid to the Applicant by the Respondent pursuant to the Reparations Scheme, as set out in paragraphs 310, 320E and 320I of this defence.

## **X. Group Members**

323. The Respondent ~~does not admit the allegations contained~~ says in respect of the allegations in paragraph 323 of the ASOC; ~~because it does not know the identity of the Group Members.~~

a. in so far as the breaches alleged are of deductions or withholdings in respect of Welfare Fund Deductions in respect of any Group Member's wages:

i. it denies the allegations in respect of Group Members who were Islanders under the Islander Act and refers to and repeats the matters set out at paragraph 41bvi and vii of the defence:

ii. it denies the allegations in respect of Group Members who were Aboriginals in the Somerset District and refers to and repeats the matters set out in paragraphs 62 and 63 of the defence:

iii. it denies the allegations in respect of Group Members who were assisted persons under the 1965 Act and refers to and repeats the matters set out in paragraph 65 of the defence:

iv. it otherwise denies the allegations and says that deductions or withholdings in respect of Welfare Fund Deductions were in accordance with:

A. sections 14 and 16 of the 1939 Act on their proper construction:

B. the 1945 regulations:

- b. in so far as the breaches alleged are of Investment Deductions in respect of any Group Member who at the relevant time had a proportionate interest in the funds held in the accounts:
- i. it denies the allegations and says that any such investment was expressly authorised by:
- A. section 9(1) of the 1945 regulations:
- B. section 4(a) of the 1966 regulations:
- C. sections 14 and 16 of the 1939 Act on their proper construction in respect of payments of money from the gross wages of the Applicant or Group Members into the Welfare Fund or otherwise from the accounts to the Welfare Fund prior to the 1945 regulations coming into effect on 23 April 1945:
- c. in so far as the breaches alleged are the matters identified in paragraph 271B the Respondent does not presently plead to the allegations but will do so in accordance with the order of 9 July 2018:
- d. in so far as the word 'including' is used, it is prejudicial and embarrassing as it is uncertain.

324. The Respondent ~~does not admit~~ denies the allegation contained in paragraph 324 of the ASOC ~~because it does not know the identity of the Group Members and refers to and repeats the matters set out at paragraph 323 of the defence.~~
325. The Respondent ~~does not admit~~ denies the allegations contained in paragraph 325 of the ASOC ~~because it does not know the identity of the Group Members and refers to and repeats the matters set out at paragraphs 323 and 324 of the defence.~~
326. The Respondent ~~does not admit~~ denies the allegations contained in paragraph 326 of the ASOC ~~because it does not know the identity of the Group Members and refers to and repeats the matters set out at paragraphs 249A – 261K and 323 and 324 of the defence.~~
327. [Blank] ~~The Respondent does not admit the allegations contained in paragraph 327 of the ASOC because it does not know the identity of the Group Members.~~
328. ~~The Respondent does not admit the allegations contained in paragraph 328 of the ASOC because it does not know the identity of the Group Members.~~
329. [Blank] ~~The Respondent does not admit the allegations contained in paragraph 329 of the ASOC because it does not know the identity of the Group Members.~~

330. ~~[Blank] The Respondent does not admit the allegation contained in paragraph 330 of the ASOC because it does not know the identity of the Group Members.~~
331. ~~[Blank] The Respondent does not admit the allegation contained in paragraph 331 of the ASOC because it does not know the identity of the Group Members.~~

## Y. Complaints under the AHRC Act 1986

332. The Respondent admits ~~paragraph~~ the allegations contained in paragraph 332 of the ASOC.
333. The Respondent admits ~~paragraph~~ the allegations contained in sub-paragraph 333(a) of the ASOC and denies sub-paragraphs 333(b) and (c) on the basis that the complaint did not allege unlawful discrimination on the basis of an alleged failure of the Respondent to give full or proper legal advice to aborigines regarding acceptance of a payment under the Reparation Scheme.
334. The Respondent admits ~~paragraph~~ the allegations contained in paragraph 334 of the ASOC and says that the class members did not include Islanders.
335. The Respondent does not admit ~~paragraph~~ the allegations contained in paragraph 335 of the ASOC on the basis that it does not know the identity of the Group Members and on the basis that the class members did not include Islanders.
336. The Respondent admits ~~paragraph~~ the allegation contained in paragraph 336 of the ASOC.
337. The Respondent admits ~~paragraph~~ the allegation contained in paragraph 337 of the ASOC.
338. ~~[Blank] The Respondent says in respect of the allegation contained in paragraph 338 of the ASOC:~~
- a. ~~the Respondent denies paragraph 338(c);~~
  - b. ~~the Respondent denies that it has failed to act to repay or account for money held in trust by it under the 1939 Act and Regulations or the 1965 Act and Regulations on the basis of the matters pleaded in paragraphs 242 to 256 and 272 to 275 herein;~~
  - c. ~~the Respondent denies that it has engaged in an act that involves an exclusion based on race on the basis that:~~
    - i. ~~as alleged in the ASOC as only Aboriginal people were capable of being the subject of the "failure" alleged by the Applicant there was not, and was not capable of being, any "exclusion" for the purposes of the RDA based on race;~~

ii. ~~there was no exclusion based on race;~~

d. ~~paragraph 338 does not plead an alleged contravention of the RDA.~~

338A. The allegation that the conduct pleaded in paragraph 338A(a) was in breach of sections 9 and 10 of the *Racial Discrimination Act 1975* (Cth) (RDA) is embarrassing, prejudicial and does not disclose a reasonable cause of action on the basis that the unlawful discrimination alleged is not the same as or the same in substance as the unlawful discrimination that was the subject of the terminated complaint pleaded in paragraph 336 of the ASOC and did not arise out of the same or substantially the same acts, omissions or practices that were the subject of the terminated complaint pleaded in paragraph 336 of the ASOC because the terminated complaint did not allege a breach of the RDA in respect of the provision of legal advice under the Reparation Scheme, and under cover of that objection the Respondent denies that it engaged in conduct which was in breach of sections 9 and 10 of the RDA and:

(a) does not admit sub-paragraph (a) and repeats and relies upon paragraphs 314 and 321 herein;

(b) does not admit sub-paragraph (b) and repeats and relies upon paragraphs 314 and 321 herein;

(c) denies sub-paragraph (c) and repeats and relies upon paragraph 290 herein;

(d) does not admit sub-paragraph (d) and repeats and relies upon sub-paragraphs 294(b) to (f) herein;

(e) admits sub-paragraph (e) and says that the Aitkenvale meeting was not convened for the purposes of providing legal advice and says that the Aitkenvale meeting was convened for the purposes of apprising persons potentially eligible for the proposed Reparation Scheme of the nature of the Offer and to invite those present to provide a non-binding response to the Offer;

(f) denies sub-paragraph (f) and repeats and relies upon paragraphs 290 and 294 herein;

(g) does not admit sub-paragraph (g) and repeats and relies upon paragraph 321 herein;

(h) denies sub-paragraph (h) and repeats and relies upon paragraph 321 herein;

(i) denies sub-paragraph (i) and repeats and relies upon paragraph 321 herein.

338B. The Respondent denies paragraph 338B and repeats and relies upon paragraph 338A herein.

338C. The Respondent denies paragraph 338C.

338D. The Respondent denies paragraph 338D and repeats and relies upon paragraph 320 herein.

338E. The Respondent denies that the Applicant and eligible Group Members are entitled to the relief pleaded in sub-paragraph 338(e).

338F. To the extent that any Group Member makes a claim to the personal estate of a deceased person the Respondent says that such a claim is subject to section 28 of the *Limitation of Actions Act 1974* and that any claim that is made after the expiration of the periods prescribed therein cannot now be pursued.

## **Z. Relief sought**

339. The Respondent says in respect of the allegations contained in paragraph 339 of the ASOC that the Applicant is not entitled to the relief sought.

### **ZA. Account on the basis of Wilful default**

339A. The Respondent does not presently plead to the allegations in paragraph 339A but will do so in accordance with the order of 9 July 2018.

339B. The Respondent does not presently plead to the allegations in paragraph 339B but will do so in accordance with the order of 9 July 2018.

339C. The Respondent does not presently plead to the allegations in paragraph 339C but will do so in accordance with the order of 9 July 2018.

### **ZB. Common Account**

339D. The Respondent does not presently plead to the allegations in paragraph 339D but will do so in accordance with the order of 9 July 2018.

339E. The Respondent does not presently plead to the allegations in paragraph 339E but will do so in accordance with the order of 9 July 2018

Date: ~~18 April 5 June 2017~~ 24 August 2018

---

Signed by Jackie Hamilton  
for GR Cooper  
Crown Solicitor  
Lawyer for the Respondent

This **further amended** pleading was prepared by Andrew Crowe QC, Christopher Murdoch QC, Geraldine Dann of Counsel and Chris Curtis of Counsel.

### Certificate of Lawyer

I, Jackie Hamilton, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~18 April~~ 5 June 2017 24 August 2018



---

Jackie Hamilton  
for GR Cooper  
Crown Solicitor  
Lawyer for the Respondent

This further amended pleading is filed pursuant to the order of the court dated ~~24 May 2017~~ 9 July 2018.