

Stolen Wages:

The long wait for Indigenous workers

James Cook University Criminology Lecture | Townsville Cultural Centre | 20 Aug 2009

Dr Thalia Anthony, Faculty of Law, University of Sydney

I'd like to acknowledge, honour and pay my respects to the traditional owners of this land – the Wulgurukaba and Bindal peoples. I would particularly like to pay my respects to the elders present with us tonight. With you, I recognise that this always has been and always will be Indigenous land.

It is a pleasure to be on this country and to be invited by Dr Garry Coventry by James Cook University to give this lecture with the kind support of Laura Swanson and Associate Professor Rosita Henry.

I've always wanted to come here because it was the place to feel the spirit of Eddie Koiki Mabo, where he took up his great struggle for his land in the Murray Islands. I think if he were with us today, he'd be pointing to the great shame of governments and corporations in denying Indigenous people their wages.

In this evening's lecture I will point to how governments have sought to control the money of Indigenous people throughout colonial history, and continue to do so today in the Northern Territory. Firstly, I'll talk about the history of a group of workers whose stories are often untold. These were the Indigenous cattle workers who worked on stations across northern Australia for decades for cattle corporations with no, or virtually no, pay, especially in northern Queensland, the Northern Territory and the Kimberley.

I'm currently involved in giving advice on a legal action for Northern Territory workers in the Wave Hill region who worked on the Vestey's stations until the 1960s. I will point to some of these legal claims that may be brought against the corporations and governments. These legal arguments will also be brought in coming weeks in relation to the stolen wages case brought by Conrad Yeatman from Yarrabah before the Queensland District Court. On 19 August 09 this case began against the Queensland government. I will also point to breaches of international law on the part of governments and corporations.

I also want to broadly discuss the compensation schemes not for cattle workers but for Indigenous people who worked for the government. In Queensland the government provided compensation on very unjust terms.

I finally want to address the ongoing control of Indigenous money by the government as a result of the Northern Territory Intervention, which may open the door for further claims of stolen moneys.

1. The Exceptional Contribution of Indigenous Workers to the Cattle Industry

Tens of thousands of Indigenous people worked for the cattle industry from the 1880s to the 1970s and most had their full wages withheld. Northern Queensland and the Northern Territory were colonised with a view to developing the Australian cattle industry. Aboriginal labour was key to this endeavour.

An academic, Dr Bill Thorpe, has commented that the creation of Queensland colonial society ‘involved the exploitation of past and present generations of Aboriginal labour-power as well as land’.¹ For Queensland, the cattle industry was its chief industry in terms of output and exports,² and Indigenous people were its predominant labour source. In 1956 three-quarters of Australia’s beef cattle were in northern Australia, and roughly three-quarters of those were in Queensland.³ Without Indigenous labour this economy would not have been possible.

In the early days, Indigenous people were recruited to cattle stations with violent force, which went hand in hand with colonists taking Aboriginal land. In 1866 Queensland Premier Robert Herbert expressed that the ‘role of the police is to deter Aborigines from attacks on property’.⁴ Pastoralists besieged the Queensland Colonial Secretary with calls for Native Police punitive expeditions, even offering to cover their costs in order to subdue Indigenous resistance.⁵ In 1899 the Northern Territory Inspector of Police, Paul Foelsche, described recruitment of young boys and girls as ‘running them down’ and ‘forcibly taking them from tribes to stations’.

¹ Bill Thorpe, Colonial Queensland: perspectives on a frontier society, University of Queensland Press, St Lucia, 1996, 67

² Thorpe, Colonial Queensland, 69

³ William Anderson Beattie, A Survey of the Beef-Cattle Industry of Australia, CSIRO, Melbourne, 1956, 14

⁴ B. Knox, The Queensland Years of Robert Herbert, Premier, University of Queensland Press, St Lucia, 1977, 236

⁵ Kidd, The Way We Civilise, 10

As the cattle industry developed, the police had a choice – whether to kill Indigenous resisters or retain them for labour – they were to be shot or spared. Increasingly it became practical to keep Aboriginal people for cattle station work. For example, in the early 1880s R. McGregor Watson, the owner of Queensland's Gregory Downs station in Queensland's gulf country, caught sight of the Native Police as they were preparing to kill a Kalkadoon tribesman, Drummer. Arriving on the scene, Watson reached an agreement with the officer to hand Drummer over for station purposes.⁶ Mary Durack of the Durack cattle dynasty wrote that 'blackbirding aboriginal boys into slavery' was common knowledge.

As their land was increasingly colonised, Indigenous people were forced into labour to survive.⁷ Indigenous would come to perceive the benefits of being on cattle stations, relative to being on the 'outside' where they were vulnerable to the punishment of police and government officials. By working on station property Indigenous people could:

- stay on their country with their kin;
- acquire sustenance from the managers;
- practice ceremonies; and,
- go walkabout in the wet season.

Indigenous people worked extremely hard for these so-called rights, with no cash payment. Many sustained injuries that were not properly treated and never compensated.

The number of Indigenous workers peaked in the 1930s, when the labour force had reproduced in size with Indigenous people born on stations.⁸ By that stage most of the workers on stations were Indigenous and were regarded as indispensable. A 'feudal' bond emerged between station managers and Indigenous workers such that Indigenous people retained connections to country and received sustenance in exchange for their labour.

⁶ Evans, "'Kings' in Brass Crescents', 189-90

⁷ Stephen Simpson, The Simpson Letterbook, Cultural and Historical Records of Queensland. No. 1, Transcribed by Gerry Langevad, Anthropology Museum, University of Queensland, St. Lucia, 1979, 13

⁸ Gordon Briscoe, Disease, Health and Healing: aspects of indigenous health in Western Australia and Queensland, 1900-1940, PhD thesis, Australian National University, 1996, 1

The phenomenal labour contribution of Indigenous workers was acknowledged far and wide. A pastoralist comment in the *Queenslander* revealed, 'Had it not been for the aborigines doing nearly all my work' we would have been ruined.⁹ The permanent non-waged Indigenous workforce enabled the cattle industry to withstand economic downturns and droughts that threatened the industry in the south.¹⁰ Parliamentary Minister Abbott commented in 1933, 'From my experience in Queensland, I say that the natives make good stockmen and cattlemen; their services are valuable and, indeed, almost vital to the continuance of the successful policy of settlement'.¹¹ Queensland Chief Protector of Aborigines, Richard Howard, reported, 'Many of the cattle stations in the North are worked entirely with aboriginal labour, for suitable white men cannot be obtained'.¹² Finally, cattle worker Jack Jangari said that Indigenous people 'made Wave Hill [station] rich. They made every station ... rich. And keep us fellows poor'.

Male stockworkers were involved in all aspects of station work that made the cattle industry profitable. They were involved in tendering, mustering, droving cattle, shoeing, branding, leatherwork and rope making. They also built roads, dug dams and erected fences. They worked long hours every day of the week. A stockworker in the Gulf Country of Queensland said they all worked hard: 'The hours were till a job was finished, irrespective of the clock, and holidays were by the boss's favour'.¹³

Indigenous workers were valuable not only because they were unpaid, but also because their skills made them adept in the conditions and demands of station work. The low level of technology in the cattle industry until the 1950s meant droving was almost completely performed on foot and horseback. Indigenous hunting skills and awareness of the sprawling 'station land' and climatic changes made them competent workers. Northern Territory Welfare Director Harry Giese maintained

⁹ Cited in Rosalind Kidd, *The Way We Civilise: Aboriginal Affairs - the untold story*, University of Queensland, St Lucia, 1997, 23

¹⁰ Anon, 'Northern Territory: cattle and lease renewals',

¹¹ 'Report of Debates: Conference of Representatives of Missions, Societies, and Associations Interested in the Welfare of Aborigines to Consider the Report and Recommendations submitted to the Commonwealth Government by J.W. Bleakley Esq.' Unpublished, Transcribed by the Commonwealth Attorney-General's Department, Melbourne, 12 April 1933, National Archives (Canberra), File # CRS A1 33/8782, 6

¹² Richard B. Howard, *Annual Report of The Chief Protector of Aborigines of the Year 1912*, Presented to both Houses of Parliament by Command, Auth: A. J. Cumming, Govt Printer, Brisbane, 1913, 15

¹³ Henry G. Lamond, *Scripts of Talks: pastoral past, present, probable future*, Radio transcript, May 5 1950, National Archives (Brisbane), File # BP257/1 ITEM 47, 1

that 'Aboriginals took to very readily' to the activities involved in station and stock work with minimum supervision, and performed roles such as head stockmen.

Also, Indigenous women, children and the elderly carried out a wide range of necessary station tasks, including carrying water from creeks, fencing, yard and road building, digging dams and bores, and a range of domestic duties for their 'white' employers' homesteads, including child rearing.

Indigenous people would live and work on cattle stations with their families and communities. In some cases, they maintained connections to their country and were provided rations of clothing and food, but they were never paid on just terms. This resulted in a feudal relationship that was heavily exploited by the cattle managers, particularly through the non-payment of wages.

2. Unpaid Indigenous labour arrangement: legal provisions

Despite their great contribution, Indigenous people were forced to work on cattle stations without pay on most stations. This was made possible through the white law as well as through breaches of the law by the whites. In the early cattle-industry era there was no government legislation requiring Indigenous cattle station workers to be paid wages. By the late nineteenth century governments sought to regulate the industry in order to control Aboriginal workers. In the Northern Territory, under the Aboriginal Protection Acts – the *Aboriginals Ordinances* 1911, 1918, 1933 (Cth) – cattle station employers could pay Indigenous workers below Award rates or simply not pay them at all if their non-working dependants were provided with food, accommodation and clothing by the station management.

The Federal Government regulated this unpaid relationship by establishing a licence system for Indigenous workers under the *Aboriginals Ordinance 1911* (Cth). A licence, which cost 10 shillings per year, entitled an employer to recruit an unlimited number of 'aboriginal natives' whom the protector 'deemed fit'. Under the permits, Indigenous people:

- were denied freedom to travel outside the employment premises;
- had no bargaining powers over their work conditions; and

- did not have the right to refuse to work.

However, they were meant to be paid. Licences were to be cancelled if they failed to comply with regulations, which included unsatisfactory wages and conditions, but this virtually never happened. One of the regulations was that workers were to be paid unless their dependants were living on stations for free. Station employers violated the terms of licences by not paying workers even though their dependants were working.

Indigenous workers were given meagre rations. This included the food usually in the form of old flour and beef without vegetables; clothing was only provided as a loan, and there was no accommodation, forcing Indigenous workers to make humpies out of scrap. There was also negligible health care for workers who were sick or injured.

Consequently, Commonwealth Department of Health surveys of cattle stations pointed to the high incidence of Indigenous peoples' malnutrition and disease. Indigenous people were given the 'scraps' according to Ruby De Satge, an Indigenous domestic servant on Victoria River Downs Station. She said, 'They fed the dogs better than they fed the blacks out there!' Hobbles Danyarri, also on the Victoria River Downs Station, claimed that 'tucker' consisted of 'flour with kerosene ... they make a johnny cake smell like diesel and kerosene'.

In Queensland, the *Masters and Servants Act* was instituted in 1845 which firmly bound the employee to the employer. Regulation 656 (s12 of the Act) ensured dependence and loyalty in the labour relationship by imposing penalties for servants who left their master. Commenting on the application of the *Master and Servant Act* on Aboriginal workers, Jackie Huggins described it as 'a feudal piece of legislation which made it an offence for employees to leave their place of employment without permission'.¹⁴ Employers 'tracked down runaway workers and brought them back to face a thrashing or prison for absconding from a work contract'.¹⁵

¹⁴ Jackie Huggins, "'Firing on in the Mind": Aboriginal Women Domestic Servants in the Inter-War Years', *Hecate: The Counter-Bicentenary Issue*, vol. xiii, no. ii, 1987/88, 14

¹⁵ Huggins, 'Firing on in the Mind', 14

In 1897 the *Aboriginal Protection Act and Restriction of the Sale of Opium Act* in Queensland introduced permits for employing Indigenous people and gave authority to employers over their workers. Marnie Kennedy described the consequences of the 1897 Protection Act for Indigenous cattle workers, 'We were not free to go anywhere outside our employment without permission. ... We had to have a permit to travel. The police issued these permits... The police had control over our money'.¹⁶ Aboriginal workers had no legal or bargaining rights.¹⁷

In some instances, wages went into a worker trust fund under the supervision of an Aboriginal protector, initially in Queensland and later in the Territory, but Aborigines rarely saw this money.¹⁸ More often than not, they simply were not paid.

This situation led to an observation in 1930 by the Minister for Home Affairs Arthur Blakely that: 'there was a form of slavery in operation and that aboriginals were being worked without any remuneration whatever.'

When it became compulsory to pay wages around the mid-twentieth century under the *Wards' Employment Ordinance 1953* in the Northern Territory and similar legislation in Queensland, employers would book down Indigenous wages as credit in the station store. They would then mark up prices in station stores up to 300% over town prices.¹⁹

Government patrol officers noted that, even in the 1950s, 'work for no pay was not at all uncommon' but did nothing about it. Government officials did not seek to ensure that station store prices were kept at market levels. Historians have described government inspections of Aboriginal working conditions as 'nominal and superficial'. In other words, government officials did not fulfil their duty to ensure compliance with regulations that Indigenous people to be fairly paid.

Consequently, most workers during their employment on cattle stations never saw cash and this was in no small part due to the cattle station managers' and

¹⁶ Kennedy, *Born a Half-Caste*, 24

¹⁷ Rowley, *Outcasts in White Australia*, 113

¹⁸ 'A BILL To Amend "The Aboriginals Protection and Restriction of the Sale of Opium Act, 1897," and for other purposes', *Queensland Parliamentary Papers*, Govt Printer, Brisbane, 1901, ; Walter E. Roth, 'Employers of Aboriginals to pay Wages to Protectors: Circular Memorandum No.6', 23 January 1903, Queensland State Archives, File # POL/J16 516/15 Kowald and Johnston, *You can't make it rain*, 73

¹⁹ Rose, *Hidden Histories*, 155

governments' view that Aboriginal people could not handle their money and could not be trusted with cash.

I'll now turn to some of the legal arguments that could be made against governments and / or cattle corporations.

3. Legal avenues

There are a number of legal breaches that could be argued:

1. the government and cattle corporations were negligent in failing to ensure fair conditions of work and to cancel permits or licences where workers were not given sufficient rations or mistreated;
2. the government and cattle corporations were negligent in failing to pay workers where their dependants were not living on stations for free but actually working – which was almost always the case.
3. the government was negligent in failing to ensure that wages were paid from the mid-twentieth century according to regulations
4. there were breach of trust by cattle station managers who inflated store prices through the 'booking down' system
5. there were also breaches of trust through governments taking Aboriginal money and putting it in trust funds and never returning it.

There are a breadth of legal avenues, including a breach of duty of care, breach of statutory duty, breach of fiduciary duty and breach of trust. Dr Ros Kidd has done some wonderful work on especially the breaches of fiduciary duties in relation to the Queensland government misappropriating money through putting Aboriginal wages in trust accounts. My research and work with lawyers in relation to a claim for the wages of Northern Territory workers at Wave Hill also indicate a breach of a duty of care and statutory duty through failure to pay wages. But we still have no solid determination on how the courts will assess the claims. While the

circumstances were completely unjust, they were not necessarily illegal. This is one of the sad ironies of the Anglo-legal system.

However, Queensland and Northern Territory Indigenous workers may take heart in the South Australian decision relating to Bruce Trevorror. In that 2007 case, an Australian court for the first time awarded a member of the Stolen Generations compensation, amounting to half a million dollars, for psychiatric and other injuries. Although that was a case of a member of the stolen generations' seeking compensation, and not a stolen wages case, it nonetheless set down principles that may be used in a stolen wages case.

The Supreme Court in the *Trevorror case* recognised that the South Australian government knowingly breached procedures and guidelines for removing children. Accordingly, the government breached its duty of care, its breach of fiduciary and its statutory duties and committed false imprisonment. Public officials took Mr Trevorror while he was in hospital at the age of 13 months. He was placed in the care of a foster family for ten years. The courts recognised that the government's mishandling caused significant injury.

However, financial victories in the courts are not easy to come by. Firstly, the costs of this litigation far outweighed the payment to Mr Trevorror – and this is without the impending appeal which the South Australian government is bringing. Secondly, the time and emotional costs to the claimant are enormous. Finally, there is substantial judicial discretion which makes outcomes inconsistent.

More efficient and favourable outcomes may be found in a scheme or Compensation Commission that recognises Indigenous workers' rights to damages for the government and corporate wrongs. They should be funded to sufficiently reflect the grave injury to Indigenous people. This is not what we have seen in the Queensland compensation scheme, which I will discuss in a moment. Before I do that, I will point to how the denial of wages to Indigenous people was a breach international law.

4. Breach of international law

Indigenous workers may have to look for legal remedies beyond the Australian borders where domestic courts are unwilling to recognise new categories of harm where it has not done so before and are hence unwilling to provide compensation. It took many test cases, for example, before the courts recognised native title and compensated a member of the stolen generations. And even now that they have, the outcomes are not always positive for claimants. A court's interpretation of the facts or legislation can lead to unfavourable outcomes, for example in native title. Domestic courts also have discretion in deciding what evidence will be accepted, and historically we know that courts' have not treated Indigenous evidence with the same weight as Anglo-Australian evidence.

Also, we have to remember that, sometimes in domestic law, even though the acts were incredibly unjust, they were still legal. This is because as long as the government made the law and followed it, it is the law. It does not matter how unfair it is. Of course, I believe that the government did break the law and I have pointed to some of the arguments that may be made.

International law may be able to provide remedies where domestic avenues fail. International law can be – although not always – fairer than domestic law because it represents more universally held values, rather than simply the imperatives of a colonising nations. Although ironically it can also operate to legitimate colonisation.

International law provides more categorical rights for Indigenous people and workers. Therefore, there may be a stronger basis in international law for finding that the non-payment of wages to Indigenous cattle workers was illegal.

In the early to mid-twentieth century, unionists, Indigenous activists, such as Daisy Bates, and journalists alleged the conditions for Indigenous people on cattle stations, breached international human rights and violated the *Slavery Convention*²⁰. Although Australia hadn't signed this convention, the activists made an important argument about the appalling conditions on cattle stations and brought this to the attention of the international community.

²⁰ Opened for signature 25 September 1926 LNTS 60 (entered into force 9 March 1927). Although not ratified by Australia until 1953, the Convention prohibited slavery conditions and the owning and trading of people under Art 1.

Today the most feasible international law claims for Indigenous workers in the twentieth century are the conventions of the International Labour Organization. Australia ratified the *Convention Concerning the Creation of Minimum Wage-Fixing Machinery 1928*, which obliges States to create machinery for minimum wage rates, that their enforcement be supervised, that representatives of workers shall be consulted in this process and informed of the Award. Indigenous people did not have minimum wages until after WWII, and even then they were not set down in consultation with Indigenous people or properly enforced.

Australia in 1932 also ratified the *Forced Labour Convention* that created obligations to stop forced or compulsory labour in all its forms and prohibits public authorities from imposing 'compulsory labour for the benefit of private individuals, companies or associations'. A complaint could be brought to the International Labor Organization on the basis that police and pastoralists violently recruited Indigenous labour and then inflicted violence if they did not obey rules or sought to escape from the cattle stations.

Furthermore, although it is not strictly binding, *The Universal Declaration of Human Rights 1948*, provides under Article 23 that 'Everyone, without any discrimination, has the right to equal pay for equal work' and there be a 'free choice of employment and a right to just and favourable conditions of work'. Article 2 specifies that the Declaration is to be applied 'without distinction of any kind, such as race [or] colour'. As early as 1963, the Australian Workers' Union and the Australian Council of Trade Unions moved a motion that Indigenous workers' rights should be consistent with workers' rights under Universal Declaration of Human Rights.

Finally, and to bring this in the fold of criminology, there is an argument that stolen wages constituted a form a state crime. Unfortunately international law does not recognise a state crime as such. One argument is that you cannot imprison a state. But surely it could lead to other penalties such as payment of compensation? Criminologists Green and Ward define of state crime as 'state organisational deviance involving the violation of human rights'. They emphasise that state crimes often go hand in hand with corporate crimes to further the colonial or imperial agenda.

If we use this criminological notion of state crime as our starting point, we begin to develop a much more holistic view about the legality of the Australian state's engagement with Indigenous people and the deep harm that attached to the state's colonial acts. Otherwise, we can get distracted with the detail of legal requirements, and look past the bigger human rights issues that face Indigenous people. The state needs to be made accountable for breaching Indigenous workers' human rights, including through providing just compensation.

5. Government Compensation Schemes: justice in the detail

The most effective means of addressing past and present injustices for stolen wages is through the establishment of a Commonwealth Government compensation scheme. Such an initiative would involve recognition of the moral, as well as economic, injustice suffered by Indigenous workers. It would prevent lengthy court cases against the Government.

However, there has been little good will from the Federal government. In relation to the Northern Territory, the Commonwealth government (which was, and continues to be, responsible) has failed to address Indigenous people's lack of payment for over 60 years. This is despite the fact that the Democrats initiated a Commonwealth Senate Inquiry into Stolen Wages in late 2006. The Senate Committee produced a report entitled *Unfinished Business*, which supported in principle a Commonwealth compensation scheme. But the government has ignored its findings. This lecture will provide a moral and legal argument for Commonwealth government compensation.

At a state level there have been efforts to compensate workers who were employed predominantly by the government and had their money put in trust funds and never paid out. It did not pay workers who were working for corporations on cattle stations. These schemes set up in Queensland and NSW have been flawed. Queensland's compensation scheme has been the subject of sustained criticism from Indigenous bodies.

The 2006 Senate Report on Stolen Wages reflects the concerns raised by Indigenous groups. It urges 'the Queensland Government [to] revise the terms of its reparations offer' because the scheme provides Indigenous people with a token payment rather

than a compensatory sum. In essence the Queensland scheme involved the payment of between \$2000 and \$4000 to individual claimants alive at the date of its inception. It set aside just over \$55 million to pay all people deprived of their money. It is estimated that some workers lost wages of up to \$400,000, which adds up to a total of more than \$500m owing.

A compensation scheme should not be based on standard sums, but payments commensurate with workers' losses. This requires consideration of individual worker's contribution based on the length of their employment, their degree of skill and the seniority of their position. There should also be compensation for loss of income due to employment injuries: after all isn't that what white people get all the time in Australia? White people get compensation based on their actual loss. If this principle isn't followed, it amounts to compensation discrimination where all Indigenous people receive the same because they are Indigenous.

The Queensland compensation scheme has also been criticised for five other reasons:

1. First, it did not allow families of deceased Indigenous workers to make claims, which would have recognised the inter-generational detriment of unpaid wages.
2. Second, Indigenous people had to give up future rights to litigation. Claimants are made to sign an indemnity agreement waiving the right to recovery of full entitlements. This means that Indigenous people must sell out before they even start their claims.
3. Third, the burden of evidence is on the Indigenous person to prove they were not paid. It should be on the government to prove that they were paid given they are in the position to have this kind of evidence. Also, the scheme did not give much weight to oral evidence, and relied on the finding of documents. Oral evidence should be admissible where written records are not available, or to supplement written records.
4. Fourth, there was little legal assistance for Indigenous people in making a claim. The process can be confusing, particularly as many Indigenous people have poor literacy skills.

5. Finally, the Queensland Government imposed strict deadlines so that many stolen wages victims missed out on making an application.

Consequently, only a third of the \$55-plus million was paid out. Rather than allowing for the process to be reopened for a substantial amount of time or changing the burden of proof, it was only reopened for a short period before the government decided last year to put the money towards scholarships. This was strongly opposed by Indigenous organisations. The view was that money could not be given away that was owed to Indigenous people who had worked for it.

All states and territories need to learn from the mistakes of Queensland's compensation system when implementing their own. Otherwise, compensation becomes a token measure that is part of the discriminatory process that gave rise to stolen wages.

There also needs to be compensation for Indigenous workers on Church missions and corporations. In order to reflect the wrongs committed by churches and corporations, these bodies should be made to contribute to compensation funds. This is the same as what happened with James Hardie, which was made to contribute to a compensation fund for those who contracted asbestosis and mesothelioma from its products. The full range of parties contributing to Indigenous harm and stolen wages need to be held responsible.

6. Failing to learn from stolen wages: ongoing control and misappropriation of Indigenous money

The Australian Government has not learnt from the injustices arising from its control of Indigenous money. One of the indicators that the Government has not learnt from the historical wrongs of stolen wages – apart from the fact there hasn't been adequate compensation paid – is that the Government continues to withhold the money of Indigenous people. The recurrence of these discriminatory and controlling policies is clear in the Northern Territory Intervention. Indeed, to implement the policy the Government had to suspend the *Racial Discrimination Act*, which breaches

Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

A key component of the policy of the Northern Territory Intervention is the *Social Security Amendment Act 2007* (Cth). This legislation automatically assigns 50 per cent of Indigenous peoples' welfare money to a government account that can be reimbursed in certain (licensed) stores for items approved by the government. Centrelink staff determine the 'priority needs' of welfare recipients, their family and dependants, and regulate spending accordingly. These decisions cannot be appealed through the Social Security Appeals Tribunal and Administrative Appeals Tribunal.

In the Northern Territory at the moment we see the same trends of controlling income arise as we did when wages were withheld from cattle workers:

- A denial of cash money to Indigenous welfare recipients in Indigenous communities
- The placement of Indigenous workers' income in government accounts
- Quarantined income that can only be used in certain stores, giving these stores a monopoly advantage and the capacity to inflate prices
- Quarantined money only to be used for buying certain items – so the government decides what an Aboriginal person can eat, wear, where they can go for entertainment, etc.

Ultimately, income control entrenches a view that Indigenous people cannot be trusted with their money. The stated intention of income management in the Northern Territory – and to some extent in Cape York, Queensland – was to deal with 'passive welfare' and 'to reinforce responsible behaviour'. Minister Brough said the social security legislation 'limits the discretion that individuals exercise over a portion of their welfare and prevents them from using welfare in socially irresponsible ways'. Politicians pointed to problems of crimes in communities.

However, income management is not just for irresponsible people or criminal offenders. It is for all Indigenous people in designated Northern Territory communities. It doesn't matter whether you are receiving your welfare in the form of an unemployment benefit, a disability pension or a war veteran's pension. Ron

Merkel (2007), QC, said the government's agenda is one of 'social engineering' by 'seeking to fundamentally change Aboriginal society'.

Already we see some potential for Indigenous money to go missing through the income control system in the Northern Territory:

- For example, Indigenous people cannot easily find out how much money they have left on their card which stores their money. They therefore cannot keep track of their money and check that the government has given them the correct amount
- In many instances the cards were not redeemed for their full amount and many Indigenous recipients, through lack of understanding, did not take advantage of their full entitlement.
- Store cards that are used in regional centres, primarily at Coles, Woolworths or Kmart, do not have proper security so anyone can use them.

Indigenous people have already communicated concerns about not knowing what is happening to their money, which echoes stolen wages concerns. It arises because it is the Government, and *not* Indigenous people, that is irresponsible and cannot manage Indigenous money or be kept accountable.

7. Conclusion

I began by suggesting Indigenous workers at Wave Hill are interested to launch a test case to reclaim their stolen wages. While, I hope I have demonstrated that reasonable grounds exist for claims in tort and equity against station owners and the Federal Government, I believe the best means of addressing the wrongs perpetrated against Indigenous workers is through the establishment of a compensation scheme by Governments and responsible corporations.

Ideally a scheme that is nationally coordinated would provide compensation for Indigenous people across Australia and in various industries. It would implement many of the recommendations that the Commonwealth Senate committee put

forward in 2006, including its formation and operation through a consultative process with Indigenous workers.

The responsibility to compensate Indigenous workers cannot be eschewed by putting money into other Indigenous policies. The challenge is for the Government to create a scheme that is truly a conciliatory gesture by involving Indigenous communities in the process of delivering wage justice. Central to reconciliation is redressing past wrongs and ensuring that they are not repeated now or in the future.



– Dr Thalia Anthony teaches Law at the University of Sydney and researches in areas of Indigenous People and the Law and Native Title.