

Introduction

It was late in 1993 that I wrote my first conference paper, which I titled 'You can trust me, I'm with the government'.¹ At the time I was finishing my PhD, a 700-page investigation of the administration of Aboriginal Queenslanders from 1840 to 1988.² After considerable persistence I had been given generous access to files controlled by the government; department staff conceding no-one had much idea what those files might contain. To the wealth of information gleaned from fifteen months daily reading and photocopying these files I added material from the two years already spent in church repositories and Queensland State Archives (QSA).

With the thesis almost finished, I believed some of the evidence I had uncovered would reshape our understanding of how governments have operated in controlling the Aboriginal population, particularly their private savings and trust funds. This management lasted from 1897 to 1972, denying Aboriginal workers and account holders charge of their employment and wages, free access to their earnings and pensions or any written evidence of what was happening to their finances. My research had uncovered a litany of problematic management practices.

As I was aware that Aboriginal activists had for years complained that money controlled by the government had been lost or stolen I decided to focus the paper on a summary of my research. To join me on the conference platform I asked Les Malezer, a Gubbi Gubbi man I had met in his position as divisional head of Aboriginal Rights and Culture in the

department where I did my research. Les Malezer quietly informed me that after months of intense lobbying by the Aboriginal community the government had only just agreed to stop operating on the contentious Aboriginal Welfare Fund. This fund had been set up in 1943, absorbing levies on wages and profits from Aboriginal enterprises, greatly subsidising state government expenditure on Aboriginal affairs for fifty years. By the start of 2006, the 1993 residue of around \$7.9 million has grown with interest to \$9.3 million (\$8.6 million).

Sometime late in 1995 I read a brief media report stating that the Foundation for Aboriginal and Islander Research Action (FAIRA), now headed by Les Malezer, was providing legal assistance to seven residents of the Palm Island Aboriginal community who claimed they had been illegally underpaid while employees of the government. I rang to offer my support. Launched in the Human Rights Commission (now Human Rights and Equal Opportunity Commission — HREOC) in the mid-1980s and lost for some years in a bureaucratic maze, the action had been recently reactivated.

The plaintiffs asserted that underpayment by the government was illegal after passage of the federal *Racial Discrimination Act* in 1975. They claimed damages for discrimination for the period from 1975 until 1986, when control of local government, including wages, devolved to the Aboriginal community councils and legal rates were paid. This was the first time a group of Aboriginal people had challenged the government's financial controls.

As an expert witness, I prepared evidence to support my affidavit to the HREOC inquiry held in a Palm Island classroom in April 1996, including copies of records of government decisions to breach federal and state laws and continue underpayment. The government — and Crown Law — knew of this evidence from my thesis, of which they had multiple copies. My naive assumption was that this evidence — the government's own documents — was irrefutable.

Looking back, I realise it was the government's decision not only to deny the evidence but also to suggest I might be sued if I presented it to the Commission³ that transformed me from interested spectator to active participant. I determined I would not be stopped from tabling what I knew to be relevant to the case. Largely upon this evidence, and quoting liberally from the documents, the Commissioner concluded the

government had ‘intentionally, deliberately and knowingly’ underpaid the claimants during the period 1975–1986.⁴ He suggested compensation for the discrimination of \$7000 per person. The Borbidge National–Liberal Party coalition government declared it would ignore the decision and the claimants lodged their case in the Federal Court. But in April 1997, one year after the HREOC findings against it, the Borbidge government sent the minister to Palm Island to apologise to the claimants and hand over the \$7000 cheques.

By the time Peter Beattie’s Labor government took power in mid-1998⁵ several subsequent Federal Court claims had also settled at considerable expense; by May 1999 twenty had been paid and 350 further claims had been lodged with HREOC by FAIRA. Notwithstanding internal estimates that 15 000 workers had been illegally underpaid the government suggested only 3500 people were owed wages, and provided \$24.5 million over three years in the 1999–2000 budget to settle ‘with people whose grievances are legitimate.’⁶ When this offer closed in January 2003, around 5700 people had claimed the \$7000 as compensation for discrimination, at a final cost to the government of almost \$40 million. In 2002 the government was sued for over \$100 000 by two former workers;⁷ their cases were settled out of court in 2004.

After repeated claims from Aboriginal people ‘alleging disappearance of wages and funds held in trust by my department’, in 1990 Minister for Family Services and Aboriginal and Islander Affairs Anne Warner ordered a preliminary inspection of the Welfare Fund and associated trust accounts. She described to Parliament the longstanding regime that enforced payment of Aboriginal people’s wages to officers who ‘acted as trustees’ for Aboriginal savings bank accounts. The inspection had revealed Aboriginal funds were ‘raided in order to cover financial shortfalls’ of the department but had found no evidence to suggest the money had ever been reimbursed. Practices where the Welfare Fund had been used as departmental funds ‘have continued in one form or another to the present day’, she said, announcing she had commissioned a detailed external investigation of the records and accounts.⁸

In May 1999 Minister for Aboriginal and Torres Strait Islander Policy Judy Spence also declared her commitment ‘to settling the Welfare Fund and its associated savings accounts’ through which successive Queensland governments ‘denied Aboriginal people the opportunity to take control

over their own economic circumstances'. She paid tribute to Aboriginal and Islander people who had 'fought so valiantly for justice and equity in this State'. 'The Government does not want to contest those claims and force people into costly, time consuming and emotionally draining legal battles', she said. 'We must be accountable for the dishonourable actions of former Governments in this State.'

In May 2002 Premier Beattie unveiled his government's solution: a capped offer of \$2000 for people under the age of fifty, and \$4000 for those older, as 'reparations for the decades of control by former Queensland administrations of the wages and savings of indigenous people.' The government estimated there were 11 400 surviving potential claimants in the first group, and 5000 in the second, giving a total projected payout of over \$55 million. Describing the Welfare Fund as 'the most potent symbol of these policies', the Premier cautioned it was a separate issue on which the government would continue to negotiate with the community as to its disbursement. He declared the offer was 'a fair and balanced way' to give Aboriginals 'what they are entitled to' that would 'deliver some overdue justice to ageing people' rather than forcing them to endure protracted court cases and the risk of dying in the interim.⁹

The starting point for this book is the Premier's claim that the promised payment will give people 'what they are entitled to' and deliver 'overdue justice'. To assess the validity of these assertions the book investigates the historical evidence of financial controls in Queensland in the context of developing jurisprudence relating to claims by Indigenous peoples against governments nationally and internationally. It is the work of a researcher and historian, not a lawyer.

Chapter 1 looks at the context and consequences of the offer. Chapter 2 gives brief histories of government management of Indigenous peoples in the former British colonies of the USA, Canada and Queensland, and summarises the Individual Indian Money class action in the USA, which seeks financial accountability for decades of mismanagement. Chapter 3 charts the historical difficulties for Indigenous groups seeking enforceable legal action against governments.

In the context of court decisions relating to enforceable fiduciary duties, Chapter 4 analyses the policies and practices that controlled Aboriginal people's lives in Queensland during the twentieth century. Chapters 5 and 6 investigate in detail the Queensland government's dealings on private

moneys (wages, savings, child endowment and pensions), and on bulk trust funds amassed from unclaimed savings and deceased estates, and deductions from wages. Chapter 7 analyses the government's management of the Welfare Fund.