

## **The Changing Nature of Common Law Employment Contract**

**Eric Holm**

**James Cook University**

### **Abstract**

While some of the common law duties relating to the employment relationship are governed by statute, other common law duties remain points of contention particularly following the recent unravelling of the work choices framework. Despite the best intentions of the government, at the time, it would seem that many of the core positions undertaken under the work choices framework, represented key positions rather than suggested guidelines.<sup>14</sup> Interestingly it had most application to those parties which were not regulated by an industrial instrument that stipulates the conditions and remuneration of employment.

Despite the development of a more regulatory legislative framework as it relates to the employment contract, in a climate where the negotiation of independent contracts of employment are becoming increasingly desirable, the need to ensure compliance with the underlying common law principles of contract and the overarching restraint introduced by legislative enactments make the employment contracts increasingly difficult to draft. The change from the Workplace Relations Act toward the Federal Government 'work choices' amendments arguably removed many of the elements of 'command and control'<sup>15</sup> in terms of regulatory philosophy. However, what remains uncertain is the short term future climate for employment contracts given the recent unravelling of the work choices framework.

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## **Indigenous Stolen Wage Claims – An Update**

**Dr Louise Floyd**

**James Cook University**

### **Abstract**

The presentation deals with the 'stolen wage claims' (ie) claims relating to controls and restrictions on the wages of Aboriginal and Torres Strait Islander workers between 1890 and 1972. Reports, institutions and projects such as: the Senate Legal and Constitutional Affairs Committee; the Indigenous Wages and Savings Reparations Project; and the Human Rights and Equal Opportunity Commission have considered this issue. Federal and State governments, such as the Queensland and New South Wales governments, have developed systems, policies and schemes relating to reparations. This presentation will outline the progress of government responses and critiques of various systems; and it will consider, for example, recent issues such as: the consultation by the Queensland Government in Cairns in mid-2007 on distributing unspent reparations funds.

This presentation harmonizes with the topic of the conference, namely: "The Law, the Environment, Indigenous Peoples: Climate for Change?" Most obviously, the paper deals with a labour law issue relevant to indigenous workers. But the paper is related to the further themes in the conference title, as well. It studies an important legal issue which is developing in a "climate for change" – ie one increasingly aware of the need to deal the difficulties confronting all people whom the law governs in society.

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<sup>14</sup> Sean Cooney, 'Command and Control in the Workplace: Agreement-making under Work Choices', (2006) 16(2) *Economic and Labour Relations Review* 147.

<sup>15</sup> Breen Creighton & Andrew Stewart, *Labour Law* (2005).