

## High Water Mark or Nadir of Aboriginal/non-Aboriginal relations:

### The NT Intervention and Aftermath

John Hilary Martin OP

#### I

A number of myths, or better a number of conventions surrounding non-Aboriginal and Aboriginal relations were breached by the original *Intervention* in June, 2007, something which the *NTER Review* of October 2007<sup>1</sup> admits and wants to address. While the *Review*, many months in preparation, was released through the Minister's Office, not all of its proposals will be accepted, in fact some have already been knocked back. We will need to wait until next year for long-term action and so discussions and petitions will still continue before new legislation.<sup>2</sup> I will return to the *Review* and post-*Review* discussion later, but first let us talk about the original *Intervention* itself and examine how it has been working and then look at the social justice of it all.

The original *Intervention* attempted to do many different things, so let us try to sort them out. There are two large baskets of issues really. The first basket contains what I would call *administrative* issues; and the second basket contains what I call the *legal-cultural* bundle of issues, the latter has received much less notice in the press, but they are the more fundamental ones.

Let us take the administrative issues first: they include matters relating to health, education and welfare, issues such as making sure welfare money is being spent as it should be on food for growing children, on proper clothing, on petrol for cars needed for necessary travel, for basic telephone service –things like that. The items necessary for any well run bare-bones household budget.<sup>3</sup> Administrative issues include finding ways to insure that children *do* attend school on a regular basis, that children will be able to learn at home the things they don't learn in a schoolroom; that everybody in town gets more than simply medical *attention*

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<sup>1</sup> Hereafter referred to as *Review*

<sup>2</sup> Cf., Indigenous affairs Minister, Judy Macklin's remarks to Kerry O'Brien on the 7:30 *Review* (23 Oct.) and the *Media Release* of the Australian Government on the same day.

<sup>3</sup> Items largely covered in Chapter 2 of the *Review*.

but receives *ongoing* medical care; and above all, that children are safe from sexual attack and from violence at home requiring availability of police so everyone can feel safe in the streets.

We can also put into our *administrative* basket all those issues that involve employment –the dole, CDEP, the Rangers, the Aboriginal Art centres- and proper pay for work done under government sponsored schemes, *in short* everything that is needed to enable someone to make a livelihood while living in the bush. I call the above *administrative* measures (perhaps I should underline this) because as I see it they are the sort of services that are normally delivered by local (Territory) and Federal governments through their social welfare departments, the community development offices and by routine police protection.<sup>4</sup>

At this point a footnote needs to be made about Aboriginal communities. Some of them are virtually townships (those with populations of 2,000-3,000 with highway access, a shopping centre, a clinic, a post office of their own); some are remote communities of a few 100 people (having a small store, a classroom site, a community centre); and then the *very* remote communities of simply a few families living together (having no notable facilities at all, with little access to roads); and finally, *outstations* usually offshoots of a nearby township and dependent upon it.<sup>5</sup> One size clearly does not fit all communities in the N.T. or anywhere in the Outback. Some communities have been doing *fairly well, thank you*; while others have been dysfunctional disaster units –we read about them in the daily press. We can expect that anecdotal evidence will not be uniform. The original *Intervention* needed to approach communities differently but lost its opportunity by issuing blanket laws.

Admittedly, the *Administrative Basket* I have outlined is large and complex. After a year of *Intervening* we are all rightfully asking how well has the *Intervention* worked? What parts have been successful? What parts have failed? For items in this basket it is natural to expect to find quantitative, statistical answers although, not surprisingly, often all we can get are anecdotal reports drawn from different types of Outback communities. Caution is clearly needed before relying too heavily on these accounts one way or the other.

## II

Let us turn now briefly to that other big bundle of issues, which I have put into the *legal-cultural basket*. They involve suspension of the Racial Discrimination Act of 1975 and questions of civil rights. Also in this basket is the use of the powers of compulsory acquisition

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<sup>4</sup> The *Summary* of the *Review* admits that there has not been enough money spent to provide *a level of safety and well being comparable to any other Australian community*. (cf. top of p. 2 *Executive Summary NTER*).

<sup>5</sup> The *Review* has a good map with location, population and type in Appendix 4. The *Review* admits that Outstations are in an administrative limbo at the moment.

over large areas of Aboriginal land.<sup>6</sup> The original Intervention mandated five-year leases of 73 Aboriginal communities (and any other which the Minister might wish to order later on) and ordered the appointment of Government Business Managers (later called GBMs in the *Review*). They were effectively administrators over Aboriginal communities –over communities large and small. GBMs were given wide-ranging powers to build up the infrastructure of the communities under their charge and could apparently require unemployed men and women to work at assigned tasks on a work-for-the-dole basis.<sup>7</sup> They could seek compulsory acquisition of property.<sup>8</sup> The *Intervention* allowed (even encouraged) individual Aboriginals to lease small areas of land under communal ownership title in order to build and own their home and/or to start a small business on their property.<sup>9</sup> In addition, whole communities could grant a head lease to areas of communally owned land (under Native title) for periods of up to 99 years (granted that 99 years was an outside limit) for development purposes –*development* could conceivably involve setting up a hotel, a tourist venue, or even a manufacturing plant. These measures were presented in the press as something new and daring, but reading legislation already on the books they were perhaps not so new after all.<sup>10</sup> In a *cultural* sense, however, the measures introduced by the original *Intervention* in June, 2007 were not routine, but upended long-standing conventions (or at least post-Mabo

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<sup>6</sup> Appendix 15 of the *Review* admits, p. 39, This was ...*without consent of the Aboriginal land owners or the Aboriginal Land Councils*.

<sup>7</sup> GBMs were placed in many Indigenous communities in the NT situated on land held under the Aboriginal Land Rights (Northern Territory) Act 1976 and the Pastoral Land Act 1976 (the latter known as *community living areas*). For a lengthy account of what they can and should do, see, Appendix 3: *Roles Government Business Managers and Community Employment Brokers* (later called CEBs).

<sup>8</sup> Cf., *Review*, pp. 39 and 46. This was not entirely new in Australian law. Ron Levy, Principle Legal Officer of the Northern Land Council, on the Law Report on ABC Radio National, 20 May 2008 quoting the Griffiths Case noted that the N.T. under its lands acquisition legislation can acquire private property, in this case Native Title, and give it to a private person to undertake private development for private profit...When asked, he went on to agree that the Minister can acquire land under this Act [Northern Territory Land. Acquisitions Act] for any purpose whatsoever. See the *Law Report* of the ABC Radio National (20 May 2008). The provision was introduced into the Act in 1998 (Ron Levy). As an example Damien Carrick stated that the small town of timber Creek ...*lost its fight against moves by the Northern Territory government to compulsorily acquire community land and then hand it over to a private group for agricultural commercial development*. (p. 1) . Jon Altman in discussing Native Title presents several limitations, however, when discussing the nature of title to Aboriginal land, and the role of Land Councils and Trusts, cf., *Centre for Aboriginal Economic Policy research (CAEPR)*, p. 10. (Oxfam Australia).

<sup>9</sup> As noted in footnote 7, acquisition was not entirely new. Cf., Aboriginal Land Rights (Northern Territory) Act 1976 under Commonwealth Consolidated Acts., Table of Provisions, [www.austlii.edu.au/au/legis/cth/consol\\_act/altra1976444](http://www.austlii.edu.au/au/legis/cth/consol_act/altra1976444) retrieved Oct 12, 2008. The arguments put forward in the 2007 *Intervention* to justify taking land in this way was to promote Aboriginal development. A contrary argument has been put by Jon Altman who says that evidence does not support the notion that private individual ownership of low-value land in remote settings can be the driving force in addressing housing or other needs... [He argues] that present levels of Ministerial involvement in decision-making about land use are excessive and burdensome... state occupation of Aboriginal-owned land generally remains on a non-commercial footing. See *Centre for Aboriginal Economic Policy research (CAEPR)*, *Executive Summary*, p. 5, and the longer discussion, p. 8b-13, (Oxfam Australia).

<sup>10</sup> Cf., footnote #7

understandings) between government and Aboriginals concerning Aboriginal use and control of land.<sup>11</sup>

In this legal-cultural basket we can also put those cultural imponderables that go so much to the heart of misunderstandings between Aboriginal and non-Aboriginal people - matters like showing respect, prior consultation, being careful about what builds/destroys self-worth and reputation.

The legal-cultural basket of issues, unlike the administrative basket, raises issues where the quantitative-statistical approach is less helpful, in fact cannot be applied directly at all. Once a lease is granted, for example, the lessee is able to use it however the civil law allows (unless there happen to be restrictions in the terms of the lease). Leasing for 99 years or even 49 years removes communal land from communal control for the lifetime of two or three generations of Aboriginal owners, including the traditional owners. Obviously no one can look that far ahead statistically. The commercial worth to an individual of bits of communal property owned now in a freehold manner may be able to be measured, but it represents a basic change in what trustee (communal) ownership means. It is something that is value-based and is not quantitative.<sup>12</sup> The ability of communities to lease their property to others who may alter its whole character changes the basis for communal land ownership – from heritage to commodity. An award of a long-term lease to outsiders goes a long way to challenge the Aboriginal belief in inalienable possession of particular parcels of land enjoyed by an ongoing community, land which they see as *ceded* to them at a *time-out-of-mind* by an ancestral figure who has left behind no written record. Loss of property rights (under whatever title) is always a justice matter which requires, at the very least, consultation and conversation, and conversation which is truly *consultation*, requires trust. These values take a certain amount of time to build up and to mature. They are values which cannot be measured with a yard stick. In the original intervention this was not taken into account.

### III

The question continually asked is has the *Intervention* [June, 2007] worked? Has it changed things? Opinions are mixed. We have Mr. Rex Wild (author of the *Little Children are Sacred* Report) saying that the *Intervention* “has created hurt and bitterness and little improvement... *governments have missed the central point of recommendations...no solution*

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<sup>11</sup> It appeared to break *some* new legal ground, however, since legislation was required and was rapidly pushed through Parliament with only one day's debate in order to accomplish the goals set by the *Intervention*.

<sup>12</sup> There are many films and programs showing the emotional, quasi-religious love their own land exhibited by aging Aboriginal Elders when they can return to their land after an absence of years. I have witnessed this myself.

*should be imposed from above.*” Ms Anderson, the co-author, also felt disappointment.<sup>13</sup> ‘...Marion Scrymgour (now Minister for Indigenous Policy in the N.T) disliked the original plan and calls for a new approach to service delivery as well as a new governance approach. *The National Indigenous Times* headlined (Oct 13, 2008) “*The Intervention: a battalion of human rights breaches*” argues that owners were being forced to sign over their land on leases up to 99 years in order to gain access to additional housing and to resources such as schools.<sup>14</sup> On the other hand we have warm accounts of mothers happy with compulsory income management –but it appears to me that these accounts come from the larger of the Outback communities. We have reminders of the stories by respected leaders like Marcia Langton about the horrible stories of sexual and physical abuse in villages in the N.T. which demanded some sort of *Intervention*.<sup>15</sup> There are grains of truth in all of the stories. We still need to ask, however, has the original *Intervention* worked out?

Looking again into our *Administrative Basket* -at the service delivery bundle of issues we ask: Are children being better fed, clothed, housed? Are there medical services nearby? Are children going to school more? Are they being better protected? Is there a better sense of wellbeing, order and safety, especially in the more remote Aboriginal communities and in the town camps? The Executive Summary of the *Review* report makes the point that the desire for *measures designed to reduce alcohol-related violence, to increase the quality and availability of housing, to improve the health and wellbeing of the communities, to advance early learning and education leading to productive and satisfying employment these matters are uncontentious*. True! But that does not mean that consensus has been achieved, the devil lies in the details.

Most of us are familiar by now, I suppose, with the chief mechanism of enforcement, the *compulsory income management* scheme, or more colloquially, quarantining of welfare payments where a percentage (50%) of payments can only be spent in approved ways.<sup>16</sup> In many cases a card is given to an Aboriginal individual which enables them to buy food, some clothing, some white goods at a store which is empowered to cash out the value recorded on the card. For some other purchases people under the compulsory managed-income can receive

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<sup>13</sup> NT News Sept. 15, 2008, remarks made to an indigenous legal conference in Melbourne, *The Age* Sept. 10, [www.theage.com.au/national/sacred-children-author-has-regrets-20080909-4d28.html](http://www.theage.com.au/national/sacred-children-author-has-regrets-20080909-4d28.html).

<sup>14</sup> NIT was comparing the action to *UN Declaration of the Rights of Indigenous Peoples*, an external criterion. *National Indigenous Times*, # 163, News p. 4. They also reported that the Australian Indigenous Doctor's Association said many Aboriginal Territorians had their health harmed as a result of the NT intervention. (p. 3)

<sup>15</sup> “Trapped in the Aboriginal Reality Show,” *Griffiths Review*, posted Fri. Feb 8 2008 AEDT ; also ABC News, Opinion accessed Nov. 9, 2008. She refers back to an interview of Nanette Rogers, Crown Prosecutor, by Tony Jones ABC, 15, 05, 06 reporting cases from 2004 and to Alison Anderson, member for MacDonnell (N.T.) 2006]

<sup>16</sup> Quarantining applies only to welfare or grant money, not to earned income like CDEP or wages from employment.

approval for vouchers which enable them to exchange the voucher for petrol, for necessary car repairs and so forth. Is the compulsory managed income system working?<sup>17</sup> Are children better off; are families less dysfunctional a year and three months after the Intervention of June 2007 because of it?

About this we have some thin statistical evidence and a great deal of anecdotal reporting pro and con. Grocery stores report more fruit, vegetable and meat are being purchased. Examination of garbage in trash heaps suggests that there are fewer bottles and cans and fast food wrappers. The weight of children has increased.<sup>18</sup> There is also much positive anecdotal evidence especially from women that good food can now be bought because they can control how their welfare money is being spent – at least 50% of it - and they are rescued from seeing it spent where it should not be spent, on grog, cigarettes or card playing, and the elderly are shielded from *humbugging*. (This term refers to close relatives or friends pressuring people to give them money). The community is quieter now, they claim, which seems to follow indirectly from quarantining of money since there is less cash available to be spent on grog purchased near home, and there is less money to buy petrol to drive to purchase it at a distance. The quiet also seems to follow from more night patrols (in more populated places) and from more police presence, at least in those communities which have them.

On the other hand, we have the ABC Program of October 30, 2008 for Beswick, Barundga, Eva Valley and Binjari (all near Katherine) which show severe hardship being imposed on pleasant, clean, well-spoken Aboriginal men and women by bureaucratic management of income which has destroyed what little stability their lives might once have had.<sup>19</sup> There is also anecdotal evidence that GBMs sent from Canberra, untrained in talking with Aboriginal people, enter small communities, put up ugly portable housing for themselves, erect fences, disrupt community routines, and shut down struggling art and community centres, unknowingly destroying the last shreds of the town's creativity and self-respect.<sup>20</sup>

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<sup>17</sup> In any program of this type (thought up within 72 hours) there will obviously be many glitches, unforeseen problems, lost records, mistaken identities at check out counters and the like. They can be very hard on the people who experience them, but can be corrected over time, even short periods of time. But individual cases do not answer the question, *is the system working?*

<sup>18</sup> This was argued by the Minister, Jenny Macklin to Kenny O'Brien on the *7:30 Report* Oct 23 and I have heard similar reports myself first hand.

<sup>19</sup> *Intervention: Katherine, N.T.* ABC-TV Oct. 30<sup>th</sup> 9:30pm, directed by Julie Nimmo and Tom Zubrycki.

<sup>20</sup> Anecdotal stories need not be taken at face value and it depends very much on who reports them. Marcia Langton would probably assume that they came largely from white folks and city bred Aboriginal people, like the Women of Wik, who had not experienced the shame, desolation and violence of some many of these small places. Cf. her, *Trapped in the Aboriginal Reality Show*, and *Money, Sex Power* (ABC Books) cf., Griffith Review 22 edited extract, "Hostages to men's business," *The Weekend Australian* (Nov. 8-9, 200\*08, p. 28)

Despite all this, the sense comes through that it is income management that has produced the greatest sense of resentment and resistance, as the *Review* itself seems to admit. Many requests have appeared in the press and in the submissions to the Minister that the managed-income program be modified, that it not be automatically applied across the board to everybody, and perhaps made voluntary except where the welfare of children is at stake. The *Review* suggests that people who do not wish to participate should be free to leave the scheme, that it should be limited as a precise part of child-protection measures, and the report adds that managing income should include education to *improve financial literacy*.<sup>21</sup> These suggestions were immediately met with anger by Vicki Gillicki (a panelist), Scrymgour and Marcia Langton among others. The Minister has forcefully said that the comprehensive income-management system would not be scaled back for at least a year; that there is still a national emergency; and that the stabilisation must continue.<sup>22</sup>

Are children attending school with more regularity? The evidence that I have heard says that attendance is still very poor, nothing much has changed. Attendance records are being kept by schools so we can eventually compile some records on this matter. In the meantime Ms Scrymgour in Darwin has been very unhappy with the latest scores of children in the smaller communities (not the big cities, like Darwin) and seems to have dismissed the N.T. chief education officer. The jury seems still out on positive effects for education by the *Intervention*. Spending large sums of money on new buildings is not the best priority in the short run. It seems obvious that school curricula need to be revised and made more attractive through input from local community leaders as to what might be needed and which they will then support. Clearly, children and teenagers must be able to read and to write, but in what language? They must be able “to figure” but they will need to work on their computer skills as well.<sup>23</sup> In Aboriginal communities more Aboriginal teachers need to be employed and all teachers encouraged to stay at their posts for longer periods. Handling educational issues is not easy especially since so many “new” programs have been tried out before. Although this is one of the goals promoted in the *Review*, it appears as a distant prospect. At the end of a recent Four Corners program Sarah Ferguson said (with a sigh I presume) *successive generations of new teams of enthusiastic educators have arrived on the Tiwi islands*

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<sup>21</sup> *Executive Summary NTER, p. 1*. The report itself suggests that quarantining of welfare should not be automatic or universal, but will be imposed where child welfare is directly at stake, p. 21.

<sup>22</sup> Australian Government, Media Release (Oct. 23, 2008)

<sup>23</sup> Aboriginal children are intelligent they need a meaningful curriculum. I have seen a program supposedly designed to teach children fractions which was boring, dumbed down beyond belief, guaranteed to empty a classroom quite smartly.

*determined to set things right. The biggest fear is that in 40 years time someone will dig out these pictures from the archives to find out what went wrong this time.*<sup>24</sup>

What is being done about housing? A positive ray of hope was the statement of the Minister, Jenny Macklin, at Wadeye, that houses would be built, there was a real need for them, and they would be designed and built by the local people themselves. Tracking in prefabricated sweat boxes designed for profit was not the way to go. However expensive, inappropriate housing will only be destroyed and vandalised within a few years, again becoming unlivable.

Have the prospects for employment improved since the *Intervention*? Whatever may be said of the Community Development Employment Projects (CDEP) it was work on a job for a wage. The money was earned. By stopping CDEP the original *Intervention* destroyed too many good programs, programs that were doing good for Aboriginal communities even if they did not seem to be cost efficient to outsiders.<sup>25</sup> Its cancellation was a step to work-for-the-dole which is seen as a punitive welfare scheme. It is difficult to see where any new jobs have entered the communities.<sup>26</sup> This was a real shame since frustration at being out-of-work was a main problem which needed to be addressed. Without finding ways for Aboriginal men to show initiative communities will never become self-sufficient.

There is a lot of feeling that nothing has really changed very much about child safety.<sup>27</sup> More insistent however, are continuing reports of seething anger under the surface that the *Intervention* evinced a lack of trust in Aboriginal people. Deep frustration is felt by people who see themselves helpless to do anything about managing their own affairs. The frustration of the “Prescribed Peoples Alliance” at Alice Springs is a recent witness of this.

#### IV

As we said at the opening of the talk one of the Baskets, the *Administrative Basket*, dealt with what we might call *service delivery*, i.e., delivery of good food, education and housing. This has gained a great deal of attention, far too much attention, I suspect, so that our

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<sup>24</sup> Cf., Report, p. 31. Also see ABC Four Corners 16<sup>th</sup> June 2008, last page of the full transcript.

<sup>25</sup> It will be reinstated with some requirements for training and education added and hopes that these will lead to full time jobs. Government will no longer subsidise CDEP tasks but will pay a full wage for work done. Report p. 22.

<sup>26</sup> The employment broker scheme (CEBs) to promote outside work seems quite useless on the ground.

<sup>27</sup> Marcia Elia Duncan (a panelist) said in the *NTER Review, The situation in remote communities and town camps was- and remains- sufficiently acute to be described as a national emergency...[therefore] the Intervention should continue.* Repeated in Sunday’s Age (Oct. 19, 2008) where she said that nothing has changed very much about child abuse in the N.T. There is a difficulty in the argumentation here. If the situation is truly as bad as before, why aren’t there more reports and prosecutions? To justify the statement we must suppose that reports are still not being made through fear which is now as bad as before. Either we have an argument based on silence, never very strong as a legal case; or we must admit that the *Intervention* has been an idle exercise.



minds have been distracted from more fundamental issues. From the beginning the *Intervention* clearly had a legal-cultural agenda. The compulsory acquisition of 73 communities without forewarning, consultation or consent was a breathtaking legal action. Enforcement involved suspension of the Racial Discrimination Act of 1975.<sup>28</sup> In taking over 73 communities the government took over the good with the bad ones and injustices occurred. Aboriginal communities, for example, where no reports of sexual abuse of children had occurred, which were dry and which were financially independent from the proceeds of raising cattle lost their independent authority –destabilising a community which with good reason had thought itself a model of stability.

How has the *Intervention* proceeded on the legal-cultural front and where are we going after the *Review*? We have more of *a work in progress* here. In the *Media Release* from the Minister's Office (Oct. 23, 2008) after the *Review* was released, there is a promise of more legislation in the Spring Session of Parliament in 2009. The compulsory five-year lease of land will continue. The taking over of 73 Aboriginal communities and appointing Government Business Managers (GBMs) will also continue –until, as is said, “greater stability is shown in aboriginal communities”. *Community* is a difficult word to use here to describe a collection of people scattered over a wide area who frequent some sort of a centre only from time to time.<sup>29</sup> Rather than communities, the terminology now used is of “prescribed areas.” (We now find the 73 really only referred to the larger centres). The “prescribed areas” under supervision include all the territory held under the Aboriginal Land Rights Act (N.T.) 1976, all Aboriginal *communal living areas* and all Aboriginal town camps.<sup>30</sup> This means that 70% of all Aboriginal people in the N.T. in 500 communities live within prescribed areas. For these prescribed areas the *Review* talks of *place-based agreements –whether regional or local [to] provide a framework for more effective community development and coordination of government services*. Again, *substantial investment of public funds in community housing, requires security of tenure which must rest on payment of just terms*.<sup>31</sup> Aboriginal speakers have been asking about rent from the government for those Aboriginal lands leased for five years and for indemnity for damages that may be incurred. In her *Media Release* the Minister has agreed that a reasonable rent

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<sup>28</sup> The High Court had used this Act to invalidate a law passed by the State government of Queensland which attempted to derail the Mabo suit by declaring extinguishing all claims to native title which might have existed in Queensland from the date of annexation. See *The First Australians*, #7, SBS, Sunday Nov. 2, 2008.

<sup>29</sup> To complicate the matter, before the original *Intervention*, the N.T. government had planned to re-divide local government into a Shire system which has been implemented since the *Intervention* started. This has tended to transfer local council authority to a distant city centre. The Shire system is now finding its sea-legs in running practical day to day affairs.

<sup>30</sup> From the *Executive Summary NTER, Review Board*, p. 1

<sup>31</sup> From the *Executive Summary NTER*, pp. 1 and 2. Appendix 14 to the *Review* only lists the 5 year leases and which communities are under them.

should be paid.<sup>32</sup> There will also be some discussion about the reduction of the boundaries of these leased areas (which are distinct from prescribed areas). The terms of leases, moreover, will now allow for a “full range of appeal, tribunal mechanisms afforded to other Australians.”

Leasing of Communal land mentioned in the original *Intervention* either by individual Aboriginals or by a community taking head lease of its lands for development negotiations for long-term leases will continue, particularly to insure that the Australian government’s \$547 million investment in housing, upgrades, and reformed tenancy arrangements can progress.<sup>33</sup> While some leases on land have been given out, I have not had time to find how many or what exactly is entailed by them.<sup>34</sup> Leasing by individuals which was an important prospect offered by the original *Intervention*, raises major issues about the integrity of Aboriginal properties and the maintenance of Aboriginal identity. These are issues which will continue, they will not go away.

The Aboriginals who will live in these prescribed areas will be attended to in various ways. There will be money and programs for them along with a great deal of structure to ensure that nothing goes amiss. In program after program decisions are being left ultimately in the hands of the Minister. If the decisions of the Minister are simply to confirm and support initiatives generated by Aboriginal people themselves, all may still be well, but if we have templates imposed from above, the people living in prescribed areas will be prescribed indeed.

## V

What of those *Cultural Imponderables* mentioned at the beginning of this talk? The matters of prior consultation, of showing respect, of promoting initiative, of not ruining reputations, of not destroying a community’s sense of self-worth? The *Executive Summary* and the *Review* admit that there remains among Aboriginal people a deep belief that the original *Intervention* and the measures introduced by the Australian Government were a collective imposition based on race. This is not surprising. The *Intervention* came down on Aboriginal communities and not on any non-Aboriginal ones. It came without any warning,

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<sup>32</sup> Some had also asked the government to stop raiding the ABA to pay for the Intervention expenses.

<sup>33</sup> *Media Release*, Oct 23 2008, p. 4.

<sup>34</sup> We are all aware of course, from press reports of the headland lease arranged by Yunupingu in Arnhem land and the lease to buy a house by Barney Narjic at Wudapuli. Marcia Langton was a witness, apparently, at the crucial discussions between Bruff, Russell and Yunupingu where he succeeded in gaining the head lease on his traditional property by a board of traditional owners for 99 years. This allowed him to keep control of his land while directly receiving grants from the government, - an arrangement which Langton doubts would even be allowed again, *Trapped in the Aboriginal Realty Show*. When Mr. Narjic learned of the full cost of “buying” his own home, he gave up the project.

even to the N.T. government (although it might have guessed that something was up, the NT government was in fact kept in the dark) and was executed like a military-police operation.<sup>35</sup> The initial Aboriginal reaction to a proclaimed national emergency was to give the army units entering their towns a cautious welcome mixed with uncertainty, fear and remembrance of the history of the bad old days. The *Executive Summary and Review* agree that there was a *strong sense of injustice* [among Aboriginal people] *that Aboriginal people and their culture have been seen as exclusively responsible for the problems within their communities that [in fact] have arisen, it was felt, from decades of cumulative neglect by governments in failing to provide the most basic standards of health, housing, education and ancillary services enjoyed by the wider Australian community.*<sup>36</sup> Their feelings of anger over the injustice of attributing to them all the problems and failings in the bush was, again, well founded. A great deal of instability in Aboriginal communities has been perpetuated by continual shifting of government (local and Federal) programs, and of initiatives taken without much knowledge or reference to local conditions and dropped when the money ran out.<sup>37</sup> An attitude that ‘we can make this better for you than you can produce it for yourselves’ still prevails. Partnerships and relationships are continually arranged where Aboriginals are always the junior partners, even on their own lands. The *Review* panel does recognise *that without genuine engagement and active participation of the local community, deep-seated change will not be achieved. It must be nurtured with the community*<sup>38</sup>. *This is the lesson of the intervention*, and perhaps this is how Canberra now sees it.

## Conclusion

Did the original *Intervention* and the subsequent *Review* get it right? The original *Intervention* tried to do many things and it certainly did *not* get them all right. Moreover *it diminished its own effectiveness through the failure to engage constructively with the Aboriginal people it was intended to help.*<sup>39</sup> Does the present *Review* of the original *Intervention* get it right? Mr. Yu’s panel is obviously split, at least on compulsory income

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<sup>35</sup> The rollout was a *strictly controlled exercise...against non negotiable timelines.* *Review*, p. 43

<sup>36</sup> *Executive Summary NTER* p. 1 and *Review* p. 25

<sup>37</sup> *Beyond Humbug* by Michael Dillon and Neil Westbury, Westlakes, S.A., Seaview Press, 2007 goes into this in some detail. Pp. 218-221 give an excellent Glossary of initials used by government departments and other entities. A great help in sorting through the government maze.

<sup>38</sup> It is not as if the community had not thought about matters, like unemployment. Consider the 1999 report of the Memelma Tribal Council with Kardu Numida Incorporation, “Proposal to develop a Wadeye Middle Management Training and Employment Strategy”, (Stret Ryan & Aosis. Pty Ltd, Business and Management, 1999. Like so many thoughtful reports did it make its way anywhere within government agencies?

<sup>39</sup> *Executive Summary NTER* p. 1, and Chapter 3 of the Report, p. 47 admits that the original *Intervention* was *not based on a consideration of current evidence about what works in indigenous communities.* - as found in *Reconciliation Australia*.

management and perhaps on much more. It is also apparently now split from the government and this has extended uncertainty. The *Review* (as I read it) did better than the initial *Intervention* and promised much. As so often happens, however, there is not enough money available to put flesh on our best rhetoric, nor are there enough people trained to undertake it.<sup>40</sup> The promise to deliver more services along with the admission (which Aboriginals have long claimed) that enough resources were not provided for education, health, housing and security, have occupied most of the *Review* and it is a step in the right direction. The *Review* seems to have missed, however, or to have been unaware, of the more fundamental point - facilitating local initiative. Although the government vigorously denies wanting a top-down approach, the *Review* and statements of the *Media Release* (Oct 23) still proceed very much from the top-down model - like a doctor who has the medicine to cure one's ills. The continual use of the word *participation* is a bother. *Participation* inevitably gives the impression of someone being invited in to be a part of your plans, not theirs. Aboriginal people in the *Review* are regarded as a separate class of people who must be taught what to do and to conform. At the end of the day it does *not* seem to make enough room for promoting Aboriginal initiative or identity. If this should be the case, like so many interventions before, it may wind up spending a lot of money with little tangible result.<sup>41</sup>

In his Boyer Lectures in 1967 (over 40 years ago), W.E.H. Stanner put forward something else:

*... on the evidence the Aborigines have always been looking for two things: a decent union of their lives with ours but on terms that let them preserve their own identity, not their inclusion willy-nilly in our response to a scheme of things and a false identity but development within a new way of life that has the imprint of their own ideas.*<sup>42</sup>

For this we all need in justice to work on three things:

- 1) Respect for each other's culture (even being polite would help)
- 2) Prior consultation and mutual discussions before all important decisions
- 3) Full employment (find a way to make a living – even living in the bush).

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<sup>40</sup> The section on money, cf. Report from p. 49, gave a good account of problems of overlapping authorities and use of money which it hopes will be improved.

<sup>41</sup> Appendix 16 of the *Review* calls attention to an address by Stephen Cornell of Harvard who suggests looking into the American and Canadian experience with their own indigenous communities. The key point here was that self-determination really meant self-determination, where indigenous people really did run their own affairs. They did not do this overnight and did not do this by simply learning to copy Western governance models, but by following their own traditions of how authority worked with them.

<sup>42</sup> W.E.H. Stanner - *After the Dreaming*, ABC Boyer Lecture, 1968, ABC 1969