

## **Tricky hunt for common ground**

By Noel Pearson

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In the 1960s, the 13 clan groups represented by the then Yirrkala Aboriginal Council made application for a general purpose lease to the Commonwealth of Australia for an area of 2500 square miles (6475 km<sup>2</sup>) over what was then Aboriginal Reserve lands on the Gove Peninsula in the Northern Territory.

The council proposed “to develop and make use of this land for the maintenance and development of the Aboriginal way of life, its traditions, its arts and its culture” and “for the promotion of the economic independence of the community and its members”.

Their submission made clear the Yolngu people’s desire for development: “We recognise that contact with the white Australian community has brought changes to our way of life and we now wish to use the land and the sea to earn money.”

No lease was issued.

In the early ’70s, the late Yolngu leader, Roy Marika, led elders from Yirrkala in opposing the establishment of the Walkabout Hotel on Nabalco’s bauxite mining town of Nhulunbuy. The Swiss-owned company that had usurped the traditional lands of the Yolngu people to establish its lucrative mine against the opposition of the traditional owners added alcohol to its injuries to the people of Yirrkala. Together with the Northern Territory’s liquor commission, it ignored the opposition of the traditional owners. Old women publicly protested against this arbitrary imposition but were not successful. The grog problems of the Yolngu people started to grow.

More outlets were licensed in the growing and booming mining town. In the late ’80s Yolngu leaders protested against the granting of a takeaway licence to Woolworths, again to no avail. The benefits of the Fresh Food people having a supermarket in this town are often not taken advantage of today by many Aboriginal families because they don’t want to be humbugged by the drinkers hanging around the liquor takeaway. So they shop at the IGA instead.

Now in 2007 we have Prime Minister John Howard and federal Indigenous Affairs Minister Mal Brough introducing omnibus legislation authorising and giving effect to the federal Government’s intervention in the Northern Territory. This legislation seeks solutions to the tragic social problems caused by the thing Yolngu leaders had tried to ban: alcohol.

It also seeks to guarantee access to leases to community members so they can own their homes and undertake economic development instead of being barred from this by the land’s communal ownership.

This story has parallels in many other parts of Australia. In 1985 the Queensland Government and its then Minister for Local Government, Russ Hinze, forced the establishment of the canteen at Aurukun, against the opposition of most of the community and despite numerous plebiscites that voted no to the liquor outlet.

Today we are counting the costs of this failure of governments to respect the desires of Aboriginal people. These costs include the neglect and abuse of children, terrible violence by intoxicated people against their own loved ones and the entrenchment of deep addiction problems in these communities. We would call this twisted history irony if it were not really tragedy. What must be understood by all Australians who share great concern and sorrow for Aboriginal people is that the problems that beset our people have direct explanations in the bad faith of governments and the liquor outlets that have knowingly and unhesitatingly profited from this misery. And who continue to do so.

I recall meeting Yolngu leader Galarrwuy Yunupingu, the country’s most galvanising indigenous leader, just after the High Court’s decision in the Mabo case in 1992. It was at a meeting convened by the Northern Land Council, which he chaired, to discuss the ramifications of the decision on native title and I was a member of the delegation from Cape York Peninsula.

During the course of briefings from lawyers about the meaning of the court decision, I recall Galarrwuy giving a striking soliloquy on the question of individual title-holding within the framework of communal title. He gave an example of the crocodile farm in his community and the whole dilemma of individual Aborigines contributing labour to make such an enterprise work, while the rest of the community need not make any contribution but were entitled to take the benefits of the enterprise. He was articulating what I now know economists call the “free rider” problem. Gallarrwuy’s discourse included an explanation of the deterioration of housing in the absence of any sense of private ownership.

For me, Galarrwuy’s articulation of this issue was heretical to my then young lawyer’s fanatical commitment to the notion of inalienable communal title to land. The astounding speech was clearly quixotic to the assembled lawyers and advisers, who politely listened, then moved on to the arcane business at hand.

But this explanation of the free rider problem never left me and I have become convinced in the years since that there must be, and there can be, a reconciliation between private title-holding and the preservation of the underlying communal tenure.

Aboriginal leaders rightly fear the consequences of allowing communal lands to be alienated. There would not just be a Swiss cheese effect; the whole cheese block would be lost to dealings with unscrupulous money lenders and developers.

There is much history in North America and New Zealand that cannot be allowed to be repeated in Australia. However, this fear of alienation has led to a paranoid opposition to any notion of private titles to community members for housing or businesses. Leaders suspect the intentions of Howard and Brough, that their ultimate intention is to privatise Aboriginal land.

The Prime Minister made the following commitment to the Reconciliation Workshop at Old Parliament House in May 2005: “Reconciliation is about rights as well as responsibilities. It is about symbols as well as practical achievement. It is about the past as well as being about the present, and the future. But what can we agree on undeniably? We can agree in the special status of the Aboriginal and Torres Strait Islanders as the first people of our nation. We can recognise and acknowledge past injustices, and I’ve frequently said in my time as Prime Minister that the treatment of indigenous Australians represents the most blemished chapter in the history of this country. We recognise that communal interest in land and spiritual attachment to land is fundamental to indigenous culture.”

He went on to say: “And when I talk about land in this context let me make it clear that the Government does not seek to wind back or undermine native title or land rights. Rather, we want to add opportunities for families and communities to build economic independence and wealth through use of their communal land assets.”

There is no reason for the Prime Minister to dishonour this clear commitment to respect communal title to land.

The bill that is before federal parliament is inelegant and imperfect, but the thrust of its purpose is not sinister. It is necessarily urgent, but it needs to be decisively improved in some crucial respects.

It is absolutely imperative that the provisions relating to the holding of town leases and the subsequent disposition of leases not be within the sole and arbitrary power of the federal Government. Rather, this should be the province of an entity that is comprised of representatives of indigenous landowners.

Mal Brough has emerged as the most active indigenous affairs minister in the history of this portfolio. Many indigenous people will vigorously contest any suggestion that he may yet end up making the most positive contribution to this most precarious of policy issues for the benefit of Australia’s most vulnerable peoples.

The difference between disaster and success will depend on whether Mal Brough and John Howard will engage with Yunupingu and the traditional leaders of the Northern Territory on a way forward. It will be a grave mistake for the federal Government to be as intransigent to amendments to its bill as those who have opposed the intervention entirely.

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