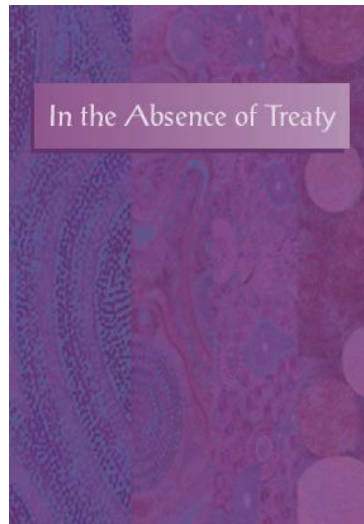


Review of ‘In the Absence of Treaty’

By

The Hon Alastair Nicholson AO RFD QC



This is the fifth book written and collated by Michele Harris of ‘concerned Australians’ dealing with issues related to the aftermath of the Northern Territory Emergency Response (the Intervention) of the Howard Government in 2007.

Like its predecessors it is beautifully presented and rather than engage in polemic, the author has let others speak, most of who are Aboriginal People. These are not the carefully selected and small group whose views are given prominence in the Murdoch media and by the present Government, but represent a much wider range of Aboriginal opinion that has been largely ignored by Government and the public.

It also contains full information as to the various reports and recommendations that have stemmed from various Committees, importantly including the Senate Inquiry into Stronger Futures legislation and that of the Parliamentary Joint Committee on Human Rights and the Statement to that Committee by the National Congress of Australia’s First Peoples of June 2012.

The theme of this book relates to the land, the attachment of Aboriginal People to the land and the effect of the intervention and subsequent legislation passed by both major parties affecting their land rights in the Northern Territory. Once again the major sub theme is consultation or rather the lack of it by relevant Government agencies and politicians despite stringent criticism, not just from Aboriginal people and other critics, but by the Parliamentary Committees themselves.

It chronicles the almost inexplicable reasoning behind the then Government's overriding of NT law in introducing legislation in relation to community living areas. These are small areas of land perceived by the Aboriginal people to have been returned to them out of the totality of land that they lost with the advent of pastoralism. As I have pointed out previously, the effect of this legislation was to give the Minister almost unlimited control over the uses of town camps and community living areas and in particular to enable their development for private purposes, presumably for profit.

The legislation was originally said to be a backup in case the Northern Territory Government did not act but as the book points out, after some further farcical and rushed consultations with only a few of the Aboriginal People affected, a regulation was duly passed by the Commonwealth, effectively bypassing the NT Government and confirming the Federal Minister's control.

Despite very sensible provisions for consultation suggested by the Australian Human Rights Commission and endorsed by the relevant Parliamentary Committees, the lack of proper consultation has plagued the Intervention process from beginning to end.

The problem is that Aboriginal People have, from the beginnings of white settlement, been in a position of weakness in any negotiations with Government and have decisions made for them by politicians and bureaucrats without properly involving them in the process.

The book concludes that there needs to be a legally binding contract to give Aboriginal people certainty as to their rights and points out that Australia is the only Commonwealth country that does not yet have a Treaty with its First Peoples.

However, events to date under the present government do not suggest that much is likely to change and that Constitutional recognition is unlikely to be more than token and a Treaty a remote dream.

Alastair Nicholson

Melbourne, 3 February 2014