

**ABORIGINAL LAND RIGHTS LAW IN THE NORTHERN TERRITORY** (Vol 1) by Graeme Neate (Gen. ed. Garth Nettheim), Chippendale, Alternative Publishing Cooperative Limited, 1989, 464 pp. \$39.95 (Cloth), \$29.95 (Paper).

In November 1975, the Whitlam government's Northern Territory Aboriginal Land Rights legislation was before the Australian Parliament. The following year, the *Aboriginal Land Rights' (Northern Territory) Act 1976* (Cth) was enacted by the Fraser government. It was pioneering legislation and Graeme Neate's book, *Aboriginal Land Rights Law In The Northern Territory* (Alternative Publishing Co-operative Ltd., 1989), is a pioneering work, full of extensive detail reflecting his first hand practical knowledge of the working of the Aboriginal Land Tribunal—set up under the Act—in its formative years.

After two introductory historical chapters, the author turns to the operation of the Act, looking first at the concept of "traditional Aboriginal ownership" of land (chapter 3) and then at the traditionally owned land that can be claimed by traditional Aboriginal owners (chapter 4).

The author outlines the contribution by anthropologists (usually white males) to the 'understandings' of Aboriginal land tenure systems that eventually became part of the professional languages of lawyers and anthropologists. The judgment of Blackburn J., in the *Gove* case is summarised (flawed though this contribution was), and then the conclusions of Woodward J., in his Reports (Aboriginal Land Rights Commission 1973 and 1974) are analysed. The Act and its definitions are based on his recommendations. The interpretations of these definitions made by Toohey J., the first Aboriginal Land Commissioner appointed under the Act, in some of the particular fact situations presented to him, are explained in a way that illustrates how this extremely complex aspect of the Act has been flexibly interpreted, thereby ensuring the successful operation of the spirit of Woodward J.'s, recommendation.

After this *Tour de force*, the rest of the book seems fairly straightforward. In reality, it presents a descriptive legal history of this new and unique body of law, including the interpretations by the High Court of the legal questions that have come before it and the particular claims dealt with by the Aboriginal Land Commissioners, until the publication cut-off date of the end of 1986.

The status of land open to claim is the subject of the fourth chapter, involving discussion of the meaning of 'Crown land' in the Northern Territory, 'alienated . . . by or on behalf of Aboriginals', 'unalienated', and the status of land held under various licences, of stock routes and reserves, public roads, river beds and banks, mining rights and interests, pastoral leases and 'town' land.

Chapter 5 sets out procedural matters such as how to lodge a claim, the preparation of the claim book and what happens during the hearing.

The early practice directions and the revised ones of 1985 open and close this chapter.

Evidence of Aborigines and of Anthropologists constitute chapters 6 and 7. Questions of admissibility—this is a Commission, not a court of law—and the Aboriginal world-view as opposed to the Western world-view are elucidated here. Oral evidence from individual Aborigines as well as from groups can be restricted by constraints placed on the witnesses by their traditional law itself and the same limitations have led to problems for the anthropologists whose expert evidence has been subjected to legal challenge, e.g. through attempts to use the hearsay evidence rules.

The last two chapters cover practical matters. "Dealing with land claims" (chapters 8) and "Aboriginal Land" (Chapter 9) illustrate complications involved in the unavoidable balancing of various interests by the Aboriginal Land Commissioners and the Ministers acting on their recommendations. The book concludes with a look at the operation of landholding Aboriginal Land Trusts and at the nature of the title held as Aboriginal land.

Graeme Neate's book has been thoroughly researched and comprehensively indexed. It is the first in a two volume study, unfortunately, a small type that is not easy to read has been used. The publishers are ACPL, general editor in this series Garth Nettheim. As he points out in his preface, this volume is primarily concerned with the means by which traditionally owned land in the Northern Territory becomes Aboriginal land under the Act and deals in particular with the relationship between law and anthropology in this process.

The most poignant part of the book is what is not there. Traditional land ownership is a recognised part of our legal system only for those Aboriginal traditional owners fortunate enough to live in the N.T., S.A., Victoria or N.S.W. insofar as the NSW land claims procedure operates. As a result, Australia is split between recognising and non-recognising areas. By providing such a lucid description of this trailblazing Act, the book throws into stark relief the failure to ensure recognition of traditional land ownership in the two intransigent mainland States of Queensland and Western Australia.

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