

The Judge added that to find that the right to self-government survived the assertion sovereignty does not challenge the sovereignty of the Crown:

Without doubt the fact of Crown sovereignty in that sense is binding upon this court ... However, the assertion of Crown sovereignty and the ability of the Crown to legislate in relation to lands held by Aboriginal groups does not lead to the conclusion that powers of self-government held by those Aboriginal groups were eliminated. (Para 124)

The division of legislative powers under the Constitution, however, was a matter internal to the Crown and did not exclude governmental and legislative powers residing in Canada's first nations. The judge points to the various constitutional principles and values that are not set out in writing, but which guide legislative judicial and executive action, as is the case with our own Constitution.

This case is an important development in the potential for colonial legal systems to meet the expectations for self-government that Indigenous peoples hold. Despite recent pronouncements from the High Court regarding the relevance of North American jurisprudence, these cases hold many lessons for our own development because, while the history of treaty-making and constitutional development may be different, the principles for recognition of Indigenous rights are the same.

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Recent publications

The publications reviewed here are not available from AIATSIS. Please refer to individual reviews for information on obtaining copies of these publications.

Native Title in Brief, National Native Title Tribunal, 2000.

The National Native Title Tribunal has produced a multimedia information kit to help people understand the complex native title laws. Tribunal President Graeme Neate said that practical, accessible information was a critical ingredient in the resolution of the nation's 530 outstanding native title applications. The 18 minute CD-ROM is also available on video.

'Most people recognise that mediation, rather than litigation, is the best way to resolve native title applications and reach agreements which are supported by everyone involved, whether Indigenous people, pastoralists, miners, local authorities or governments. But for those who have to deal with a native title application, the process can be daunting. The CD-ROM covers a range of topics such as the kinds of agreements that are possible under native title law, development and native title, and the stringent registration test that is applied to applications. While the CD-ROM could never be as exhaustive as the 440 page Native Title Act, it is a building block towards greater understanding and more informed participation in the mediation process,' stated Mr Neate.

Copies were available from the National Native Title Tribunal on 1800 640 501 or www.nntt.gov.au.

The Valuation or Management of Land Subject to Native Title, Guidance Note 27, The Australian Property Institute, 2000.

The National Council of the Australian Property Institute recommends that this Guidance Note, *The Valuation or Management of Land Subject to Native Title*, be used by members of this professional organisation for the commercial valuation of co-existing property interests subject to native title. Legislation which confers a right of exclusive possession (which extinguishes native title rights and interests) are listed in an appendix to assist members in distinguishing the likelihood of co-existing property interests.

The publication emphasises the importance of identifying where native title exists or may exist in all property valuations or assessments and provides practical tools to do so. Members are advised on how to conduct research on the land, prepare a tenure history, undertake site inspections and consult relevant experts and records, and the potential limitations of these approaches.

The commercial impact of coexistence or likely coexistence of native title is handled by two main approaches. The 'unaffected valuation basis' is to provide the valuation of the land together with an outline of the likely content of any native title rights and interests and a qualification indicating that the property valuation or assessment does not reveal any diminution due to the possible presence of native title. The 'affected valuation approach' requires the preparation of an expert report about the native title rights and interests. The member then uses the report to calculate whether the property's value is discounted and if so by how much. Some guidance is provided in matters that should be taken into account when making such a calculation, including comparison of similar property sales where available. The limited information in this section makes it clear that the Guidance Note expects the expert report to play a leading role in the calculation.

This Guidance Note is effectively written from a non-Indigenous perspective for non-Indigenous professionals about commercial value of land to non-Indigenous people. It declines to address situations where native title rights and interests could increase the commercial value of land. The advice given is practical, factual and dispassionate, and is based in rights as recognised by law. Usefully, the publication also tries to dispel a number of destructive fears that are popularly held, for example, 'Because pastoral rights prevail over coexisting native title rights to the extent of any inconsistency, there is little concern that these tenures are not secure.'

This publication is available for \$100 (non-members) and \$25 (members) from The Australian Property Institute, phone 02 6282 2411, national@propertyinstitute.com.au

Negotiating the Native Title, papers delivered at a BLEC conference in May 2000, Business Law Education Centre, AIC Worldwide.

Negotiating the Native Title publishes the papers presented at a BLEC conference held in May in Perth. The presenters are from legal, industry, management, community, research and/or Indigenous backgrounds. Their papers chiefly seek to interpret the fundamental tools of negotiating native title for non-Indigenous people working with native title claimants or native title holders.

Fred Chaney's comment, 'We are living and working in the inevitable transitional period between the acknowledgment of the existence of native title within the Australian legal system and formal determinations in particular cases,' summarises the importance for industry of training courses of this nature. His paper on the design and operation of native title corporations constructively sets out how such bodies affect industry. David Ritter contributes two papers which frankly tackle common misconceptions when negotiating native title - *Mission Impossible: understanding the role of native title representative bodies* and *A visit to your neurologist: infrastructure agreements and 'the right to be consulted'*. Greg McIntyre's paper is a good review of current developments at law resulting from recent native title decisions. Other presenters include John Clarke, John Hoare, James Kernaghan, Alan Pitman, Kado Muir, Jeremy Van de Bund and Quentin Jackson.

The publication is surprisingly expensive and similar information may be available elsewhere for much less, or even for free. The publication itself is of a very low production quality. When searching for the title be aware that the odd sounding title may be the result of a typographical error.

This publication is available for \$395 from the Business Law Education Centre, tel 02 9210 5700, fax 02 9223 8216.

Native Title Research Unit publications

The following NTRU publications are available from AIATSIS. Please phone (02) 6246 1186, fax (02) 6246 1143 or email: sales@aiatsis.gov.au. Prices listed include postage.

A Guide to Australian Legislation Relevant to Native Title 2 volume set, Native Title Research Unit, AIATSIS, 2000. (\$49.50)

Native Title in Perspective: Selected Papers from the Native Title Research Unit 1998- 2000 Edited by Lisa Strelein and Kado Muir, 2000. (\$21.50)

Land, Rights, Laws: Issues of Native Title, Volume 1, Issues Papers Numbers 1 through 30, Regional Agreements Papers Numbers 1 through 7 1994- 1999 with contents and index. (\$19.95)