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## Book Reviews

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*Commercial Implications of Native Title* by Bryan Horrigan and Simon Young (eds): The Federation Press, Sydney, 1997. Pages 1-462. Hard \$75.

by Jeff Kildea  
Barrister-at-Law

The enactment of the *Native Title Amendment Act* 1998 means that, after more than six years, native title law may now be able to settle down without the distractions of political controversy. Both major political parties now accept that native title is here to stay. Although native title has been a legal reality since *Mabo* was decided in June 1992, the political engagements which have continued since then have meant that many legal practitioners have tended to sit back and to wait and see the outcome before investing the time and effort required to understand native title law. After all, it is difficult to advise clients on the impact that native title might have on their development proposals when the ground rules are in a state of uncertainty.

That is not the attitude which the Centre for Commercial and Property Law at the Queensland University of Technology adopted. Well before the political scene had stabilised, the Centre sponsored publication of *Commercial Implications of Native Title*. It is an ambitious work running to some 428 pages and containing 12 chapters on a range of topics. Nevertheless, it is a very accessible publication, with many points of entry for those who have not yet come to terms with the detail of native title law but would like to understand it. As well, for those looking for answers to specific problems concerning the application of native title law to commercial activity, there is much detailed analysis covering the more complex issues.

The book is divided into three parts: Part I deals with the key developments in native title law and policy; Part II discusses commercial sector implications; and Part III covers native title dispute resolution. The chapters in Part I provide the reader with a basic understanding of this new area of Australian common law and its statutory enactment in the *Native Title Act* 1993. Bryan Horrigan's

opening chapter mixes a number of styles (numbered points, question and answer, straight narrative) in order to give an overview of native title law and of the various aspects of its commercial implications which are covered in more detail in later chapters. Other contributions include a chapter on the workings of the National Native Title Tribunal by its president, Justice Robert French, a working guide to the *Native Title Act* 1993, and a discussion of the aspects of policy which have influenced native title legislation at Commonwealth and State levels.

For practitioners who are seeking guidance in advising their commercial clients on the implications of native title for mining and the development of other natural resources, Part II contains three chapters giving reflective insights into such issues by the contributors. David Yarrow's chapter on ownership and control of natural resources is a detailed analysis of the ramifications of native title law as it affects the resources industry. There are also chapters on financial, accounting and auditing implications, and on practical implications for financiers, land dealers, investors and professional advisers.

Part III contains chapters on proof of native title and negotiating resource development agreements, comparing experience in Australia with that in North America. There is also a chapter which looks at the implications of the *Wik* decision for various commercial interests.

*Commercial Implications of Native Title* contains a variety of material for readers who are at either elementary or advanced levels in their understanding of native title law. The novice in the area will find the work a helpful introduction to applied native title law. While, those with more knowledge of the subject will benefit from the reflections of the contributors on a number of relevant and challenging issues. Native title law in this country is new enough that no one can yet claim to be a complete expert in the area. The ventilating of ideas and concepts, which this book does very well, is an essential part of the legal

profession's coming to grips with the substantial changes which *Mabo* and *Wik* have brought to the law in Australia relating to land management and resource development.

The book itself is very well laid out. It comprises a detailed table of contents, which includes the titles of the headings used in the chapters. The preface explains the books methodology and gives a brief expression of the editors' views on the likely response of the Commonwealth government to *Wik*. There is a list of contributors which includes short details describing their backgrounds and qualifications. This is followed by a table of cases and a table of legislation. The latter is very helpful in locating the different points of view of the contributors on the meaning and application of particular sections of the *Native Title Act 1993*. At the end of the book there are appendices, reproducing two landmark documents: the Cape York Heads of Agreement and the Crescent Head Agreement. The Crescent Head Agreement was the basis for the first determination of native title under the *Native Title Act 1993* made by the Federal Court in April 1997. The index is thorough and easy to work with. All in all, it is a high quality publication.

In terms of the content of the chapters, the only major criticism, which is not the fault of the editors or the contributors, is that the amendments contained in the *Native Title Amendment Act 1998* have major consequences for the commercial aspects with which the book deals. The publication of this book before the political debate was resolved certainly filled a need. It is to be hoped that the Centre for Commercial and Property Law will commission a revised edition to include the amendments. Even if it does not, the lawyer whose practice requires a knowledge of the implications of native title law on her or his clients' affairs, would still find *Commercial Implications of Native Title* a valuable acquisition to the firm's or the chambers' library.

*The Modern Contract Of Guarantee* by James O'Donovan and John Phillips: LBC Information Services, Sydney, 1996. Pages i-xc, 1-841, index 843-866. Hard \$225.

by Gregory Burton  
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This text has a well-deserved reputation for comprehensive and intelligent treatment of the law on guarantees. Previous editions appeared in 1985 and 1992. The current edition continues the high quality without great change in format. A series of seminar problems have been added at the end.

There are significant changes in content of some chapters to reflect the impact of the *Corporate Law Reform Act 1992* (Cth), with its introduction of a revised corporate insolvency regime, and developments in respect of the law on factors vitiating a guarantee and "all moneys" mortgages, amongst others.

The pace of judicial and legislative development, mentioned by the authors as an impetus for the new edition only 3.5 years after the previous edition, continues. The current analysis in Chapter 4 in particular must be read in the light of the High Court's decision in *Garcia v National Australia Bank* (6 August 1998) and the inclusion of a new form of statutory unconscionability extending to small business in the *Trade Practices Act 1974* (Cth), s 51AC. The discussion in Chapter 5 (pp 250-253) on the scope of "all moneys" mortgages must be read in the light of the decision of Hill J in *Re Murphy; Donnelly v Commonwealth Bank of Australia* (1996) 140 ALR 46 and the words of Priestley JA in the New South Wales Court of Appeal in *Smith v Australia & New Zealand Banking Group Ltd* (unreported in full, CA, NSW, CA40392/95, 21 November 1996), p 17. Chapter 14 already contains discussion of the then form of the *Code of Banking Practice* and *Consumer Credit Code*, so requires checking against the final form which came into effect in November 1996 (after publication of the current edition).

As in previous editions, exposition of relevant authority is complemented by analysis and criticism, so that use of the text for different purposes is facilitated. This fulfils the authors'