

Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?

Edited by Sean Brennan, Megan Davis, Brendan Edgeworth and Leon Terrill (Sydney: The Federation Press, 2015), pp. v + 273. Seven maps. AU\$75.00 (pb).

This book explores a live, and lively, issue: the extent to which native title can be used to achieve economic empowerment. The question mark in its title is aptly placed, for as the editors note, “[n]ative title is no conveyor belt, automatically transporting people from a place of political or economic marginalisation to somewhere better” (p.2). Here the law is Janus-faced: “both a colonising and a decolonising doctrine”, in the words of Lisa Strelein (p.44).

The book is divided into two parts, the first of which examines Australian native title law in detail. These chapters are thickly populated with legal history and analysis, as in David Yarrow’s discussion of the inalienability of native title, Jonathon Hunyor’s exploration of “the interplay between principles and laws relating to racial discrimination and the recognition and development of native title case law and legislation” (p.99), and Brendan Edgeworth’s chapter on *Mabo*’s “pervasive, enduring and radical influence [...] on Australian property law” (p.75).

Several chapters consider the contested question of commercial rights, focusing on *Akiba v Commonwealth*. This 2013 case involved the recognition of a right to take resources for any purpose from sea subject to a determined claim. The prospect of commercial native title rights inspires considerable cognitive dissonance in the nation state: as Sean Brennan notes, “Commonwealth and State respondents have repeatedly objected in court to the characterisation of resource-related activities as trading rights, while [...] governments have encouraged Indigenous people to pursue economic activity” (p.35). The law’s development has also been unpromising in this regard; Paul Finn (who heard *Akiba* at first instance) expresses concern that “the accentuation of the so-called spiritual dimension of native title” has deflected attention from native title “as

a source of material advantage and advantage” (p.27). Strelein suggests that legislative change is required to “ensure economic and commercial purposes are recognised as inherent to the enjoyment of native title rights and interests” (p.58) and proposes an extension of section 223(2) of the *Native Title Act 1993*.

The latter chapters enter the practical realm, considering the current state of play in the native title world. Thus Jon Altman and Francis Markham carefully set out the extent of Indigenous landholdings and survey the possibilities for economic empowerment therein and Marcia Langton explores the capabilities of prescribed bodies corporate, noting that these “new polities” face particular challenges including financial vulnerability (p.179). Highlights include Andrew Chalk and Sean Brennan’s detailed discussion of the *Aboriginal Land Rights Act 1983* (NSW), Leon Terrill’s analysis of Hernando de Soto’s thesis on property rights in a native title context, and David Trigger’s sensitive exploration of intra-Indigenous disputes.

These chapters make for appropriately sobering reading. In Ciaran O’Faircheallaigh’s thoughtful discussion of the need to “reignite” debates on Aboriginal self-government, he observes that in its current state “native title is of limited value as a basis for Aboriginal economic participation” (p.158). Power imbalances are stark: notably, during negotiations claimants are heavily reliant on “discretionary ‘corporate social responsibility’ policies as a basis for pursuing commercial activity” and are “subject to the vagaries of corporate policies and economic fortunes” (p.159). However, as O’Faircheallaigh acknowledges, victories have been achieved within and despite the existing system. Accordingly, the book closes with a heartening account of the recent Noongar settlement from Glen Kelly and Stuart Bradfield, who set out some hard-won gains and observe frankly that the native title system is “a means to an end, not an end in itself” (p.250).

This absorbing and timely book is highly recommended for anyone with an interest in native title or legal history.

Whispers from the Bush: The Workplace Sexual Harassment of Australian Rural Women. By Skye Saunders (Sydney: The Federation Press, 2015), pp.xviii +220. Foreword by David Morrison. Bibliography, Appendices, Index. ISBN 9781760020385. AU\$59.95 (pb).

Whispers from the Bush is a study on sexual harassment of female workers in rural areas authored by Australian National University academic Skye Saunders. A former

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Canberra-based solicitor specialising in Employment Relations and Discrimination Law, the book is based on her successful doctoral thesis of the same name. Written in a thesis-style, this publication includes a literary review, clear definition of terms, discussion about methodology, project constraints and qualifiers, findings and policy recommendations.

The findings, derived from qualitative and quantitative research, reveal some very interesting information. Saunders conducted 107 face-to-face interviews in rural locations all around Australia with candidates from a spread of employment areas. The subjects are mostly female and to preserve anonymity, identified by age and job description only. Complementing the oral component, is a statistical and analytical survey of sixty-eight Australian adjudicated workplace sexual harassment cases during the five-year period 2005-2010.

Sexual harassment in the bush is a given — isn't it? Well at least that's the perception as you get closer to town (p.148). So Saunders' analysis of the sexual harassment cases comes as a surprise. It emerges that "rural complainants were more likely to secure judicial reasoning in their favour" (p.94) than their urban counterparts. There is a pattern here of perception and responses to sexual harassment that is highly specific in context. Levels of education, rather than degree of rurality, make the difference between awareness and avenues of redress (p.100). Professional women and women working in the mining sector are nearly twice as likely to take action. It also helps to be older, Anglo and employed in a relatively senior position.

But it's not the same across the board for all rural female employees, and the oral accounts agree. Some rural occupations make female employees more vulnerable than others. Agriculture/horticulture industry workers are particular targets for some types of harassment but interestingly so are women in the mining sector. Hospitality/retail workers report slightly different findings again. Context matters.

For me, the most depressing aspect of the results was the repeated finding by Saunders of a workplace culture of women "blaming" other women for sexual harassment; an attitude she found shared by most (p.134). Less clear-cut was the issue of acknowledgment of harassment. For Saunders, an advocate, sees this "culture of denial" as a possible "self-defence mechanism" so women do not have to take action and thus avoid the possible penalties of ostracism, gossip or sense of isolation that reporting could incur (pp.144f). The similarity of the language of self-deprecating acceptance used by some of the women is so pronounced that it could almost be taken as evidence of collusion prior to the interviews (cf. pp.122; 147).

The book concludes with a sequence of very broad policy recommendations which centre around the ideas of "re-educating" male employees about sexual harassment, of implementing workplace strategies to recognise and redress sexual harassment and to encourage support amongst women through increased knowledge of appropriate actions when acknowledging and responding to sexual harassment (p.174). Good ideas, sure, but for me these proposed policy initiatives do not play to the actual strengths that Saunders has revealed in her findings.

Saunders' research has identified specific industry workers who are particularly at risk and this threat is not spread evenly across rural employment areas. She has demonstrated that higher education levels are both a protection and a guide to appropriate responses when facing sexual harassment. She has also shown that lack of female solidarity contributes to the negative impact of sexual harassment. With the exception of perhaps the last point, the recommendations she makes do not make strategic use of the potential specifically to target policy in light of her findings.

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That said, this work is original and timely with important policy implications and now out of the Academy and into the public domain. Knowledge of circumstances cannot necessarily prevent events from taking place but they are the first and best way to start.

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