Foreword

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In Australia, Canada and New Zealand, colonisation has produced similar effects on the indigenous populations. Dispossession of land and loss of autonomy led to a depreciation of culture, poverty, a loss of dignity and a sense of alienation and despair. The resurgence of indigenous identity in the late 20th and early 21st centuries has been marked by movements to redress these disadvantages. At the forefront of these movements have been claims of land rights. Land has been sought not to secure economic benefits alone but also – and more importantly – to grow and sustain indigenous culture and spiritual values.

The legal mechanisms by which land rights have been obtained have varied – sometimes by recognition of Aboriginal title under the common law, sometimes by reservation of land for Aboriginal purposes, sometimes by grant of a statutory or common law title. Whichever mechanism has been used, however, the legal system of the sovereign authority has necessarily been the underpinning of indigenous interests in land. The same legal system has then underpinned the benefits which indigenous groups have been able to secure in reliance on their interests in their land. But legal systems are limited in their capacity to fulfil all indigenous aspirations.

This book documents a number of processes designed to achieve the agenda of particular indigenous groups. It shows that less reliance is now placed on litigation than on negotiation to achieve the agenda. Attention is drawn to both the processes and the outcomes of negotiations in each of the jurisdictions. There are some interesting lessons to be learnt.

Apart from whatever leverage has been provided by interests in land, indigenous negotiators have drawn on popular and governmental goodwill to strengthen indigenous culture and to enhance the educational and training opportunities for indigenous people. There has been no shortage of rhetoric extolling these objectives, but the rhetoric has not always produced practical results.

Practical results have followed when negotiators shared an understanding of local conditions: the social, cultural, spiritual and political realities, the legal system, the continuity of the relationship between indigenous and non-indigenous populations and the benefits which all parties may reasonably hope to obtain by reaching agreement. Successful negotiations have grown out of respect and trust among the negotiators.

Respect and trust lead to consensus on terms of agreement and to support for its implementation.

But it would be a mistake to suppose that legally enforceable agreements can settle every issue. Relationships between community groups continue and change; finality in agreeing some aspects of their relationship may be unreal, if not undesirable. Nor can the written expression of an agreement guarantee its harmonious and effective implementation. That spirit grows only when all those who are responsible for, or affected by, an agreement come to know its terms and to own them. Only then can the agreement foster that mutual respect and sense of solidarity among the parties which are essential to achieve their human dignity. In the final analysis, it is not documents but inter-personal relationships which are the test of reconciliation between indigenous and non-indigenous people.

Leaders in reconciliation will find much to reflect on, and a considerable stimulation to research, in the pages which follow.

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30 January 2006