Attorney General Rob Hulls
Keynote Address
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Acknowledgments:

- *Traditional owners, the Kulin Nations; and in particular the Wurundjeri people and Boonwurrung people. I pay my respects to their Elders past and present, and to all Elders here today.*
- *Professor Mick Dodson, Chair, AIATSIS and Australian of the Year;*
- *Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner;*
- *Les Malezer, Chair, Foundation for Aboriginal and Islander Research Action (FAIRA); and Chairperson, Global Indigenous Peoples Caucus to the UN.*
- *The Hon Justices North and Mansfield, Federal Court;*
- *Richard Wynne, Minister for Aboriginal Affairs, and Gavin Jennings, Minister for the Environment;*
- *Traditional Owners and Friends of Land Justice.*

The Story So Far

Just over two years ago, Minister Jennings and I had the immense privilege of attending the settlement of the Native Title Claim of the Gunditjmara people of South West Victoria. On that day, I spoke of the value of the symbolic

and the pragmatic. I spoke of the value of having the guts to acknowledge responsibility and failure.
Standing on ancient and breathtaking terrain, then, we could vindicate the Gunditjmara's long and resolute fight for the law's recognition. We did so, however, with our eyes wide open - aware that the process in which we had engaged was burdened with limitations; and was not going to deliver the same result to all who sought its assistance.

Certainly, the *Native Title Act* was a jubilant and assiduous response to a milestone in the national story. A marvel of legal complexity and realpolitik, nevertheless many held out great hope - determined that, somewhere in there, lay the necessary seeds of redemption.

It soon became apparent, of course, that this was easier said than done. The Howard regime set its full reactionary forces against it, often whipping up inappropriate sentiment; while Victoria had its own parochial brand of

fear mongering about ‘backyards at risk’ from the Kennett administration.

Coming to office determined to make it work, Labor nevertheless inherited the legacy of Kennett’s hostility. In short, the first claim to be tested, the Yorta Yorta claim, began and ended as litigation that demonstrated the costs, both financial and human, of the *NTA*’s onerous requirements; *and* how ill equipped it was to deal with the aspirations of Victorian Traditional Owners.

Working within our limitations, we entered into a Cooperative Management Agreement with the Yorta Yorta which, I believe, now sees them recognised and respected as Traditional Owners of country. Meanwhile, our determination to mediate saw the Wotjobaluk, Jaadwa, Jadwajali, Wergaia and Jupagalk Peoples of the Wimmera given legal recognition of native title in particular parcels; with management of a much wider area, and freehold title ‘handed back’ over a further 45 acres. Similarly, the

Gunditjmara determination was accompanied by an agreement over joint land management and the transfer of title to particular parcels of land.
These negotiations, however, were both costly and protracted. At the rate at which the claims were progressing, it became clear that it would take **55 years** to resolve all existing and predicted claims, with Traditional Owner aspirations unlikely to be fully realised.

Barrelling resolutely down the legalistic path, then, was not going to bring meaningful results. Opportunities were going to be missed, relationships fractured and the public dollar strained. This was in part because of the complexity of the *NTA*. This was in part because changing *some* attitudes was like turning around the Queen Mary. It was also, however, because the regime in which we were operating gave the least opportunity to those most severely dispossessed - and, in Victoria, this was a fair number.

Let’s be clear here - dispossession was no accident of history but a deliberate and widespread policy: one of violence and suppression, of intentional estrangement, of calculated severing of connection and custom.
Like elsewhere, Victorian Indigenous children were thieved. Like elsewhere, Victorian Indigenous people were cast from country. We could be seen to be complicit in this litany of wrongs, then, unless we find avenues which allow us to face the past with humility and the future with hope.

Just as the Apology acknowledged the consequences of fracturing families; just as the preamble to the *NTA* acknowledged the ‘consequences of past injustices’; so we must make these same acknowledgments in the business with which we are charged – getting back to basics, as this Conference suggests, and making land justice real.

Victorian Native Title Settlement Framework

That’s why I’m delighted to announce that a partnership between the state and Traditional Owners has produced an

out of court alternative to the conventional process – the *Victorian Native Title Settlement Framework*, which has been endorsed by the Victorian Cabinet.

Recognising that land aspirations are primarily about recognition, respect and opportunities that flow from joint management of land, Framework Agreements, under the new arrangements, will facilitate packages of benefits in return for permanent withdrawals of claim.

Consistent with current practice, Traditional Owners will still need to demonstrate that they are 'the right people for country' – that they have connection to their predecessors at the time Victoria was settled; that they are an inclusive group representative of all the native title holders for the areas; and have organisational capacity.

Obviously, claimants can still elect to go through the Courts. As an alternative, however, the Framework offers faster resolution; reduced costs; economic development; a

stronger basis for co-operative land management; and finality and certainty for all, given that Agreements will retain current protections for third parties. In short, it will move us closer to the original intent of the *NTA.*

Commonwealth Partnership

We cannot get there alone, however. Like Victoria, the Commonwealth recognises that the *NTA'*s potential to rectify past injustices has not been realised. Like Victoria, the Commonwealth wants a more flexible approach and sees native title as an avenue for Closing the Gap and broadening the economic base of Indigenous communities.

Put simply, the Commonwealth gets it. In thanking the Federal Attorney General, Robert McClelland and the Minister for Family, Community Housing and Indigenous Affairs, Jenny Macklin, for their enthusiasm, then, I can say that we're working closely to elicit *essential* financial, as well as policy support, to get our work off the ground, because this new innovative approach is dependent upon such a partnership.

We do so not just for Victorian aspirations, but for the sake of the national agenda. Justice North recently described the Framework as being seen *"as a template…Australia-wide"* and, in fervently agreeing, I encourage *all* jurisdictions to examine the Framework as a model for genuine change.

Conclusion and Thanks

The chance is there to take the next step in our collective journey to maturity and we *must* seize it. It's been a slow and often painful road and - 17 years on from *Mabo*, with an entire decade virtually lost along the way - we've got a lot of catching up to do.

Just as the dispossession of this land's first peoples is this nation's greatest tragedy; their survival its greatest act of heroism; reconciliation, in all its forms, is our greatest opportunity for redemption. *This* is the story that most

defines our nation. This, then, is the story on which we must make good.

Business will only be finished, however, when the legacies of dispossession and assimilation, of racism and disadvantage, are dismantled on every front. The possibility of genuine land justice is one such front, as is the capacity to participate as equal parties to a dispute, and as equal parties to its resolution.

Legal recognition, in all its forms, *should* and *does* matter, but so does economic development, respect for culture and the nurture of strong communities. That's why this Framework will be so important. Yes, it will bring certainty and recognition to those communities for whom, when the dust has settled on the Court's findings, find little on offer to address the most severe legacies of the past.

It will also, however, offer much greater hope and opportunity for the future; and one source of this hope is

the incredible partnership that's been forged between the Victorian State and Victorian Traditional Owners.

That's why, in closing, Ministers Wynne, Jennings and I must acknowledge the extraordinary role that Victoria's Traditional Owners have played in developing the Framework. Without a State-wide representative body such as the Land Justice Group, without leadership from people such as Graham Atkinson, we would not have been able to negotiate such a truly productive partnership.

We also thank Professor Mick Dodson, whose extraordinary work as Chair of the Steering Committee charged with developing the Framework has been inspirational; and all the members of the Steering Committee who drove this process hard – who were rigorous and robust; who held Government to account, as genuine partners do; who brought imagination, pragmatism, insight and intellect to the table every time.

Finally, my thanks also to all those at the Federal Court for their patience and encouragement; and to the Native Title Unit in my Department for leading the incredible amount of work that has gone into development of the Framework.

There's business to be finished that speaks of hope and possibility, of deliverance and grace, of a time that is long overdue. Let's get to it, then - let's get back to basics and prove that Australia has come of age, that it *is* a place that values 'Spirit of country – land, water and life'.