

10th Annual National Native Title Conference

Keynote Address

Thursday 4 June 2009

Mr Graham Atkinson

Chair of Native Title Services Victoria

Co-chair of Land Justice Group

Dja Dja Wurrung traditional owner

I would like to begin by paying my respects to the traditional owners of the country on which we meet today – the Wurundjeri people and their Elders past and present.

As Chairman of Native Title Services Victoria, which is co-convening this conference with AIATISIS, I welcome delegates to what I am confident will be a wonderful conference.

I would like to thank you Mick for your kind introduction, and for your leadership in assisting Victorian traditional owners to work closely with government, to foster new relationships and build new ways forward to achieve real land justice. Your involvement as the Chair of the Steering Committee for the development of a Victorian Native Title Framework has been invaluable.

I am very pleased to be here today at the 10th Annual Native Title Conference, not only as Chair of NTSV but also Co-chair of the Land Justice Group. This conference is being held at a time of great significance for Victorian traditional owners. It comes at a time when we have made great headway in working out new ways to deal with unfinished business that goes some way to redressing past injustice.

During the past 4 years, the Victorian Traditional Owner Land Justice Group and Native Title Services Victoria have been working together to build new partnerships with government,

and to foster new ways to resolve old issues of injustice. The strength and cohesion of the Land Justice Group, which was established in 2005, to advocate for workable native title outcomes, has been essential to achieving our strong negotiating position. Native Title Services Victoria, a service provider not a representative body, has been standing behind and supporting the Land Justice Group since its inception. The Land Justice Group has managed to get government to the table by remaining focused on the big issues - securing land and recognition of culture - the issues that are important to traditional owners from across Victoria. Strength and resilience is the legacy we have from our ancestors. It is their strength, dignity, character and cultural integrity that have inspired us to carry on this struggle.

Victorian Traditional Owner Land Justice Group

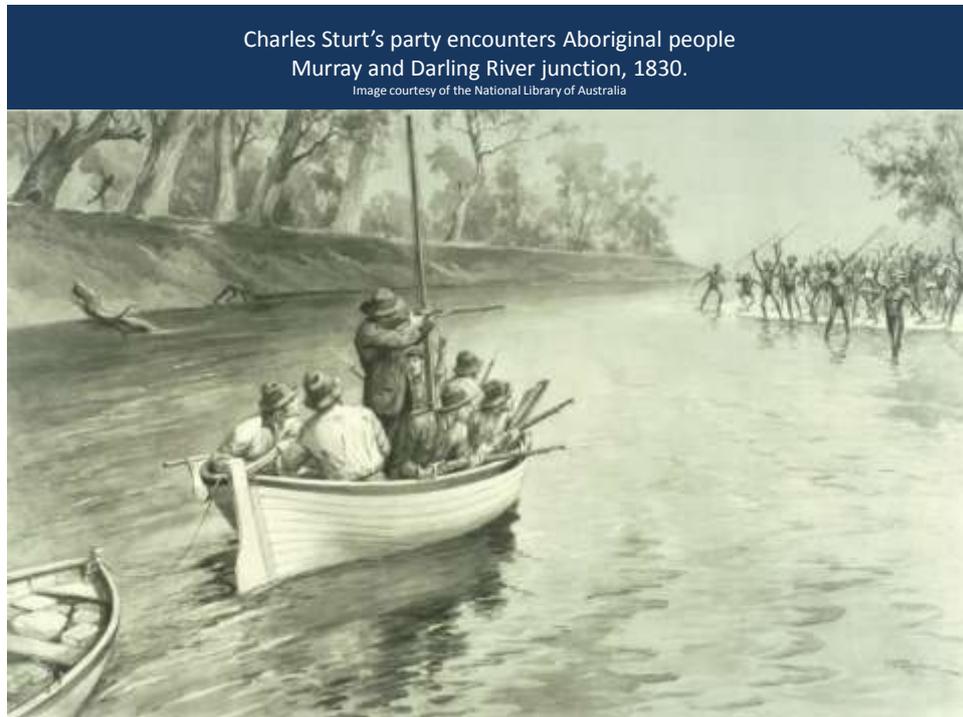
Co-chairs Graham Atkinson, Bobby Nichols and Len Clarke



I was reflecting on the NTSV Board's encouragement to delegates this year to: 'Get back to basics, renew the purpose of native title and do the right thing' and thought I might offer some observation on what this means in Victoria. I want to share with you today some stories about Victorian traditional owners past and present, whose strength and resilience

has been crucial in the long and arduous struggle for land and culture. These stories are central to where we are today in native title in Victoria.

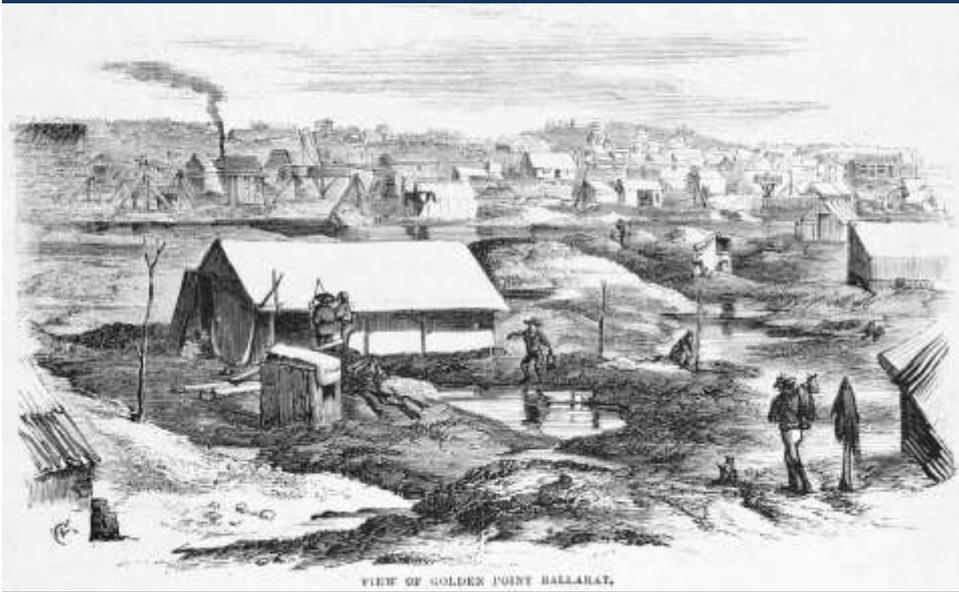
Victorian traditional owners have tried to protect our land estates.



In the early days of confrontation with European settlers, Victorian traditional owners exerted their strength through violent attacks. One of the well known stories of resistance from this time is that of the Eumerella war - where Gunditjmara traditional owners led a widespread attack on pastoralists in the region – crops were damaged, men were killed and many lives came under threat. Travelling parties were ambushed, and stations, farm labourers and their stock were attacked. The consistency and ferocity of the sustained attacks led European settlers to consider leaving the area. Attacks continued into the 1850's when more European settlers arrived in the rush for gold, and Aboriginal people were outnumbered.

View of the Golden Point mine at Ballarat, 1854.

Image courtesy of the State Library of Victoria



At this time, Victorian traditional owners struggle for land and cultural recognition continued in a different form. Station hands rushed for the gold fields leaving many farms depopulated. In response, Aboriginal Victorians filled these vacant positions, seizing the opportunity to rebuild their lives by gaining work on the farms and developing the land.

Aboriginal and European stockmen
Watercolour by Samuel Thomas Gill, Victorian artist 1830-1880s

Image courtesy of the National Library of Australia.



For example, the Wurundjeri, Taungurung and Dja Dja Wurrung people worked the farms and washed sheep in central Victoria, while the Wergaia-speaking people and Wadi Wadi, Wamba Wamba and Barapa Barapa groups were hired on stations in north-west Victoria. The Gunditjmara, Kirrae Wurrung and Tjapworong people developed the agriculture sector in western Victoria. The Gunai/Kurnai and Bidawal nations worked the land throughout eastern Victoria. Farms across northern Victoria were maintained by the Yorta Yorta, Pangerang, Dhudhudroa, Waywurru and Yaitmathang. Aboriginal people worked the land for non-Indigenous farmers. This allowed traditional owners to reside on, or near, their traditional country.

The discipline and strength of Victorian traditional owners, and their contribution to Victoria's agricultural sector is too often forgotten. Our aspirations have not changed. We want jobs, and business, and the freedom to practice our culture on our land. It's pretty simple - we want our contribution to be valued. Despite the fact that many of our people were again pushed off the land we, the traditional owners of Victoria, draw our inspiration from this legacy. More recently, the fight for Framlingham, Lake Condah, Lake Tyers – all of these stories of struggle are inspiration to us today – through perseverance and working together we can get some of our land back.

Presenting
land title for
Framlingham
to traditional
owner
Percy Clarke,
1971.

Image courtesy of
AIATSIS.



Lake Tyers residents, year unknown.

Image courtesy of AIATSIS

Left to right: (Back row): Julia Edwards, Grace O'Rourke, Ted Foster, Albert Hayes, Morrell Harrison and baby. (Front row): Con Edwards, Dorcas Harrison, Arnold O'Rourke, Wully Edwards.



When the Land Justice Group agreed to enter into negotiations with government, to sit down and try to resolve old issues of injustice, we were determined to continue the struggle of our ancestors in the hope our children wouldn't need to fight for land justice. Over the past 4 years, we have worked hard to maintain our cohesion. This was essential to our capacity to

achieve the outcomes we need from government. The legacy of our ancestors, their determination to get outcomes, helps us focus our struggle. We only have to think of Coranderk, where leaders of the Kulin confederacy of central Victoria led a delegation to Melbourne to petition Sir Henry Barkly for land in 1863. Increasingly concerned about the presence of Aboriginal people in major towns, the colonial government sought to contain our people in certain areas away from the townships. This policy resulted in the enactment of the *Reserve and Missions Act* which established stations across the colony and was administered by the Board for the Protection of Aborigines. The Kulin deputation resulted in more than 2000 acres of land being allocated for Aboriginal people to reside on. Their determination to negotiate, to seek the outcomes they needed, have inspired us to keep going.

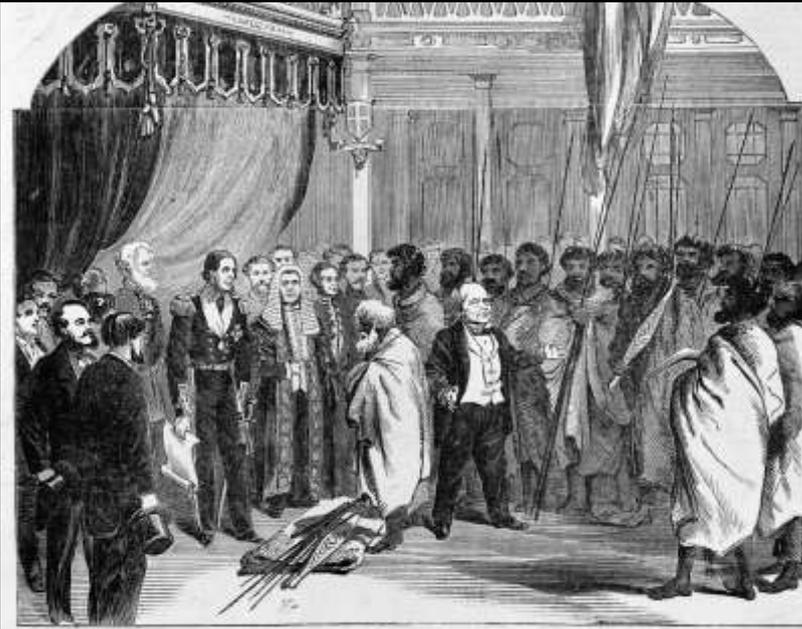
Residents in the Coranderrk hop garden
Circa 1882.

Image courtesy of the State Library of Victoria



Deputation of Victorian Aborigines at the Governor's Levee, 1863.

Image courtesy of the State Library of Victoria



DEPUTATION OF VICTORIAN ABORIGINES AT THE GOVERNOR'S LEVEE.
PROFESSOR THOMAS TRAPLATTIN AND ESTABLISHMENT'S RESULT.—THE PAGE 5.

Presenting a cohesive front is not without its challenges. When we represent many different groups from around the state, speaking with one voice is not easy. But we know from the past, failed attempts like the Victorian Land Rights Bill of 1983, a united front is essential to get outcomes.

Land rights march in Melbourne

Image courtesy of the University of Melbourne Archives.



Victorian traditional owners' strategy, led by the Land Justice Group, has been to focus on the big issues, on the aspirations we all have in common – our land and our culture. Our protocols for operating at a State level have involved respecting the autonomy of each group, and not speaking on local issues. But instead seeking to create clear agreement options and better negotiation processes so that each traditional owner group in Victoria does not have as hard a journey as those who have gone before. This unity of purpose propels us forward.

It is important for us to remember how historical influences have reshaped Victorian traditional owner identities. The push to move to reserves and missions in the 1860s meant members of different tribes resided together.



Traditional owners tried to retain tribal identities, but also started to strongly identify with their area of residence. Stories from this time make us think about how our traditional cultures have evolved as we have been subject to historical influences, in the same way as all

cultures evolve all over the world. A strict interpretation of the *Native Title Act* has produced a view that traditional owners can only be officially recognised, if they have remained immune from historical influences since European settlement. My personal experience of this was the devastating outcome of the Yorta Yorta case, which many Victorian traditional owners still carry as a deep wound. The injustice of the native title system was felt by me personally, by my family and by the whole Yorta Yorta nation. Although we have had some positive outcomes since then – for the Wimmera clans, and for the Gunditjmarra - they do not go far enough.

Denise Morgan giving evidence at the Yorta Yorta native title claim
November 1996

Image courtesy of National Library of Australia



Justice Merkel with Wotjobaluk elders during the consent determination.



Justice North with Gunditjmara traditional owners at consent determination



A critical aspect of what we have been advocating for in Victoria is to establish a fairer process, which recognizes the nature of connection traditional owners have to land *today*, and does not view traditional owners as museum pieces frozen in time.

The idea of a statewide policy framework to enable out of court settlements for native title claims and land justice matters was initiated at the April 2006 meeting of the Land Justice Group with three Victorian Government Ministers, the Attorney General, the Aboriginal Affairs Minister, and the Minister for the Environment. At this meeting, it was suggested that a statewide framework could provide benefits and structure for future negotiations with traditional owner groups. In August 2006, the Land Justice Group responded with its discussion paper on Framework Agreements advocating for reform around the following key areas:

- Transfer of culturally significant crown land;
- Non-extinguishment of native title;
- Establishing connection to country and traditional owners' boundaries;
- Hunting and fishing rights and natural resource management;
- Cultural recognition and strengthening;
- Strategies for economic development; and
- Claims resolution

The new strategic approach put forward by the Land Justice Group in this initial paper aimed to address the unfinished business of land justice, and it aimed to develop a new process for negotiation, collaboration and partnership building, which could occur outside the Courts, through agreement making.

In February 2008, some 14 months after the Land Justice Group submitted its Framework Agreement Discussion Paper to the State Government, the Attorney General, The Honourable Mr Rob Hulls announced Cabinet approval to establish a Steering Committee,

chaired by Professor Mick Dodson, to develop a native title settlement framework. The Committee comprised five traditional owner representatives from the Land Justice Group, four senior State government bureaucrats, and the CEO of Native Title Services Victoria.

The Steering Committee first met in March 2008, and then met regularly during the year, submitting its final report to Cabinet and to the Land Justice Group in December 2008.



All meetings were chaired by Professor Mick Dodson with specific Working Groups reporting to the Committee on designated topics at those meetings. This was a fast paced process where Working Groups met in between meetings with the purpose of researching issues, and reporting to the full Steering Committee. It was an intensive, task oriented process but the final deadline was met when the report was completed and tabled.

Throughout the process, Native Title Services Victoria provided advice and support to the Land Justice Group, developed research for Working Groups, and met regularly with a wide variety of stakeholders to further the development of the Framework report. This was a hard slog, even for our dedicated staff.

The Land Justice Group negotiating team operated in a very organized way, making sure they caucused before every Steering Committee meeting. This ensured that the negotiating team had the opportunity to explore and debate all relevant issues, and determine their agreed position before Steering Committee meetings. In addition, the negotiating team consulted with Land Justice Group members and traditional owners along the way, and provided the confidential Report of the Steering Committee to the entire Land Justice Group membership in December 2008.

In February 2009, the Land Justice Group unanimously endorsed the report and is now waiting on Cabinet consideration of the report and implementation of the Framework. Ongoing consultation with the Land Justice Group and with Victorian traditional owners is an integral part of the road map for the future.



The Land Justice Group was prepared to engage with government in this process because we saw the need to build strong foundations for the future. We recognised that reform *in*

favour of traditional owner interests required discussion and robust relationships. It has been our goal to continue the struggle of our ancestors and put the specific aspirations of Victorian traditional owners in the minds of government. There has never been any guaranteed outcome in engaging with government in this way. One thing is certain, the process has created a solid foundation for new relationships, collaboration and most importantly, a new level of understanding.

This is not the first land justice initiative in Victoria. Many have tried before, few won and sadly, many opportunities have been lost. But what has been different about this process, has been our strategic approach, and the willingness of government to collaborate closely. In Victoria, we have been spending our time intensively building partnerships in the hope that the future holds less heartache, better use of resources and successful agreements all Victorians can be proud of. Victorian Traditional Owners have learnt from hard experience that a win-lose approach is not in traditional owners' interests. We have been strategic in our thinking, and we have tried to work with government to develop an approach where we are equal negotiators at the table. For government, this is new.

Now, we need to continue to build these partnerships, so that groups in Victoria can create agreements that provide fair and sustainable benefits for our people who have been waiting for generations. Delivering land justice is about more than just delivering symbolic recognition. Traditional owners need pathways to economic development.

Our input into

- sustainable management of land
- joint management initiatives; and
- access to natural resources

would assist us to establish and cultivate traditional owner business enterprises. For us, traditional owner enterprise is the key to the healthy future of our families, our country, and our culture. Real land justice is achievable with both sides working together -: collaboration and new partnerships are essential to meet our aspirations.

Thank you