Chapter 8

To *Akiba* and Beyond: Old Hopes and New Dreams for Native Title

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It is an honour to be invited to submit a chapter to this volume marking the conspicuous contribution of the Hon Paul D Finn to Australian legal and judicial scholarship.

I first met Paul in 1981, when he was an established senior scholar in the Faculty of Law at the Australian National University, and I arrived as a junior member. He has been, for me, from that time right through to the present, the source of education, enlightenment and encouragement, and a deal of fun. I have much to thank him for.

From him I learned to think much harder about the suitability of Australian law for Australians. I thought harder, and with greater confidence than before, about how Australian history has impacted on and influenced our law. Finn's pioneering work, *Law and Government in Colonial Australia*, was the first published expression of much of Finn's thought in that regard.

During the early 1980s, I was researching and writing on the topic of Aboriginal land rights in Australia, something that was then more of a public policy and law reform topic than one in relation to which the common law of Australia was ever likely to respond. The fact that, in *Mabo v Queensland (No 2)* (*Mabo*),[1] in 1992, the High Court did respond to the common law question, for me at least, provided another great lesson in life and in the law: that one should never underestimate the commitment of judges as guardians of the law. With *Mabo*, the common law was found to recognise native title as part of Australian law. The *Native Title Act 1993* (Cth) followed soon after.

By then I had returned to practice in Western Australia. In 1991-1992, as one of the counsel assisting the Western Australian Royal Commission into what was colloquially known as 'WA Inc', Finn and I renewed our

1 (1992) 175 CLR 1.