

# What has native title done for me lately?

By Monica Morgan

As I write I'm sitting in the gunjah of my mum, Elizabeth Morgan-Hoffmann, on the banks of the Dhungulla (Murray River) at Cummeragunja, a place where many a campaign for the advancement for the rights of Aborigines has been hatched, while trying to imagine the future for Yorta Yorta people post-native title.

It has been 10 years since the 'Tide of History' decision of the Yorta Yorta/Bangerang native title application by Justice Olney on 18 December 1998. Following Olney's decision and an unsuccessful appeal to the Full Court of the Federal Court, we won special leave to appeal to the High Court, but lost when the High Court heard our case—the majority upholding the Full Federal Court decision. In all, we spent almost six years and millions of dollars within the native title legal system, only to be told that native title does not exist for the Yorta Yorta/Bangerang Nation.

The decision was so mean-spirited that Olney used a petition signed by 42 men residing on 'Maloga' a mission station in 1881, as the date on which the Yorta Yorta had abandoned their native title rights. As this took place prior to the *Racial Discrimination Act 1975* (Cth), it ensured that the Yorta Yorta was not eligible for compensation on the grounds of extinguishment. His reasoning was that, even though there was little doubt that the missionary had written the petition, he concluded that the paragraph, which stated that all our land within our tribal boundaries has been taken possession of by Government and white settlers, established that the Yorta Yorta had abandoned their traditional way of life. If one were to read further into the paragraph it also states that our hunting grounds are used for sheep pasturage and the game reduced and in many places exterminated, rendering our means of subsistence extremely precarious, and often reducing us and our wives and children to beggary.

When Gough Whitlam handed over the title of Watti Creek to the Gurindji, he was acknowledging the land as their traditional homelands and even supported them in developing their own cattle station. I am sure the Gurindji did not view acceptance of this piece of paper as abandoning their culture and traditional way of life; it was and is seen as a continuance of traditional culture and self-determination. The fact that the government acknowledged that the traditional lands of the Gurindji were in the control of Lord Vesty, an English pastoralist, did not render them any less Gurindji nor did it mean losing their native title. So why in southern Australia in exactly the same circumstance, but a different era, does our native title become extinguished?

Why bother? I am reminded of a yarn the old people told about a white fella coming down our river, the Dhungulla. The white fella's name was Edward Curr, and the British colony had just carved out nearly a quarter of our country and gave it to him as grazing lands for his sheep and cattle. Ironically it was Curr's unsubstantiated writings, an ethnocentric evaluation on the laws and customs of my people, which were used by Justice Olney in making his decision. Well, anyways, this old man Kiaia walked out on the log of a fallen tree as far out over the river as he could and shouted to the white fella 'Yanaka! Yanaka!' ('Go away! Go away!'). He was declaring his ownership for his country, including the river. He was saying, 'This is mine, you are not welcome!' What did the strange white fella do? Was he raising his hand in a friendly gesture? Was he intending to give his reason for being in someone else's country? Was he going to ask permission or pay for the rights to be on Yorta Yorta country? No. He raised his rifle and gave out a shot toward the old man.

Our history during this time is the same for all of Australia, resistance with spears and nulla nullas followed by shootings, massacres, diseases, capture and rape of women, the rounding up of our people onto missions and reserves, rations, dog passes and the removal of our children. Extermination or adaptation, that was the choice. Aboriginal people were nothing more than savages, natives with no more rights than the kangaroo and emu.

Resistance would need to take on a different tack. For the next 150 years, our mob would use other methods to campaign for our rights through the use of deputations, petitions, civil disobedience and finally statements of demand for land, rights and justice.

In 1990, our people heard of the land claim by Eddie Mabo and the Murray Islanders for recognition as the sovereign owners of their land and waters. My mother spent many months talking with Bryan Keon-Coen (the Queen's Counsel who took on the *Mabo* case) urging him to assist the Yorta Yorta to launch a similar case in the Australian courts.



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Eventually he agreed, with the first stage of our case being prepared through the Victorian Legal Service. When Eddie Mabo and the Murray Islanders won their case in the High Court, we felt a sense of excitement that this was an opportunity to gain recognition and our land rights. During the course of the next year we were told that new legislation that would deal with our claims would be enacted in the federal Parliament. We were told that if we wanted funding to fight our case we would have to go through this new legislation. It was the *Native Title Act 1993* (Cth). Our people decided to apply for native title.

In Olney's deliberations and final determination he chose the writings of an ethnocentric, land-grabbing, self-proclaimed expert who wrote his memoirs after leaving Yorta Yorta country some 40 years later, as his primary source, even though Curr was ridiculed by all scholars and experts of the day. Olney dismissed the claimants' own self recognition and oral history as not being reliable, not as reliable as the written word, and full of embellishment. This is an antiquated, backward notion of Indigenous peoples. The Yorta Yorta right to an identity is grounded by the principles inherent within the United Nations *International Covenant on Civil and Political Rights*, that every person or group of people have a fundamental right to an identity, their own process of governance, culture, social and religious belief.

What we found during the course of our native title claim is nothing but an endorsement of the existing status quo enjoyed through the process of invasion and the subsequent colonisation of Yorta Yorta country. This went unabated from the early 1800s to the present day, resulting in the occupation on our traditional lands and waters by people with rights 'greater' than the Yorta Yorta's rights. The prevailing discrimination in the process of devising native title legislation, including later amendments by both Labor and Liberal governments, meant the redistribution of our lands and waters. This discrimination left Yorta Yorta people the most disadvantaged in regards to land holdings and the waters in our own country. This loss of jurisdiction over our own lands and waters has severely restricted our ability to receive an economic base from the natural resources and its investment within our traditional country. When posed with the question of the waste of money fighting a legal battle, I answer, 'What is the price for justice, when compared to the social, cultural, spiritual and emotional cost of having your land appropriated and exploited for European economic greed?' Thus the question of equity is very much alive with regards to the ability of the Yorta Yorta people to fulfill our obligations in the protection and maintenance of our social, cultural, economic and environmental way of life.

The fact that the Yorta Yorta/Bangerang native title application was not successful does not and will never change the fact that my people of the Yorta Yorta are the traditional and sovereign owners of our lands and waters. For justice to be met there is need for a treaty or treaties to be negotiated with the Yorta Yorta nation and all other Indigenous nations, recognising that the invasion and possession of our lands was illegal and unlawful. Native title is nothing more than window dressing to continue to exploit and deplete our resources and it will never meet the need for land rights and self determination.

Oh, and what happened to Kaia as he was screaming obscenities at the white intruder? A young girl, Undyarning, had heard of the fire stick that made a big sound and smoke and could strike people down dead and even though she was shaking, she quietly walked out along the log and gently took the old man's hand and led him back to the safety of the bank. The old man lived but he could never have imagined the degradation that not only his people but also his beloved river would endure over the next 150 years. That small girl would one day speak to her children and her grandchildren, who then would pass it on to their grandchildren, of what she learnt about speaking your mind, making your point, regrouping and waiting to continue the struggle another time. At the end of the day, when Curr, his descendants and most other white fellas have had their fill and used all the resources from our lands and waters, Undarnyng's people will always be where they belong; in their traditional country.

