

# **Chronology of the Yorta Yorta Struggle for Land Justice 1860–2009**

## **A *prima facie* case for prioritising Yorta Yorta Nations in the Governments Land Justice Agenda.**

### **Introduction**

The following chronology is drawn from the oral and documentary evidence of Yorta Yorta attempts to claim land justice, compensation, and inherent rights (1860-2009). It demonstrates that the assertion of inherent rights and interests to the ownership of land, water, heritage and the control of resources has always been at the heart of the Yorta Yorta Nations struggle.

The purpose of the chronology is to provide a *prima facie* case (and substantive documentary evidence for the settlement of the long outstanding issue of land justice and, for the recognition of existing rights and interests that need to be given high priority in the current Victorian State Governments ‘National Park/Joint Management’ proposals, and the ‘Native Title Settlement Framework’. The National Parks crown lands and the Settlement Framework are important and welcome Government policy initiatives that offer mechanisms that can provide the long awaited land justice and other rights and interests that the Yorta Yorta community have attempted to achieve over the last century and a half (*prima facie*=latin and legal term for arising at first sight based on first impression a good case and reason for: Oxford Dictionary).

In addition to the chronology of claims presented, one also needs to acknowledge the role that many Yorta Yorta leaders played in support of other groups who have achieved land justice and fundamental rights in Victoria and Australia. The contribution of William Cooper, Sir Doug Nichols, and other Yorta Yorta leaders of the Aborigines Advancement League, (formerly Australian Aborigines League, Victoria, 1934-57) and their support for fundamental human rights and land justice for Lake Tyers, 1970s, Framlingham and Lake Condah, 1980s is also duly recognised.

The chronology of the *prima facie* case is set out in the following order.

- 1) A timeline of recorded attempts made by Yorta Yorta people and their representatives to claim land and/or compensation from 1860-2009.
- 2) Details of claims made that describe the nature of the claim, the way the claim was made, the response to the claim, and the reasons, where given, for its unsuccess.

## **1. Chronology of Claims**

- 1.1. **Yorta Yorta Claim for Compensation for interference to Traditional Fishing Rights 1860.**
- 1.2. **Petition to NSW Governor for Land 1881.**
- 1.3. **Land Rented or Purchased in the Names of Aborigines as Dummy Selectors 1885.**
- 1.4. **Attempts by Matthews to Secure Land from Victorian Authorities 1881–87.**
- 1.5. **Application to Victorian Board for Land to Establish a Fishing Reserve at the Barmah Lakes 1887.**
- 1.6. **Petition to NSW Governor for Land 19 July 1887.**
- 1.7. **Matthews' Final Attempts to get Land 1889–92.**
- 1.8. **Applications for Additional Cummera Land 1890 onwards.**
- 1.9. **Formation of Aboriginal Political and Land Rights Movement 1930s.**
- 1.10. **Petition to King George V for Human Rights including Land 1935.**
- 1.11. **Efforts to get back Land 1959.**
- 1.12. **Further Deputations for Land 1959–66.**
- 1.13. **Campaign to get back Land 1966.**
- 1.14. **Land Rights Deputation to Canberra 1972.**

- 1.15 **Claim for Barmah/Moira Forests 1975.**
- 1.16 **Fight for Return of Cummera Land 1972–83.**
- 1.17 **Claim for Barmah Forest 1983.**
- 1.18 ***Yorta Yorta v State of Victoria and Ors (1994–2002).***
- 1.19 **National Parks and Joint Management, 2008-9**
- 1.20 **Victorian Native Title Settlement Framework Agreement, 2009.**

## **2. Details of Claims**

### **2.1 Claims for Compensation: 1860**

**In 1860, the Yorta Yorta asserted their rights by seeking compensation for interference to their natural fishing areas by paddle steamers. They made their intentions known to a Government representative of the Protection Board who reported:**

**Since the Murray has been navigated by steamers, the natives have found it scarcely possible to catch fish, heretofore their chief means of support. A native of the Moira (Yorta Yorta), who rode up the Murray with me, informed me of the intention of himself and five other Aborigines to proceed as a deputation to His Excellency the Governor to request him to impose a tax of 10 pounds on each steamer passing up and down the Murray, to be expended in supplying food to the natives in lue [sic] of that which had been driven away (Victorian Aborigines Protection Board, *Annual Report*, 1861:19).**

**No further reference is made of these requests or whether the government acted them upon. It does show, however, that the Yorta Yorta were clear about their Indigenous rights and independently made plans to seek compensation for the effects of the European intrusion.**

## **2.2 Petition to NSW Governor for Land: 1881**

**On the 5 July 1881, a petition signed by 42 Maloga people was presented to the NSW Governor. The demands were for:**

**a sufficient area of land to cultivate and raise stock; that we may form homes for our families [and in] a few years support ourselves by our own industry.**

**They asked this as compensation, because**

**all the land within our tribal boundaries has been taken possession of by the Government and white settlers (Barwick, 1972:47; Cato, 1976, Appendix. 10).**

**The petition was refused at that time, however in 1883, almost two years later, a reserve of 1800 acres was gazetted adjoining the Matthews' property. This was the site that later became Cummeragunja when Maloga was closed and relocated on the new reserve in 1888–89 (Cato, 1976:12, 131, Appendix. 14 for location and details).**

**Note: This was the particular claim that Olney J. construed as the acquisition of Native Title rights by the Yorta Yorta in *Yorta Yorta v State of Victoria and Ors* (1998).**

## **2.3 Land Purchased in the Names of Aborigines as Dummy Selectors 1885**

### **Dummying**

**The term 'dummying' was a method used by squatters after the introduction of legislation that threw open land for selection. It meant that when someone who was ineligible (eg, a squatter who already had land) to buy land employed or asked somebody else to apply for land on their behalf. When the applicant was granted the land they could then transfer it over to the person who was ineligible.**

**John Atkinson (son on Granny Kitty) rented some land from Moira Station. This land was to the northeast towards Barmah where he erected a bark hut for his wife**

and children, and cultivated some acres of wheat. Matthews noted in his diaries that he suspected Johnny was dummying this land for Moira Station.

Johnny Atkinson's farm venture was only short-lived and he later returned to Maloga. No further reference is made to his farming venture, but it is known that during this period land was being selected in the names of Aborigines by European landowners. John O'Shannasy of Moira Station is recorded as selecting and paying the deposit for land in 'the name of two Aborigines', as dummy selectors. No doubt one of these were Johnny Atkinson (Buxton, 1968:158).

Many squatters in the Murray Region exploited this system as a way of retaining prime areas of river frontage land (personal communication, History Department, La Trobe University).

#### **2.4 Further Attempts by Matthews to Secure Land from Victorian**

**Authorities: 1881– 87**

During this period, Matthews pleaded for assistance from the Victorian Board for land. He applied for land to set up a small reserve across the river from the Maloga site to enable him to set up workshops because any industry located at Maloga was subject to double customs duties at the Moama Bridge for import of raw materials, and export of goods when they were manufactured at Maloga. The Victorian Authorities again refused to grant any land to Matthews for the same reasons as mentioned (Barwick, 1972:47).

Prior to the closure of Maloga in 1887, Matthews noted in his diaries that the Maloga people 'talked incessantly' of their desire to 'own' blocks of land. They wanted their own piece of land to work for themselves and pass on to their children – not a selling title but a grant in perpetuity. The administrators initially encouraged these ambitions, particularly when they wanted people to move to the new reserve after Maloga was closed. The Maloga people were led to believe that they would be granted land when they moved to the new Cummeragunja site. Furthermore, they were blackmailed into moving to the new site by being threatened to have their opportunity to own land taken away if they didn't (Cato, 1976:160).

## **2.5 Application to Victorian Board for Land to Establish a Fishing Reserve at the Barmah Lakes: 7 July 1887.**

**Matthews applied to the Victorian Board for a fishing reserve for the Yorta Yorta at Moira Lakes, which is their traditional fishing grounds. The application was refused by the Board who could not:**

**see its way clear to carrying out your suggestion of forming or assisting to form a fishing station at Lake Moira (Cato, 1976:169).**

**Matthews was well aware of the potential of establishing a fishing reserve at the Barmah Lakes and developing fishing as a commercial enterprise. From 1855, Rice's Murray River Fishing Company had made huge profits by exploiting the skills of Aboriginal fisherman, which they 'payed for in grog' in return for their labour (Cato, 1976:54).**

## **2.6 Matthews' final Attempts to Get Land: 1892–99**

**After Matthews lost control of the Maloga Mission and was sacked as supervisor, he rented land on the Victorian side opposite Maloga where he set up a refuge for Aboriginal children. This place was called Beulah House, and again because of its location on the Victorian side and its potential undermining of Victorian Aboriginal policy, Matthews' venture was closed in 1899.**

## **2.7 Petition to NSW Governor for Land: 19 July 1887**

**On this day Jack Cooper, son of Granny Kitty, and brother of Bob, William and Ada read an address of welcome to Lord Carrington at the Moama Railway Station on one of his visiting stops with a vice-regal party. Cooper presented a petition to His Excellency asking that one hundred acres of land be granted to such Aboriginal men who were capable of farming, in order to support themselves and their families (Cato, 1976:231).**

The petition was not granted, but from 1896–1907 some land was granted as farm blocks for individuals. These were about forty acres each, according to oral history evidence, and they were cleared, sown and harvested by Yorta Yorta people. For example: 'six small blocks were allotted in 1895 and another seven during 1896, and by 1898 twenty were being cultivated and cleared' (Barwick, 1972:42–3; Atkinson, 1981a).

### 2.7.1 Blocks taken back by Board

In 1907, just eleven years after the farm blocks were granted, the pioneer farmers received a most disheartening blow from the NSW Board. The Board decided to revoke the twenty individual holdings and informed the holders that they did not have title, as they had always been led to believe, but merely 'permissive occupancy' (Barwick, 1972:53).

The Board's reasons were that the land was being misused, as they had leased some of their blocks to outsiders for grazing during the years 1903-07, and thus had sown less crops. In fact, the decision to lease some of their land for stock use was an intelligent response to a fearsome drought that killed two-thirds of the State's livestock, forced hundreds of Europeans off their land and was finally broken, not by rain, but by floods (Barwick, 1972:53–4). At least the Aboriginal farmers gained some return for their land by leasing the remaining grass and thus were able to carry on. This was indeed an act of good farm management, but the Board did not agree, which was a blatant contradiction to their management program in 1914–18. During this period, when faced with similar adverse conditions the Board agreed that agistment fees and leases would provide a useful supplement to the Cummeragunja Station's income (Barwick, 1972:57).

The underlying reason that the Board revoked the farm blocks was that it wanted to make Cummeragunja self-supporting by making the able-bodied and successful Aborigines support the whole community. The irony of it all was that those Aborigines who had adopted the European work ethic were rewarded by being forced back into a cooperative effort (Broome, 1994:81).

## **2.8 Applications for Additional Cummera Land: 1890–1900s**

The original reserve of 1800 acres was inadequate for pastoral and agricultural development, as there was only four hundred acres of sand hill above flood level and suitable for cultivation. The remainder was heavily timbered and subject to flooding.

### **2.8.1 Additional Grants**

Pressure from local settlers defeated the Board's 1885 and 1887 applications for extensions, but three additional grants were made between 1890 and 1900: 90 acres, 510 acres and 320 acres. Soon after 1900 an additional 254 acres was granted, which combined to make the total size of 2,965 acres (Barwick, 1972 50).

### **2.8.2 List of Areas of Land Granted**

1.	1881	800 acres
2.	1890	90 acres
3.	1899	510 acres
4.	1900	320 acres
5.	1900 onwards	245 acres

**Total 2,965 acres**

In view of this amount of land granted on a 'temporary basis' for Aboriginal use, one needs to consider it in the context of the original land occupied by the Yorta Yorta (see Figure 1). The map indicates that the amount of land the Yorta Yorta gained was infinitesimal in relation to their traditional lands that were forcibly taken. Moreover, because Aboriginal occupation of Australia was never legally recognised by the British and later Australian Governments, Aborigines had no secure tenure to their reserves nor did they receive any compensation for the dispossession of their tribal land. In Canada, New Zealand, Papua New Guinea and North America, settlements were made with the Indigenous people that

recognised prior occupation and title to land. Different groups were granted perpetual tenure of specific portions of their traditional lands as compensation for the relinquishing title to their lands (Barwick, 1972:14).

In this context it is even more disturbing when one considers that nearly all the 2,965 acres of Cummera land was leased to European farmers from 1921. Most of these were only short term, but pressure had been building up since the 1890s for leases, and in 1934 the Board gave a European neighbour a ten-year cultivation and timber lease of 2,000 acres for only 416 pounds a year. Leases of almost the entire reserve to Europeans were continued through the 1940s and 1950s (Barwick, 1972:14–15, 56–7).

## **2.9 Formation of Aboriginal Political Movement**

During the 1930s, Cumeragunja people were instrumental in forming the first Aboriginal Protest Organisations in the capital cities. These were the Aborigines Progressive Association established in Sydney in 1933 and the Australian Aborigines League in Melbourne in 1933.

These Organisations were the springboards from which other organisations gained their inspiration and indeed, from which the National Movement can trace its origins. Their main concerns were for the abolition of the Protection Board and its restrictive laws, better conditions for Aborigines living on reserves and equal citizenship rights. The call for land rights was also a major part of their charter which they recommended – 'that a special policy of land settlement for Aborigines should be put into operation, whereby Aborigines who desire to settle land should be given the same encouragement as that given to Immigrants and Soldier Settlers, with expert tuition in agriculture, and financial assistance to enable them to become ultimately self-supporting (Horner, 1974: 69–70).

## **2.10 Petition to King George V: 1935**

In 1935 William Cooper drafted a Petition signed by 2,000 Kooris asking for representation by Aborigines in Parliament, a unified and National Department of

Aboriginal Affairs, and an advisory panel in each State consisting of European experts and Aborigines (Horner, 1974:47). Cooper also sent a letter to the NSW Premier's Department asking for the development of Aboriginal lands in NSW, suggesting that Cummera could be an ideal experiment that other reserves could follow (Annual Report of the Australian Aborigines League, 1936:6).

These proposals and the petition won considerable publicity and public support, which impelled Commonwealth authorities to convene a Conference of State Ministers in April 1937 to discuss the adoption of a new policy of assimilation (Barwick, 1972:62).

### **2.10.1 Deputation to Prime Minister: 1938**

On the 26 January 1938, Cummera people led the first Aboriginal deputation to Canberra to advise the incumbent Prime Minister on the need for Commonwealth intervention to improve Aboriginal Welfare in all States by establishing what they called a Ministry of Aboriginal Affairs (Barwick, 1972:67–8).

The deputation gained little result and people left discouraged (Horner, 1974:16–63).

### **2.10.2 Loss of Land: 1953–59**

In 1935, the Board requested the Lands Department to revoke the reserve of all but 200 acres, on the ground that the land was no longer needed for Aborigines. The revocation, however, was not made immediately, but four years later in 1959, 1,535 acres had been revoked and subsequently leased by the Lands Department to a farmer who had used it since 1934. The remaining land, 1,427 acres, including the 200 to be retained as an Aboriginal reserve, was being farmed by other Europeans under Permissive Occupancies granted by the Lands Department to under leases granted by the Board. An Aboriginal resident describes the loss of land by saying: 'Because the land up to our doorstep was leased, residents had to work elsewhere as farm labourers' (Barwick, 1972:64).

### **2.11 Efforts to Get Land Back: 1959**

In 1959, Cummera residents with the support of the Aborigines Advancement League began to investigate the possibility of cooperative farming, and petitioned for the use of the land still reserved. One lease of 200 acres ended on the 31 December 1959 but farming on this land was virtually impossible because it was overtaken with burrs.

### **2.12 Further Deputations for Land**

Residents continued to send letters and deputations to the NSW authorities asking for the use of more of the land that their forebears had cleared. The Board's response, however, was that the persistence of separate Aboriginal communities was inconsistent with the policy of assimilation, and adhered to its plans for revocations and the dispersal of residents (Barwick, 1972:64).

The remainder of the reserve was leased until 1964 despite Crown Law opinion at the time that leases had 'always been illegal,' for the Board had never had authority to hand over reserves to persons who were not Aborigines. Reserves, as previously mentioned, were Crown Lands reserved from 'lease or sale' for 'Aboriginal purposes' (Barwick, 1972:64).

### **2.13 Campaign for Return of Cummera Land: 1966**

After forty-five years of complaints and seven years of direct negotiations with the Board, the descendants of the pioneer farmers finally won permission to begin farming Cummera once again (Barwick, 1972:64).

#### **2.13.1 Conditions of 1966 Agreement**

The agreement signed in 1966 made them merely 'tenants at will' of the Board, who could cancel their tenure on a month's notice and retain all fixed properties and assets (Barwick, 1972: 64.).

#### **2.13.2 Recommencement of Farming: 1968**

**In February 1970 the NSW Ministry of Aboriginal Affairs, which was established in 1968, granted a loan to the fifth generation descendants of the pioneers to develop their farming on the remaining land at Cummera.**

#### **2.14 Land Rights Deputation to Canberra: 1972**

**In 1972, descendants of the Yorta Yorta joined another deputation to Canberra to protest against the 16 January 1972 declarations of the Commonwealth policy by the Prime Minister, which still denied recognition of Aboriginal title and traditional land rights.**

**The press and public paid little attention and the Minister responsible for Aboriginal Affairs later told Parliament:**

**Freehold in the Australian legal system represents a holding from the Crown tantamount to exclusive ownership of the land, entailing a right to take out and dispose of the land, as the title holder wishes. This notion, we believe, is alien to Aboriginal thought and custom (*Australian*, 24 February 1972).**

#### **2.15 Claim for Barmah Forest: 1975**

**Between 1972 and 1983 there have been other important claims made by Yorta Yorta people for land and compensation. These were for the Barmah Forest in 1975 and Cummera lands. The Aborigines Advancement League, the National Council of Aboriginal and Islander Women and the Victorian Council of Aboriginal Culture supported them. Yorta Yorta people were instrumental in setting up these organisations (Margaret Wirripunda, 1985). The claim for the Barmah Forest was again lodged in 1984 without success.**

#### **2.16 Return of some Cummera Lands: 1983**

**Cummera people lobbied for the return of the former reserve lands that were leased to Europeans in the 1930s. As indicated in Chapter 4, they lobbied State and**

federal Governments and were successful in gaining the return of some of the reserve lands in the 1970s and in 1983 (approximately 1,200 acres) under the *Aboriginal Land Rights Act 1983* (NSW) (see Chapter 4).

### **2.17 Yorta Yorta Tribal Council: 1983**

In April 1983, Yorta Yorta members held a meeting in the Barmah Forest to discuss the Victorian Land Conservation Council's Report on the Murray Valley region, with the aim of forming a Council, which would be the representative body for land, compensation and cultural issues relating to Yorta Yorta people and their tribal lands.

The Yorta Yorta Tribal Council was formally established from this important meeting and given a mandate to represent Yorta Yorta people in those matters, particularly the Barmah, Millewa and Moira Forests, which are the heartland of Yorta Yorta ancestral lands.

The emergence of the Council was a very important historical event for the Yorta Yorta people, because it marked one hundred years since their ancestors were first granted a piece of land in response to their petition to the NSW Government in 1881. In April 1883, they were granted 1800 acres of their traditional land on a temporary basis for their future use. This was the original piece of land on which Cummera was established (see claim No. 2 in Chronology).

The forty-two people who signed the petition were the founding ancestors of Maloga and Cummera. Present day descendants trace their genealogical links directly back to these ancestors.

In this context, the Council was symbolic in that it marked a century since their ancestors first petitioned for land rights and it emerged from the forest, which is still today seen as a significant part of Yorta Yorta lands. It is the keeping place of Yorta Yorta cultural heritage and the resting place of Yorta Yorta people's spirits.

### **2.18 *Yorta Yorta v State of Victoria and Ors* (1994–2002)**

**The Clans Group superseded the Tribal Council in 1989 and carried on with the work of the Tribal Council.**

**In March 1993 the Clans were advised of their rights to claim land and compensation as the Traditional owners and occupants of lands within their tribal territories. The advice came from the legal council employed by the Victorian Aboriginal Legal Service to consult with Aboriginal communities in Victoria in relation to the *Mabo* High Court Judgment in June 1992.**

**The Clans Group and its members agreed to lodge a Native Title claim for lands within their traditional territories and for compensation, which was found not to exist by the Justice Olney of the Federal Court, in 1998 and subsequently dismissed on appeal to the High Court in 2002. Around that time the Clans Group was modified to reflect the broader rights and interests of Yorta Yorta people by the Yorta Yorta Nations Aboriginal Corporation in 1999 which is the current organisation that represents the broader rights and interests of the Yorta Yorta.**

**Following the failure of the Native Title Claim the State of Victoria and Yorta Yorta Nations Aboriginal Corporation signed off on Co-operative Land management agreement. The agreement does not return lands to the Yorta Yorta but gives advisory status to the Yorta Yorta through a Joint Body management structure that consists of a majority of Yorta Yorta representatives.**

#### **2.19 National Parks and Joint Management, 2008-9**

**Negotiations are currently being held between YYNAC, and the State Government on proposals for National Parks and land ownership and management proposals for those crown lands that exist within the territorial jurisdiction of the Yorta Yorta on both sides of the Murray.**

#### **2.20 Victorian Native Title Settlement Framework Agreement, 2009**

**With the announcement of the Framework Agreement in June, 2009 the YYNAC are considering options of advancing their rights and interests through this new policy initiative that will provide an option for Victorian Traditional Owners to achieve land justice and other rights and interests, which include: the creation of a new regime for Traditional Owners to Jointly Manage National Parks and other**

**Crown Land in Victoria. The proposals also include ‘Aboriginal ownership of and management of land in perpetuity, compensation, statutory rights, funding for cultural heritage and employment and commercial activities’ -see Core Principles, Native Title Services Victoria Ltd, Fact Sheet, 2009).**

**The YYNAC continues to represent Yorta Yorta interests within their traditional lands and waters. Today the YYNAC carries forward the holistic approach of their forebears in dealing with matters relating to all aspects of the traditional territories and cross border issues. The YYNAC are now in the process of negotiating their rights and interests for land, heritage, water, compensation and the establishment of Joint Management agreements for crown lands that fall within its jurisdiction.**

## **Summary**

**The foregoing events illustrate that for a century and a half, the Yorta Yorta people's struggle for land, compensation and for fundamental human rights has always been at the heart of their struggle. The history clearly demonstrates that the Yorta Yorta had explicitly petitioned for land as 'compensation' for their stolen tribal territories in order to gain self-determination and economic security. From these requests they expected 'secure tenure' but received only 'permissive occupancy' and advisory status for the management of lands controlled by the Protection Board, the Lands Department and the Crown (Note: The Current Cooperative Management Agreement has only advisory status on land management issues).**

**With no fair and just outcomes in the long and continuous struggle the Yorta Yorta have remained amazingly resilient and patient people. They went through the native title process in good faith only to be disappointed again by the way that the native title law was interpreted and applied in their case. Since the failure of Native Title to deliver land justice the Yorta Yorta have turned a full circle and are again seeking a fair and just settlement of their long and outstanding grievances. The establishment of a *pima facie* case for the treatment of their ongoing case for ‘unfinished business’ as a high priority in the Governments current land justice agenda calls for immediate attention and discussion with YYNAC.**

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