
In ‘Not One Iota: The Yorta Yorta Struggle for Land Justice’, PhD Thesis, School of Law and Legal Studies, Faculty of Law and Management, 2000, pp.296-299.

Chronology

The following chronology outlines the statistics of the case, from the filing of the original statement of claim in 1994, to the judgment that was handed down in December 1998. The case is still in litigation and as of writing the Yorta Yorta are waiting for a decision from the Federal Court appeal that was heard in August 1999. It is anticipated that the case could go to the High Court on appeal. This being the most likely scenario, it would mean that Native Title litigation will continue into the year 2002. This will stretch the time involved in the Native Title process, for the Yorta Yorta, to eight years (from 1994 to 2002), which is two years less than that involved in Mabo (No.1 and No. 2) 1982–92.

January 1994

Community discussions and consultations with Victorian Aboriginal Legal Service and lawyers began with the Yorta Yorta Clans Group at the Dharnya Centre (Barmah Forest) after the Mabo decision. Native Title Legislation was introduced in January 1994.

February 1994

The Yorta Yorta Clans Group decided to lodge an application for a determination of Native Title to land, water and compensation with the registrar of the National Native Title Tribunal (NNTT) on 21 February 1994. The claim was one of the first substantive claims on mainland Australia following the Mabo (No. 2) decision. The compensation claim was held over until the land and water claim was heard and the Court established whether or not and to what extent Native Title has survived.

September 1994

The application was accepted and Mediation began before Justice Grey of the NNTT in September. Some 470 interests applied to be parties to the claim including local farming, recreational and commercial interests and State and local governments on both sides of the Murray (Chapter 7).

Mediation began in Shepparton Town Hall and other conferences were held with parties throughout the claim area at Mathoura, Deniliquin, Wangaratta, Mulwala, Corowa, Echuca and Melbourne.
April 1995

No mediated agreements were reached under the NNTT and application was then lodged with the Federal Court under s. 74 of the NTA 1993 (Chapter 7).

May 1995

The Application was subsequently amended on 2 May 1995 for the purpose of replacing the Yorta Yorta Murray Goulburn River Clans Group Inc as Applicants with Ken Briggs, Wayne Atkinson, Geraldine Briggs, Elizabeth Hoffman, Des Morgan, Colin Walker, Margaret Wirripunda and Ella Anselmi applying for a determination of Native Title on behalf of the members of the Yorta Yorta Aboriginal Community (Yorta Yorta Proceedings Doc, 1998:4)

June–August 1995

During the interim and in anticipation of the Claim being heard by the Federal Court, the Yorta Yorta prepared their case for trial. A major research and field study was conducted to consolidate and strengthen the evidence collected and to record additional interviews with key witnesses. Further research on Yorta Yorta associations and the impact of European settlement was carried out in Libraries and Archives throughout the claim area and in Canberra, Sydney, Adelaide and Melbourne. Others were engaged to work on the claim who had expertise in anthropology, archaeology, history, genealogies, and in water and land tenure systems.

Numerous directions hearings were held and the Court issued various orders in preparation for trial. Pleadings were pursued by way of the filing and serving of the applicants' Amended Statement of Facts and Contentions and the filing of Replies by some of the respondents. Rulings were made about who were parties to the Federal Court Proceedings, and those parties were organised into eleven groups. An informal discovery process occurred. Witness statements and expert reports were filed, and other interlocutory steps were pursued.

August 1995–October 1996

On 15 August 1995 Justice Olney ordered that the heading to the proceeding be amended to: 'The members of the Yorta Yorta Aboriginal Community applicant and The State of Victoria & Ors respondent'.

As a lead up to the Federal Court hearing, the Yorta Yorta Clans Group conducted a consultation program to discuss the claim with communities, affiliate organisations in the area and other relevant government bodies: these were the Njernda Aboriginal Corporation, Echuca; Rumbalara Aboriginal Co-operative, Mooroopna; Shepparton Aboriginal Art Co-
operative Ltd; Camp Jungai Co-operative Ltd, Rubicon; Aborigines Advancement League, Melbourne; Cummeragunja local Land Council; New South Wales Land Councils, Deniliquin, Wagga Wagga and Sydney; Aboriginal and Torres Strait Islander Commission in Canberra and Melbourne; Australian Heritage Commission; Australian Conservation Foundation, Melbourne; Department of Conservation Forests and Lands, Melbourne; and Murray Darling Water Commission, Canberra.

Preparation of materials and site visitation continued during 1996. The Native Title Committee, lawyers and anthropologist selected some sixty sites throughout the length and breadth of the claim area as locations from where key witnesses would give evidence. Further work on witness statements was done concurrent with selection of appropriate sites.

October 1996

Federal Court began conferences in Shepparton with the claimants and other parties to set out the procedures for the hearing.

Monday, 28 October 1996, the first historic sitting of the Federal Court was held at Rumbulara Aboriginal Cooperative in Mooroopna before Justice Olney under a tent where the first of the fifty-five Yorta Yorta witnesses start giving evidence. Site visitation program began in the Goulburn Valley region of the claim area. First on-site evidence was recorded at the former Goulburn Protectorate site at Murchison and along the Goulburn River at sites where Yorta Yorta had maintained connections.

May 98

On 15 May 1998, the Yorta Yorta Native Title Federal Court hearing ended in Melbourne. The Trial Judge indicated that a determination would not be handed down until sometime the next year but the date was then bought forward to November 1998.

December 1998

Olney J. of the Federal Court handed down decision on the YYNTC in December 1998. The claim was appealed to the full bench of the Federal Court in August 1999 and if successful it is expected to be appealed to the High Court.

The length of time from the preparation and filing of the statement of claim with the Tribunal in 1994, to the judgment in 1998, including consultations on the setting up of the Prescribed Body Corporate (holder of the proposed Native Title rights and interests under s. 57 of the Native Title Act 1993, is nearly five years. This does not include the number of meetings, consultations and mobilisation of the Yorta Yorta community over the period or the fact that the claim is still in litigation at July 2000.
Conclusion

A summary of the key issues involved gives an insight into the magnitude of the Yorta Yorta case. The comparative figures are for highlighting the extent of the Yorta Yorta claim rather than the nature of the rights being pursued. The area covered by the Murray Islands in Mabo (No.1 and 2) was not more than 9 sq km; the Yorta Yorta claim was 200,000 sq km. The number of key witnesses in Mabo was eight, and in the Yorta Yorta there were about sixty. Other statistics are summarised below.

In total there were 190 witnesses who gave evidence including four anthropologists, two archaeologists, a linguist, an historian, a genealogist, a variety of departmental officers and local government representatives, and many local residents and land users. In addition to those 110 sitting days mentioned, one also needs to include the mediation process, which was approximately 50 days; the administration, preparation of materials, field work, research, and community consultations; and the physical resources required in the mobilisation of the Court and Yorta Yorta witnesses and elders throughout the claim area and Melbourne. Interstate trips undertaken by the Yorta Yorta to conduct research in Adelaide and attend meetings with ATSIC in Canberra, and the special Court sitting in Sydney were all part of the Native Title process (Yorta Yorta Proceedings Doc, 1998:26).

The Material Evidence presented to the Court, excluding the transcript, occupy some '15 meters of shelf space' in the Judges' Chambers (Age, 19 May 1998).

More than sixty sites were visited in the claim area including five hours in aerial views and visits to sites by boat during the replenishment season of 1996-97.

Parties and Legal Council to the Claim

1. Parties to the Claim

Over 400 people were included as parties to the claim. All the respondents were represented during most of the hearings by lawyers and various other authorities in land and water matters. There were six main categories of interests, which consisted of the following groups:

1. the States (Victoria and New South Wales),
2. local government,
3. recreational users,
4. water interests,

5. pastoralists and wood loggers,

6. tourist operators.

2. Counsel for the Applicants

Counsel for the applicant: Mr B.A. Keon- Cohen QC
Mr K.R. Howie
Mr T.P. Keely

Solicitors for the applicants: Arnold Bloch Leibler

3. Counsel for the Respondents

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and North East Region Water Authority: Mr S.G.E. McLeish

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Murray-Murray Rural Water Authority,
and North East Region Water Authority: Victorian Government Solicitor

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Mr J. Waters

Solicitors for the State of New South Wales: New South Wales Crown Solicitor's Office

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Greater Shepparton City Council,
Campaspe Shire Council,
Moira Shire Council,
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Cattlemen's Association & Ors: Mr M. Love
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Yarrawonga Border Golf Club Limited,
Berrigan Shire Council,
Corowa Shire Council,
Murray Shire Council,
and J.B. and G.A. Gonnan:  

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Ms M.L. Warren QC

Solicitors for Murray Darling Basin Commission: Blake Dawson Waldron

Counsel for Telstra Corporation Ltd: Mr P.J. Hanks

Solicitors for Telstra Corporation Ltd: Holding Redlich

Counsel for State of South Australia: Mr M.P. Walter QC
Mr R. Smith

Solicitors for State of South Australia: South Australian Crown Solicitor's Office

Counsel for New South Wales

Aboriginal Land Council: Mr J. Basten QC

Solicitors for New South Wales

Aboriginal Land Council: Andrew Chalk & Associates

4. Dates of Hearing:


5. Decision on Appeal (Not handed down at time of writing)
6. Date of Judgement: 18 December 1998

7. Date of Appeal: 18-27 August 1999