

Queensland South Native Title Services, Principal Legal Officer Tim Wishart

Submissions on behalf of the Gunggari native title claim Applicant

22 June 2012

If your Honour pleases I appear for the applicant with Mr J C Reiach

I hand up a list of documents which I read and upon which the Applicant relies.

Your Honour

From time beyond memory; land, in what is now known as central southern Queensland, running west from the Maranoa River containing the headwaters of Neebul Creek, Johnson Creek, William Creek, Mungalla Creek and Tomee Creek has been the land of people speaking the Gunggari language.

Ancestors of members of the present claim group were born on, grew up on, became adults on, hunted over, became parents on, fought to protect and died on that land and those waters.

That land and those waters belonged to those people and those people belonged to that land. The land and waters belonged to them because their old people had given it into their custody. Care and custody of the land and waters along with the keeping of law and custom passed from generation to generation of Gunggari before the English even developed imperial ambitions. In fact, probably before English developed as a language.

That land and those waters are part of the place the Gunggari call home.

The incursion into Gunggari country by European settlers elicited a determined and violent resistance from the people whose land and way of life were being threatened. In the Maranoa region concerted campaigns, sometimes involving alliances of Aboriginal groups, were mounted in efforts to drive the interlopers from the land. Historical records suggest that similar responses were common as settlement pushed westward.

In 1855 Crown Land Commissioner Wiseman wrote:

'No tribe will allow of the peaceable occupation of their country, but following the counsel of the boldest and strongest men amongst them, will endeavour to check the progress of the white men...'

Your Honour, according to one report five entire tribes combined and attempted to expel the whites from the district. In composition and in timing these alliances may have arisen not only through individual maneuvering, but from bora gatherings that were an essential part of the broader societal networks which existed across the region.

There is no denying that losses of life directly attributable to settler and police violence were substantial. Although a minimum of 75 recorded deaths of Aboriginal people at the hands of Native Police and settlers on the Maranoa were recorded up until 1862, the real number of casualties is likely to have stood in the hundreds. By 1880, according to George Thorn a former Premier of Queensland, the Aboriginal people west of the coast were, and I quote, “pretty well shot down and got rid of.” The presence of so many descendants of the original inhabitants of this area in the court today is living evidence that the former Premier was in error.

Frontier violence was not the only cause of casualties visited on the Aboriginal population. While the loss of leaders and able bodied men must have had serious social, economic, political and spiritual ramifications, the effective dispossession of Aboriginal people from their land and their water and from their basic sources of sustenance must have been catastrophic.

The majority of settlers, intent on monopolising the land for their own purposes, did their best to keep the original inhabitants off their properties. No regard was given to the subsistence needs of the Aboriginal people. Even the Commandant of the Native Police, the controversial Frederick Walker, acknowledged that attacks upon the whites by Aboriginal people were in large part driven by a basic urge for survival. They were, he wrote:

in a manner, outlawed in their own country, being hunted from the River and Creek frontages and thus deprived of means of lawfully obtaining food. Driven to desperation, they carried on a constant war of retaliation with the whites, and lived solely on cattle...

Your Honour, Gunggari people, nevertheless, continued to maintain a presence on country sufficiently robust as to warrant complaint by white settlers and they remained sufficiently unified to host and participate in ceremonial gatherings up to the early 1900s.

There is evidence to suggest that some squatters originally tolerated a policy of dual occupancy allowing Aboriginal people to live on and make use of the country in semi-traditional ways. Other squatters recruited the local Aboriginal people into their enterprises as labourers. Large Aboriginal camps were established on stations in the current claim area including Tommo, Tongy, Bonus Downs, Albany Downs, Bindebango, and to the north at Crystalbrook, Abbieglassie and Forestvale.

The first removals under the *Aboriginal Protection and Restriction of the Sale of Opium Act* from the Maranoa district were effected in 1901. A large number of mixed race children were removed from the Forest Vale area in 1906 and 1907. From 1914 to 1941, well over 100 Gunggari were removed to government reserves and missions including Taroom, Purga, Barambah/Cherbourg, Palm Island and Woorabinda. Authorities particularly targeted those who were least engaged in mainstream society, those being residents of marginal fringe camps and those whose living habits were semi-nomadic.

Significant numbers of Gunggari people were initially removed to Taroom. The Taroom settlement was established in 1911 and became a destination for Aboriginal people forcibly removed from their homes under the Act. The Taroom settlement closed and was abandoned in 1927 ahead of the building of a dam as part of a Dawson irrigation scheme. The residents of the of the Taroom settlement were marched to the newly established settlement at what is now Woorabinda. A plaque commemorating the long trek from Taroom to Woorabinda contains many recognisable Gunggari names. The march itself remains a significant event in Gunggari tradition, history and consciousness. The dam was never built.

For Gunggari people exiled on settlements far from their homelands, the transmission of stories, hunting and gathering skills, the conduct of corroborees and maintenance of oral traditions about Gunggari country and kin, and even discrete residential arrangements served to maintain strong traditions and ingrain and reinforce connection to Gunggari society and country.

For those who remained on country, the splitting of the larger stations coupled with a diminishing willingness to support large Aboriginal camps on pastoral properties led to an increasing convergence by local Aboriginal people on the town of Mitchell. In the 1920s and 1930s, the Top Yumba, a fringe settlement on the Maranoa River, housed a large number of Gunggari families who had managed to avoid institutionalisation. In 1936, after the local council ordered dispersal of the Top Yumba camp, a new reserve was established downstream on the east side of the river. This site, known as the Bottom Yumba, became home for many years to a number of Gunggari families. The residents of the Yumba and other Gunggari people who regularly gathered there from other places about town, saw themselves and acted in concert as a people united in their local origins, their marginalisation from the mainstream and in the maintenance of a material and moral economy founded in Aboriginal and, in particular, Gunggari traditions. In other words; a people united in law and custom.

On and about the Yumba, Gunggari Elders spoke language amongst themselves. However, repressive mainstream attitudes made them reluctant to allow their children to learn their language.

Cultural laws and customs in the form of stories, hunting and gathering skills, spiritual and totemic beliefs and practices such as smoking ceremonies were, and continue to be, transmitted from generation to generation. The hunting and gathering of bush foods including kangaroo, porcupine, witchetty grubs, yabbies, fish, yams and berries, in accordance with traditional principles, constituted, and continues to be, a complementary food source as well as serving as a marker of cultural difference and identity.

In the contemporary context, the Mitchell Yumba serves as the symbolic and practical focus of Gunggari people's attachment to country. The traditional significance of the Gunggari word *yumba* includes references to camp, country and spirit home. These meanings underpin the deep sense of attachment to the Yumbas felt and asserted by Gunggari people. Both Yumba sites remain an integral part of Gunggari identity and consciousness. In particular, the bottom Yumba remains a key focus of contemporary Gunggari society and tradition.

Despite the historical and more contemporary depredations and challenges thrown at them, Gunggari people have maintained their society and an intra-mural awareness of that society. Gunggari society remains a living, vibrant reality. The Gunggari People maintain oral traditions, they maintain kin relationships, they visit, and they hold reunions and gatherings. They mourn together at the funerals that passage of time render inevitable.

The Gunggari People's claims to the broader expanse of their territory have been passionately asserted and fought for in the political context, including with protests over their omission from negotiation processes. The Gunggari people are typified by their persistence in the native title process which has been long and, at times, extraordinarily frustrating and in the successful negotiation with the State government for rights over land at Dunkeld.

The Gunggari people identify with their land and with the language which is connected to the land.

The Gunggari people have an undeniable right to be recognised, as a group, as the rightful people for their country. The Gunggari claimants' entitlements are a product of their descent from the inhabitants and traditional owners of Gunggari country at sovereignty. A determination of native title will allow them to enjoy their rightful share of the opportunities that their country presents and to look to the future with optimism and confidence. Critically, for the Gunggari People a determination of native title recognises what they have always known, that the land and waters of the claim area is and has always been their land. Your Honour, on behalf of the Gunggari People, I ask that you make an order for a determination of native title in their favour.

I hand up draft Orders.

The orders sought are by the consent of all parties.

May it please the court.

Tim Wishart
Principal Legal Officer
Queensland South Native Title Services