

# **Research Report The Gumbaynggirr Peoples Native Title Claim**

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# Acknowledgement of Country

XYZ Legal Service acknowledges and pays respect to the past, present and future Traditional Custodians and Elders of this nation and the continuation of cultural, spiritual and educational practices of the Aboriginal and Torres Strait Islander peoples.

## Introduction

The Gumbaynggirr native title claim group, led by Eddie Bilson, are seeking Native Title rights to their traditional lands & waters in the vicinity of Wenonah Head NSW, in accordance with the Native Title Act 1993 (Cth)<sup>1</sup>. Currently no native title is held over the area that spans roughly 1.112 square kilometres in total.

This report contains research into the Gumbaynggirr People, supporting documents they have provided and factors to consider their claim.

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<sup>1</sup> Native Title Act (Cth) 1993

# 1. The Gumbaynggirr People

Gumbaynggirr Nation is located on the Mid North coast of New South Wales. They have occupied these lands & waters since before the invasion of Australia in 1788.<sup>2</sup> For the purpose of this study report the Gumbaynggirr people are made up from the biological descendants of;

King Ben Bennelong;  
Maggie Buchanan and Davy Cowling;  
Biddy, the mother of Lavina Duncan (Bina Whaddy);  
Fanny Purrapine, the mother of Lily Kelly and Hilda Kelly Robinson;  
Darby Kelly;  
The father of Maggie Kelly's mother Biddy;  
William 'Old Bill' Dotti;  
John 'Jack' Dotti;  
Lucy Flanders;  
Dave Bakkangarry;  
Robert Walker and Louise Linwood;  
John 'Jack' Long;  
Bridget 'Biddy' Briggs Needam;  
Mary Briggs and Fred Briggs;  
Susan, mother of Charles Jarrett Snr;  
Rose Taylor;  
Charles Layton;  
Mick McDougall;  
Clara Skinner;  
Sylvie Craig;  
Elizabeth 'Kitty' Campbell/Cameron (known as Elizabeth Blakene);  
Emily Sutton;  
Fred Hookey; and

Any persons who have been adopted into the families of the persons (and the biological descendants of any such person); and

Persons who have been otherwise incorporated, or who are direct descendants of a person who have been otherwise incorporated, as a member of the Gumbaynggirr

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<sup>2</sup> <https://www.yumpu.com/en/document/read/8421334/project-fact-sheets-the-arrowarra-sharing-culture-project>

People and who identify as and are accepted as a Gumbaynggirr person, In accordance with Gumbaynggirr Lore (laws) and customs.<sup>3</sup>

## **2. Borders of traditional lands**

Gumbaynggirr Country extends from the Clarence River at Yamba (in the North), to the Nambucca River at Nambucca Heads (in the South) and West to the Great Dividing Range. As well as the ocean, rivers and creeks in these areas.

The Gumbaynggirr claimant group are seeking Native Title rights in a small portion of their traditional lands;

Lands and Waters east of the North Coast Railway Line, west of the mean high water mark of the Pacific Ocean, with the northern boundary at the southern border of Lot 102 in the Parish of Newry, County of Raleigh and the southern boundary at Nambucca Shire. A total of 1.112 square kilometres.

## **3. The Importance of lands on cultural practice**

### **A. Activities in relation to lands and waters**

The Gumbaynggirr people have long depended on the land and waters for a variety of resources. The ocean provides food as well as items used to fish, scale, cut, hunt, create traditional jewellery, make nets and a variety of other practical uses. Traditional knowledge, which is still used today, has been passed down through generations about how to catch fish, when to catch them and what bait to use. The excavations of middens in Gumbaynggirr Country support the claim that the Gumbaynggirr people have used the lands, waters & resources available for many years. One midden, located at

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<sup>3</sup> Kelly on behalf of the Gumbaynggirr People v Attorney General of NSW [2017] FCA 1459

Arrawarra Creek, found bones from twelve different species of fish & tools used to catch, scale and cut fish.<sup>4</sup>

The lands in the region continue to be used to hunt, gather, teach, perform traditional ceremonies & rituals, all while maintaining a high level of care and respect for the land and resources around. The Gumbaynggirr People have a strong connection to the land, animals, plants & waterways in the area. This connection provides them with the knowledge to know what to hunt and when, know which parts of trees and plants can be used for medicinal & practical purposes and allows them to educate both Indigenous & non-Indigenous peoples. For many years the Gumbaynggirr have continued to manage the lands as well as working with local land services to help increase biodiversity in the region.<sup>5</sup>

### **B. The impact of loss of land on culture**

Indigenous people have an intimate cultural relationship with land and sea. The land is seen as their mother, the giver of life who provides everything they need. They care for the land with much respect, using the plethora of knowledge that has been passed down through their ancestors. Sacred sites and areas hold both a cultural and spiritual significance to the Gumbaynggirr, there are powerful traditional sites associated with becoming a man or woman in within Gumbaynggirr lands, sacred sites used for men's business, womens work, teaching the youth & paying respect to the earth and those who have walked the land before them. Not being able to access these sites and resources freely or having them destroyed by those who do not know their significance, further adds to the cultural dissemination. Loss sites have a flow on effect that impacts generations present and future with loss of lore, language, rituals, customs and skills.

Land and spirituality are the centre of Indigenous identity. In 1991 the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recognised that Aboriginal people accorded great significance, spiritual as well as economic, which land has for indigenous people.<sup>6</sup> The taking of the land during white invasion set the stage for social disintegration, as well as deprived Indigenous people of their land and material livelihood. This was the tipping point leading to their economic deprivation and continuing poverty in a community where many of their values were, and still are, rejected.<sup>7</sup>

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<sup>4</sup> <https://www.yumpu.com/en/document/view/8421334/project-fact-sheets-the-arrawarra-sharing-culture-project>

<sup>5</sup> Australian Health InfoNet, *Gumbaynggirr people caring and sharing knowledge on traditional land*, 2015.

<sup>6</sup> Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (1991) 26.

<sup>7</sup> NSW Public Defenders, *Cultural Dispossession Experienced by Aboriginal and Torres Strait Islander Peoples*, The Bugmy Bar Book (2020) 4.

### **C. The impact of the dissemination and fragmentation of culture**

Loss of country, sacred sites & access to important resources is shown to have a significant impact on the health and wellbeing of Indigenous people.

Not being able to hunt and gather traditional food results in poor diet & an increased risk of diet related diseases - such as cardiovascular disease, type 2 diabetes, chronic kidney disease and some cancers.<sup>8</sup>

Loss of sacred sites leads to lack of mens business, womens work, traditional teaching, lore and ceremonies, which in turn leads to less cultural community engagement putting youth at greater risk of playing up and finding themselves incarcerated.

The less these traditional practices are able to take place, the increased risk of a total loss of Indigenous culture. Today, many know more about their cultural practices than what they actually use. This is not just due to loss of access to country and traditional lands but also because of the ongoing gap between Indigenous and non Indigenous Australians today. Greater Indigenous participation in caring for country activities is associated with significantly better health across all levels.<sup>9</sup>

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<sup>8</sup> Lee A, Ride K (2018) Review of nutrition among Aboriginal and Torres Strait Islander people. Australian Indigenous HealthInfoNet. From <http://healthbulletin.org.au/articles/review-of-nutrition-among-aboriginal-and-torres-strait-islander-people>

<sup>9</sup> Burgess CP, Johnston FH, Berry HL, McDonnell J, Yibarbuk D, Gunabarra C, Mileran A, Bailie RS. Healthy country, healthy people: the relationship between Indigenous health status and "caring for country". Med J Aust. 2009 May 18;190(10):567-72. doi: 10.5694/j.1326-5377.2009.tb02566.x. PMID: 19450204.

## **Conclusion**

Access to traditional lands is imperative to the Gumbayggnirr people. There is sufficient evidence that they have inhabited and cared for the lands, the entirety of the lands including the areas outlined in the Native Title claim documents, as well as the impact of not being able to access the areas freely. Supporting documents provided by Mr Bilson are well detailed and provide specific facts adding to the strength of the claim.

The Historical Report provided by Dr Michael Bennett & Anthropological Report by Mr Jitendra Kumarage, are of extremely high significance to the claim.



# Bibliography

## Articles/Books/Journals

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## Cases

Kelly on behalf of the Gumbaynggirr People v Attorney General of NSW [2017] FCA 1459

## Legislation

Native Title Act (Cth) 1993