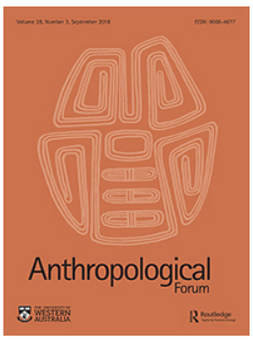

Routledge
Taylor & Francis Group

Anthropological Forum

A Journal of Social Anthropology and Comparative Sociology

ISSN: 0066-4677 (Print) 1469-2902 (Online) Journal homepage: https://www.tandfonline.com/loi/canf20

Framing the Loss of Solace: Issues and Challenges in Researching Indigenous Compensation Claims

Sandra Pannell

To cite this article: Sandra Pannell (2018) Framing the Loss of Solace: Issues and Challenges in Researching Indigenous Compensation Claims, Anthropological Forum, 28:3, 255-274, DOI: 10.1080/00664677.2018.1495059

To link to this article: https://doi.org/10.1080/00664677.2018.1495059

ANTHROPOLOGICAL FORUM
2018, VOL. 28, NO. 3, 255–274
https://doi.org/10.1080/00664677.2018.1495059

Routledge
Taylor & Francis Group

Framing the Loss of Solace: Issues and Challenges in Researching Indigenous Compensation Claims

Sandra Pannell[a,b]

[a]School of Social Sciences, University of Western Australia, Perth, Australia; [b]College of Arts, Society & Education, James Cook University, Townsville, Australia

ABSTRACT

The 2016 judgment in the 'Timber Creek' compensation case (*Griffiths v Northern Territory of Australia* (no. 3) (2016) FCA 900) signals an end to an era of extinguishment-related injustice and inequality, representing, as it does, the first litigated Federal Court award of compensation for the loss or impairment of rights and interests, under the 1993 *Native Title Act*. In this paper, I explore some of the methodological challenges and conceptual issues confronting anthropologists involved in researching compensation claims. In drawing upon my experience in researching two such claims, I discuss how the issues of gender, resource development, environmental transformation, the Stolen Generation, and the history of Indigenous-European relations in remote and rural Australia impact upon investigations into the loss or diminution of traditional attachments to land. In conceptualising this loss of connection, I discuss material relating to the 'anthropology of emotions', and I point to some of the obstacles encountered when talking about emotions cross-culturally. In conclusion, I explore research undertaken into the social and psychological impacts of ecosystem distress, loss of place, and environmental change, and I posit the value of Glenn Albrecht's concept of 'solastalgia' (2005. "Solastalgia, a New Concept in Human Health and Identity." *Philosophy Activism Nature* 3: 41–44) in framing research into the loss of solace, and in expanding upon the legal notion of this loss as 'inconvenience' and 'injured feelings'.

KEYWORDS

Compensation; emotions; solatium; solastalgia; native title; aboriginal Australia

'It's the Constitution, it's *Mabo*, it's Justice, it's the Law, it's the Vibe': Compensating for the Loss of 'Home'

You may think our appeal is based on emotion rather than law – not true.

It is about the highest law in this country; the constitution. And one phrase within it: 'On just terms'. That's what this is all about, being just. They want to pay only for the home, but they are taking away more than that, so much more.

Sure the Kerrigans built a house, then they built a home and family. You can acquire a house, but you can't acquire a home. Because a home is not built of bricks and mortar, but love and memories. You can't pay for it, and you're only short-changing people if you try. (Lawrence Hammill's closing in the High Court Scene, The Castle 1997)

CONTACT Sandra Pannell sandra.pannell@bigpond.com

In the 1997 film, *The Castle*, the blue-collar heroes of the movies, believing that the proposed compulsory acquisition of their family home or 'castle' goes against the very 'vibe' of the Constitution, fight to save the 'Great Australian Dream', a battle which takes them all the way to the highest court in the land. While 'only a film', albeit one of the most widely quoted ones at that, the film deals with a number of serious issues relating to constitutional rights, the meaning of 'just terms' compensation, and the idea of social justice, expressed in the movie as a 'fair go'. In this respect, the film not only referenced the landmark 1992 High Court *Mabo* decision, but, in a back-handed manner, it also alluded to the widespread anxiety, as expressed by the Western Australian premier at the time, that 'suburban backyards' were up for grabs under the new legislative regime of native title (Parker 2012, 120). As Jane Jacobs observed, this rhetoric of white dispossession and the yearning to 'belong' in a multi-cultural society, as documented by Peter Read in his book, 'Returning to Nothing' (1996), points to 'the troubled modes by which we have come to dwell in postcolonial Australia' (1997, 505).

In postcolonial Australia, the reality is that up until late December 1993, when the *Native Title Act* was passed, Indigenous people in Australia were not accorded the same 'fair go' justice as the fictional Kerrigan family, when it came to the matter of the compulsory acquisition of their traditional homelands. In a speech accompanying the second reading of the Native Title Bill in November 1993, the then Prime Minister of Australia, Paul Keating, spoke about the loss of home for Indigenous Australians resulting from the historical 'conflagration of oppression and conflict'. As Keating observed, this conflagration left Aboriginal people deprived of the 'religious, cultural and economic sustenance which the land provides' and they were thus left as 'intruders in their own homes' (1993, 2877). In this speech, Paul Keating also acknowledged that, 'despite its historic significance, the Mabo decision gives little more than a sense of justice to those Aboriginal communities whose native title has been extinguished or lost without consultation, negotiation or compensation' (1993, 2877).

The recent, landmark 'Timber Creek' decision (*Griffiths v Northern Territory of Australia* (no. 3) (2016) FCA 900) potentially signals an end to an era of extinguishment-related injustice and inequality,[1] representing, as it does, the first litigated Federal Court award of compensation for the loss or impairment of Indigenous rights and interests, under the 1993 *Native Title Act*. In August 2016, Justice John Mansfield awarded the Ngaliwurri and Ningali people of Timber Creek, in the Northern Territory, more than $3.3 in compensation, with $1.3 million of this amount representing a payment of *solatium*.[2] In accordance with Section 51 of the Commonwealth Constitution, which requires that the acquisition of property must be on 'just terms', and as set out in various State and Territory Compulsory Acquisition Acts, *solatium* is normally paid when an owner's place of residence is compulsorily acquired as a 'special compensation' for 'hardship, inconvenience, unspecified loss … or injured feelings' (Stephenson 1995, 147). As evident in *The Castle*, compensating for the loss of a 'home', and the intangible 'memories' and feelings of 'love' associated with it, is a complex matter and thus, as one might expect, the assessment of the quantum of compensation on the basis of 'just terms' is not precisely defined or determined under legislation. As also apparent in *The Castle*, where feelings of injustice and loss were expressed within the context of a more general, working-class antagonism towards 'bullshit' bureaucracy, disentangling the relevant elements of sentiment in a historically loaded landscape of emotion is, by no means, an obvious or easy endeavour.

In the Timber Creek decision, Justice Mansfield referred to the inordinate complexity involved in assessing the appropriate compensation, and the affective nature of acquisition and extinguishment (*Griffiths* at 37). He also acknowledged the 'intuitive' basis of his decision (*Griffiths* at 233, 234, 302), one might say, the 'vibe of the thing', regarding the quantum of the solatium awarded for the non-economic, intangible loss experienced by Ngaliwurri and Ningali people with the impairment and extinguishment of their native title rights and interests, arising from the post-1975 granting of a series of leases in the Timber Creek township area.[3]

In assessing the component awarded for solatium, being the allowance for non-economic loss, Justice Mansfield specifically referred to anthropological evidence[4] relating to the spiritual content of the affected lands and the 'pervasiveness of [the] Dreaming' (*Griffiths* at 335–336, 325), the significance of 'the spiritual integrity of the landscape' to the Aboriginal claimants (*Griffiths* at 372), and the depth of the relationship between Aboriginal people and country so conceived (*Griffiths* at 348, 355, 372). He also took into account the rights and duties of the claimants, under Ngaliwurru-Nungali law and custom, to look after and speak for country (*Griffiths* at 337), and how the unauthorised use of country by others imposed upon the native title holders a sense of 'responsibility for [any] loss and damage' to sites (*Griffiths* at 356), and, potentially, a loss of cultural reputation in the wider Indigenous community. Finally, his Honour considered the affective outcome of loss of country and the effects of the compensable acts on the exercise of rights to country (*Griffiths* at 348, 362), which 'caused emotional, gut-wrenching pain and deep or primary emotions' (*Griffiths* at 350), expressed more generally by Mansfield J as 'cultural and spiritual pain and anxiety' (*Griffiths* at 376).

As Pamela McGrath (2017, 3) has recently observed, the Timber Creek case indicates that anthropologists should focus on how the impact of loss of rights and interests is expressed in terms of 'embodied emotions' and effects a person's sense of self. McGrath's comments raise the issue as to whether anthropologists, working in the field of native title-related research, are professionally equipped to address the issue of personal pain and suffering, and long-term emotional distress, as opposed to psychologists, for example, see Hunter (1993), and whether this is realistically possible to do so within the truncated time frames commonly allocated to researching native title and compensation claims. This issue of the applicability of anthropological expertise was noted in the Timber Creek judgment, however, Mansfield J chose to selectively engage with the anthropological evidence, and that of the other experts, in his attempt to resolve the issues in the proceeding (*Griffiths* at 237).

Based upon my experience of researching two native title compensation applications, one in the Northern Territory and the other in Far North Queensland, and drawing on my experience in formulating an 'affected area' royalties distribution regime, being a form of community-based compensation for mining-associated disturbance under the *Aboriginal Land Rights (Northern Territory) Act 1976* (see Altman and Pollack 1999, 3), in this paper I explore some of the 'conceptual challenges' and methodological issues confronting anthropological investigations into compensation and the impact of impairment and extinguishment of Indigenous native title rights and interests. As evident from the two case studies presented in this paper, issues of gender, resource development, environmental transformation, the Stolen Generation, and the history of Indigenous-European relations in remote and rural Australia significantly impact upon anthropological

investigations into the loss or diminution of Aboriginal people's traditional attachment to the land.

In the final section of this paper, I draw upon material relating to the 'anthropology of emotions', and I also consider research undertaken into the social and psychological impacts of ecosystem distress, loss of place, and environmental transformation – experiences captured by Glenn Albrecht's concept of 'solastalgia' (2005). As argued by Albrecht and his colleagues, based on their research on mining-related, environmental change, and its association with increased levels of depression, negative perceptions of quality of life, and stress-related diseases in communities in the Upper Hunter Valley of New South Wales (see Connor et al. 2004), 'solastalgia', in contrast to nostalgia, specifically refers to the 'lived experience of intense change, manifest in a feeling of dislocation and of being undermined by forces that destroy the potential for solace derived from the present' (Connor et al. 2004, 55). In other words, it is a 'type of homesickness one gets when one is still "at home"' (Connor et al. 2004, 55).

In his 2005 article, Albrecht talked at length about the experience of solastalgia among Indigenous people, linking the 'break between humans, ecosystems and the land' (2005, 47), and the associated 'feelings of sadness, worry, fear and distress', and a 'declining sense of self, belonging and familiarity' (see McNamara and Westoby 2011, 233), with a range of social problems, as well as with physical and mental illness (Albrecht 2005, 47). As Albrecht observed:

> Both the loss of country and the disintegration of cultural ties between humans and the land (their roots) are implicated in all aspects of the 'crisis' within many Indigenous communities in contemporary Australia. (2005, 48)

As discussed in this paper, 'solastalgia', as envisaged by Albrecht and his colleagues, could arguably provide anthropologists with a useful conceptual tool for understanding and framing the emotional experiences of many Indigenous people in Australia, who stand witness to the transformation and/or loss of their traditional homelands, or who find that they have been legally disenfranchised from their ancestral country by the stroke of a pen in a far-off capital city. It is these kinds of acts of impairment, extinguishment, and non-Indigenous acquisition that form the basis of native title compensation applications under the *Native Title Act 1993* (Cth) (NTA). While compensation claims can be seen, at one level, as a form of restoration and redress in relation to past and present land grants and acts, as I discuss in this paper, the very nature of compensation-related research and associated litigation carries with it the risk of contributing to and aggravating existing trauma associated with the historical loss of country and the forced removal of Aboriginal people from their traditional lands, and it holds the potential to create new forms of distress and related anguish, arising from some of the unforeseen impacts of pursuing a native title compensation claim itself (see also McGrath 2017, 4–5).

Case Study 1: A Northern Territory Pastoral Station

In November 1995, a Northern Territory Aboriginal Representative Body, acting on behalf of the named applicants, lodged an application for compensation under the *Native Title Act 1993*. The applicants sought compensation on the basis that the granting of a pastoral lease in 1978, and the cancellation of this lease and the issue of a perpetual pastoral lease in

1993, precluded them from holding the lands and waters of the lease as Aboriginal freehold granted under the *Aboriginal Land Rights Act (NT) 1976*. The pastoral station in question is located in the Tanami Desert (in the Northern Territory), some 130 kilometres to the southwest of the Aboriginal community of Lajamanu, where a number of the claimants lived. Members of the compensation claim group also lived at Kalkaringi, Daguragu, and at Ringers Soak (in Western Australia).

In 1997, I was contracted by an Aboriginal Representative Body to produce a supplementary compensation report to complement the main anthropological report prepared for the compensation application. One of the primary purposes of the supplementary report, and the associated field-based research, was to record and present information on the rights and interests of female claimants, and on the social and cultural impact of the impairment and loss of those rights as a result of the 1978 and 1993 acts.

As my research revealed, members of the claim group expressed a connection to the compensation claim area in various ways, including, through birth on the claim area, the possession of patrifilially and matrifilially acquired personal totems (respectively, called *kuning* and *ngurlu*, see Bird Rose 1992, 82), through their particular sub-section affiliation, their identification with a totemic being and the associated Dreaming track, through their language affiliation and the language identity ascribed to the claim area, and through the connection of a kinsman and/or woman to the claim area. Many of the claimants also expressed a connection to the claim area through traditional hunting and gathering activities, and residence, from time to time, at the outstation established just outside the southern boundaries of the station. As this anthropological snapshot indicates, the compensation claim area constituted a rich cultural landscape, and the members of the claim group gained what Mansfield J called 'spiritual and material sustenance from the land' (*Griffiths* at 295).

Notwithstanding the depth and breadth of the connection of the claimant group to the claim area, and the diverse range of Indigenous values attributed to the claim area itself, anthropological research in relation to the pastoral station compensation claim revealed a number of issues and challenges. Among other things, this particular case study revealed the fundamental problem with focusing solely on the designated claim area as the basis for assessing the impairment of native title rights and interests. As my research revealed, the members of the claimant group expressed a connection to places both within the claim area and external to it. Reflecting this wider network of connection, many of the sites and Dreamings associated with the claim area are linked to sites and Dreamings in the wider region, and thus the severing of the pastoral lease from the broader geo-cultural landscape impacted upon the ability of the claimants, and other Aboriginal people, to maintain the integrity and communally acknowledged values of this regionally based constellation of sites and Dreaming tracks.[5] The fact that impacts on the compensation claim area resonate across a wider landscape to impair native title rights and interests more generally was acknowledged by Justice Mansfield in the Timber Creek case. As his Honour observed, 'one cannot understand hurt feelings in relation to a boxed quarter acre block. Rather, the effects of acts have to be understood in terms of the pervasiveness of Dreaming' (*Griffiths* at 325).

One of the more significant issues arising from research into the pastoral station compensation claim was the difficulty, if not the impossibility, of disentangling the tangible

and intangible loss and disadvantage associated with the said extinguishing acts from the history of mining in the region, and, more specifically, from the history of mining-related royalty distribution. In the Timber Creek case, Justice Mansfield also acknowledged the fact that impairment and extinguishment of the group's native title rights and interests did not exist 'in a vacuum' (*Griffiths* at 319) and he thus made mention of 'the tumultuous history of Australia in the claim region' (*Griffiths* at 23–27, 320). In the case of the pastoral station, the relatively nearby presence of a large gold mine, and the differential and highly contentious distribution of mining royalties to Aboriginal individuals in the region certainly coloured any discussion of compensation under the Native Title Act, with many claimants not differentiating between the two, and expressing feelings of anger, hurt, and resentment at the fact that they had not personally received royalty monies in the past. In this respect, a number of the claimants also expressed the view that under 'whitefella law' they were only able to receive one form of compensatory payment, and in light of this particular understanding, many opted to only receive (and to continue to receive) mining-related royalties, as opposed to a hypothetical, native title-related compensation award. As evident from the Timber Creek case, this award constituted a one-off payment, rather than providing an on-going income stream for the claimant group, which could possibly be the outcome of other compensation claims in the future.

Given the contentious and corrosive history of monetary royalty payments in the Tanami region, identified by informants as the source of considerable 'humbug' and personal distress, most claimants expressed a desire for native title-related compensation in the form of material items, such as washing machines and more commonly, in the form of a four-wheel drive vehicle, which may not necessarily be the identified objects of necessity and desire in other Indigenous contexts. However, as Fred Myers observed, in central Australian desert communities these kinds of vehicles are among the most valued objects (1988, 60), allowing people to visit places and look after country, go hunting, and visit kin, among other things. Washing machines and cars are also objects which would be readily understood by others as 'private property' and which, to some extent, could be controlled, although as Fred Myers observed with respect to Pintupi car ownership, 'to have a car … is to find out how many relatives one has' (1988, 61). As Myers also pointed out, vehicle ownership also provides an opportunity to 'be someone', as ownership can 'make a person of central importance when the activities being planned require transportation' (1988, 61). Reflecting this idea of a motor car as an objectification of personal identity and also of a set of social relationships, and associated obligations and responsibilities, I recorded that even a senior female claimant, who was blind, preferred compensation in the form of a four-wheel drive vehicle. As the owner of a vehicle, she would gain respect from granting permission to others to use the car, and thus she would be seen as someone who 'looked after' her family and kin, and she could readily expect reciprocal acts of generosity from these individuals (see Myers 1988, 61). While I am not saying that a 'Toyota' is in anyway equivalent to the native title rights and interests of an Indigenous group, as this example indicates, money alone is not necessarily what Aboriginal people want as a form of compensation, and in this respect, I note here that the *Native Title Act 1993* has provision for non-monetary compensation, such as the transfer of property and the provision of goods and services (Section 51(6)).

As evident from my experience in researching royalty distribution regimes in the Northern Territory, the post-compensation distribution of monetary awards will undoubtedly be associated with dispute, conflict, and, somewhat ironically, emotional pain and suffering, supposedly compensated for by a solatium award. Furthermore, in my experience, such regimes either ignore the issue of conflict and/or they are not adequately equipped to deal with such disputation. As evident in royalty distribution schemes, from an Indigenous point of view, the equitable distribution of a compensation award may not necessarily be seen as adequately reflecting the different site-related responsibilities of the members of the claim group or the fact that some members of the claim group do not have a specific connection to the compensation claim area, but, rather, have a connection to other parts of the group's traditional country.

In researching the pastoral station compensation claim, I also recorded that a number of senior women expressed their dissatisfaction with what they perceived as a male gender bias in the distribution of royalty payments, and they were consequently concerned that the payment of native title-related compensation would be similarly distributed. To some extent, the late involvement of a female anthropologist in the compensation case vindicated their concerns about the marginalisation of women in monetary distribution schemes. I note here that gender bias was also a common complaint made by women in the early 1980s in relation to the distribution of 'affected area' statutory royalties arising from oil and gas developments to the west of Alice Springs.

The gendered element of the compensation case was also apparent in the way men and women differentially expressed a connection to the claim area, reflecting Sylvie Poirier's finding that, 'the features of the landscape are gendered, identified with either male or female principles and expressions' (2005, 62). For example, women held gender-restricted *yalwalyu* ceremonies, linked to certain 'Dreaming' beings (see Berndt 1950, 28, 45), and associated with particular estates within the claim area, while senior men were acknowledged as the primary custodians for many of the sites, situated on the claim area. The association of men with 'sacred sites', and the associated rituals and sacred objects, has a range of emotion-laden connotations. For example, among the Pintupi of Central Australia, the concept of 'sorrow', as Myers found, was 'clearly attached to ritual paraphernalia and to sacred places of The Dreaming' (1979, 359), both of which are related to 'male initiation and [the] male cult' (1979, 360).

Unlike the situation in the Timber Creek case, many of the senior claimants in the pastoral station compensation case had a long-standing relationship with the European beneficiary of the 1978 and 1993 compensable acts and, as such, it was difficult to isolate the claimants' expressed feelings about the compensation area from the landscape of sentiment and emotion associated with their historical involvement with pastoralism and particular pastoralists. In this regard, the European owner of the station was regarded as someone who provided Aboriginal people with food, particularly meat, and also with fuel. He was thus publicly acknowledged as someone who respected, and looked after *yapa* ('Aboriginal people'), and who Aboriginal people publicly expressed mostly positive feelings about. That said, I am also aware from my research experience in northern Australia that Aboriginal people will often talk about a station owner as a 'good bloke', and also express a certain nostalgia about their previous association with a station (see Strang 1997, 165; Redmond 2005, 238), even though, as Bird Rose reported for the Victoria River Downs area, on many pastoral stations there was a 'lack of wages, minimal health

care, appalling living conditions, violence, back-breaking work for men and women, and insufficient and unhealthy food' (1992, 18). Similarly, others will talk about early days pastoralists as a 'bit cheeky', an expression which may, on the surface, suggest a reference to larrikin-like behaviour, but which, in reality, is a coded reference to the violent and murderous activities of these men (see Jebb 2002, 38). As Victoria Burbank recorded among Aboriginal people in Arnhem Land, the term, 'cheeky', 'is used in the sense of "angry", "aggressive", or "dangerous"' (1994, 147). Referring to pastoralists in this way represents a form of 'hyporecognition' (see Lutz and White 1986, 418), or muted acknowledgement of the emotional impacts of pastoralism on the lives of Aboriginal workers.

As I also recorded, traditional owners had revealed places of significance and other elements of their culture to the station owner and thus, as far as the claimants were concerned, the station owner was obliged to reciprocate in an appropriate manner. As this example indicates, in this remote corner of central Australia, the owner of the station was embedded in existing Aboriginal relationships of obligation and reciprocity, commonly expressed in affective terms (see Redmond 2005, 242). Thus, from the perspective of local Aboriginal people, the actions of the station owner in giving them food and fuel largely conformed with the demands made upon, and people's expectations of, kin, and also with their understanding, from their historical participation in the pastoral industry, of the obligations of 'white bosses' to help and look after Aboriginal people (see Myers 1986, 282). Accordingly, pastoral activities on the station were not viewed in negative terms, rather they were viewed as instrumental and essential to the relationship of reciprocity and obligation people enjoyed with the station owner, which was not simply an economic relationship, characterised by the exchange of money (see Redmond 2005, 242). In this respect, the claimants appear to be no different from Pintupi individuals, who, as Myers recorded, would speak of their 'bosses' with 'genuine sentimentality', and who would go to a boss 'when they need food or have a broken-down car' (1986, 283). As Myers found, those Europeans 'who fulfil the expectations of this role are liked and respected' (1986, 283). Such feelings, and the fact that some Aboriginal people identify a range of 'benefits' from their relationship with the European beneficiary of a compensable act, raises the issue as to how researchers address these factors within the conceptual framework of loss that is associated with Indigenous compensation claims.

Given this history, it is not so surprising that the claimants identified the owner of the pastoral station as the source of any payment of compensation, and not the 'government in Canberra'. In this sense, local Aboriginal people viewed the payment of compensation as a form of delayed reciprocity, based upon an existing and ongoing relationship, and not just as a disinterested, monetary award. In this regard, I note here McGrath's observation that, from an Aboriginal perspective

> compensation is a process not a payment, thus emphasising the need to heal the underlying relationships between the perpetrators of acts of extinguishment (as understood in terms of trespass, intrusion and transgression), and those who have suffered the consequences. (2017, 4)

It was also the case that a number of the claimants believed that 'demanding' compensation from the station owner would jeopardise the existing relationship they had with the lessee – a view which certainly captured the historically grounded, structural inequalities characterising the relationship between the white pastoralist and local traditional owners (see Bird Rose 1992, 17–24; Strang 1997).

As Redmond observed, in the relationship between Aboriginal people and European pastoralists, both parties regard themselves as 'owners' of the land, that is, as 'people engaged in a useful maintenance of, and interaction with, the country' (2005, 242) Thus, although the granting of a perpetual lease over the station in 1993 was said, from a legal European perspective, to have extinguished the rights and interests of the claimant group, members of the claim group continued to access and use the claim area, as 'owners', for a range of traditional purposes, including hunting and gathering, visiting sites of significance, and camping with kinsmen and women. Consequently, I encountered considerable evidentiary obstacles in documenting the social and emotional impact of legal extinguishment within the context of the on-ground reality, where the claimants appeared to continue to exercise their rights and interests, wholly unaware of their legal non-existence – a situation which also appeared to prevail in the now-dismissed Gibson Desert compensation claim (see McGrath 2017, 4).

It was also the case that, prior to the compensable acts, the station owner had erected a range of infrastructure on the claim area, primarily in the form of fences, gates, and bore windmills. Similar to the Timber Creek case, I recorded that one of these windmills had been erected at a waterhole said to be inhabited by a Dreaming 'snake'. In this particular instance, the claimants attributed a range of emotional states to the 'snake', including 'anger', and they also identified this being as responsible for the eventual destruction of the windmill at the site. As this example illustrates, Indigenous emotions, and the relationship between emotions, agency, and actions, are often expressed in terms of the concept of a 'sentient' landscape, rather than in terms of the inner feeling-states of individuals. Similarly, Myers found that, among the Pintupi, he recorded that the concept of 'sorrow' was displaced onto inanimate objects and sacred places (1979, 359), however, he also recorded that Pintupi men were 'angered at the desecration of their sacred sites' (Myers 1988, 599). I would suggest here that the projection of emotion onto the landscape, and the attribution of agency to a Dreaming entity, is not only illustrative of how Aboriginal people in central Australia identify places and Dreaming beings as part of themselves, linking the 'interior subjectivity of the person with the external world' (Munn 1970, 160), but it also represents one of the ways in which Indigenous people acknowledge and comment upon the negative effect of the actions of foreign others, such as the white pastoralist (see Povinelli 1993, 155).

The relationship between the claimants and the station owner raises some further issues regarding the basis of compensation. In the Timber Creek case, Justice Mansfield identified the economic value of the extinguished native title rights as $512,400, based upon the reports compiled by experienced land valuers, while it appears that the $1,300,000 allowance for solatium was based upon the expert anthropological evidence, as well as the lay evidence provided by the Aboriginal witnesses relating to the 'pain and suffering caused by the loss' of the spiritual value of the land (*Griffiths* at 292). As evident from the Judge's decision, and from the general legal understanding of the concept (see Nygh and Butt 1998, 402), the payment of solatium is largely based upon the sentiments and emotions associated with the solace that a person's home, or, in the case of the Timber Creek claimants, their country, provides and the 'wounded feelings' associated with the loss of this 'home' or 'homeland'. Thus, in his judgment, and in his assessment of solatium, Justice Mansfield referred to the claimants' 'pain and suffering' (*Griffiths* at 318), 'emotional, gut-wrenching pain' (*Griffiths* at 350), 'deep or primary emotions of hurt,

shame and worry' (*Griffiths* at 368), and 'cultural and spiritual pain, distress and anxiety' (*Griffiths* at 352, 368, 376). As indicated by the Timber Creek case, in the absence of such explicitly and publicly expressed emotions and feelings on the part of Aboriginal claimants, an award of compensation may just be restricted to the calculated economic value of the extinguished native title rights and interests, without an allowance of solatium. As I discuss in the conclusion, the work of Myers and Burbank, among others, identifies some of the social and cultural factors which serve to circumscribe and delimit the public expression of emotions by Aboriginal people (see Myers 1986, 1988; Burbank 1994).

The Timber Creek case certainly placed considerable emphasis on the role of memory, both individual and collective, and on the relationship between memory and emotion concepts such as anger, pain, and shame. The causal relation between emotions and effects, and the date of the extinguishing act, was both posited and commented upon by Justice Mansfield who repeatedly stated that it 'is the effect of the particular compensable act or acts which is to be measured or assessed' (*Griffiths* at 321). This was also the view put forward by the Northern Territory government, which asserted that, 'the claimants are only entitled to compensation for the "hurt feeling" evoked or caused by the determination acts' (*Griffiths* at 323). At the same time, however, his Honour also commented on the fact that the anthropologists appearing on behalf of the Applicants 'were not briefed with and did not know the nature of the determination acts or the dates at which they occurred, or the particular land the subject of the compensation claim' (*Griffiths* at 349). Notwithstanding this apparent discrepancy, the Timber Creek case points to the requirement, and some of the related methodological difficulties, to record the expression of the kind of emotional effects and impacted feelings mentioned in the judgment, albeit some 10, 20, or even more years after an extinguishing act, an issue which I discuss in more detail in relation to case study two.

Case Study 2: The Nut Farm, a Potential Compensation Test Case from North Queensland

The second case study concerns a compensation application lodged in September 1996 by an Aboriginal group, which comprises one of the more southerly of the Yalanjic group of dialect speakers, located in Far North Queensland.[6] The compensation claim area comprised 1170 hectares, most of which was planted with commercial nut trees and fenced off. It was located some 80 kilometres to the west of Cairns, in a rural region largely characterised by agricultural and pastoral activities. In 1988 a grant of a special lease, for the purpose of horticulture, over the claim area served to impair the native rights and interests, while a 1990 grant of freehold over the same area effectively extinguished all native title rights and interests in the area.

My research revealed that the claimants expressed a range of spiritual, cultural, and physical connections to the claim area. The area was thus linked, in a general manner, to the spirits of the group's 'old people', it was acknowledged as part of a traditional walking track, a number of the group's antecedents has been born nearby, one family lived on land adjoining the claim area, and some of the claimants often fished in, and camped along, the river bordering the claim area in the south. Thus, like the Ngaliwurru and Nungali people in the Timber Creek case, the connection that the claimants had with their traditional lands and waters was intrinsically a 'spiritual one'. Like the claimants in

the Timber Creek case, and contrary to the claimants in the pastoral station case, the ability of this North Queensland claimant group to fully exercise their rights and discharge their customary responsibilities in relation to their traditional country was frustrated and, at times, had been severely impaired by the history of European settlement on their country. This history of a small part of settled Australia is worth revisiting here as it reveals some of the issues confronting Indigenous people in their attempts to seek compensation and gain formal acknowledgement from the government of past injustices.

The 'White-fellas Came and Grabbed our Country'

As my research revealed, the compensation claim area has been farmed, in some manner, by Europeans since 1883. Tenure searches, and information from the claimants themselves, indicated that the area was originally used for pastoral purposes from 1883 up until the 1930s, when the land was opened for selection as an 'Agricultural Homestead'. Since that time, the compensation claim area had been used for a range of horticultural purposes.

It is also the case that the forced removal of the claimants' antecedents from their ancestral homelands, commencing around 1916 and continuing up until at least 1948, to church missions and government settlements in other parts of North Queensland (many hundreds of kilometres removed from their traditional country) impeded the physical exercise of traditional rights and interests. It also resulted in a considerable number of the claimants, and their immediate antecedents, being born at locations distant from their ancestral homelands. As one senior man lamented to me in 2013, 'I'm born and bred in Yarrabah. I'm born on another tribe's country. It's not our fault. Our grandfather never asked to come here'. Understandably, the claimants expressed anger about the forced removal of their antecedents from their traditional homelands and their resettlement on what they regarded as 'foreign country', as well as sadness about being prevented, for many years, from returning to their ancestral domain to exercise their 'birth-rights'.

Historically, the advent of pastoralism and the actions of local pastoralists (as well as local settlers) on the group's country – for example, in the nineteenth-century, beating, shooting, and kidnapping Aboriginal people (see Allingham 1977, 171; May 1983, 65–69; Bottoms 2013, 114–133), and more recently, in less physically violent terms, erecting fences and 'keep out' signs, and locking gates – have also functioned to restrict or, in a number of instances, prevent the exercise of traditional rights and interests. As an elder of the group informed me, 'white-fellas came and grabbed our country'.

From the emotional states identified by the claimants relating to the involuntary removal of their antecedents from their 'home' country – for example, 'anger', 'sadness', 'resentment', and 'hurt', and their expressed frustration at being 'locked out' of a large part of their traditional country – it is apparent that historical dispossession in relation to their traditional lands and waters, and not just to the compensation claim area, has had a profound emotional effect on the claim group. The findings of the 1997 'Bringing Them Home' report into the 'Stolen Generations' (Commonwealth of Australia 1997) strongly suggests that the effect of separating Aboriginal people from their traditional lands will continue to be experienced well into the future (1997, 11). As evident from my research in the nut farm compensation case, it was not possible to extract the specific, extinguishment-related injured feelings from the many forms of 'hurt'

experienced by Aboriginal people. As Victoria Burbank recorded in her research in an Aboriginal community in Arnhem Land, there are a number of other elements of people's experiential environment, such as noise, aggression, ill health, death, and substance abuse, which further contribute to 'feeling bad' (Burbank 2011, 96); these further compound the issue of researching compensable pain and suffering.

As evident across Australia, the alienation of Indigenous lands and waters has also resulted in considerable environmental transformation and, more often than not, degradation of Aboriginal country. The compensation claim area is a case in point: the area is far from pristine in terms of its native vegetation and fauna and in terms of its physical terrain. Rather, the environment of the claim area has, over the course of more than 130 years, been heavily modified and profoundly transformed by a range of non-Indigenous pastoral and intensive agricultural activities. It is no wonder that the claimants in the nut farm case, like other Aboriginal people, experienced and expressed what might be regarded as a deep sense of 'existential distress', in the face of the alienation of their traditional lands and waters by Europeans, or in view of the devastating environmental changes they have witnessed to their ancestral homelands since European colonisation (see Albrecht 2005). As evident from the Timber Creek case, and the noted destruction of a sacred site in the township area, such landscape transformation has a deeply spiritual significance and impact, and continues to do so in the context of long-established towns, historically modified by settlement-related infrastructure.

In his pivotal 2005 article, environmental philosopher Glenn Albrecht introduced the concept of 'solastalgia' in relation to this experience of 'existential distress'. He defined it as literally 'the pain or sickness caused by the loss or lack of solace and the sense of isolation connected to the present state of one's home and territory' (Albrecht 2005, 45). In this sense, solastalgia relates to:

> … the pain experienced when there is recognition that the place where one resides and that one loves is under immediate assault (physical desolation). It is manifest in an attack of one's sense of place, in the erosion of the sense of belonging (identity) to a particular place and a feeling of distress (psychological desolation) about its transformation … . (Albrecht 2005, 45)

Albrecht (2005) explicitly linked the experience of solastalgia to Indigenous dispossession. As he observed, '[h]istorically, Indigenous people are likely to experience both nostalgia and solastalgia as they live through the destruction of their cultural traditions and their lands' (46). For Indigenous Australians, this destruction results in a 'genuine grieving for the ongoing loss of "country" and all that it entails' (Albrecht 2005, 47). Aboriginal people's experience and sense of what might be considered as 'solastalgia' over the appropriation and transformation of their 'home', in the fullest sense of this expression, potentially constitute the kind of 'injured feelings' compensable under the *Land Acquisition Act* and the *Native Title Act* in the form of an award of solatium.

Solastalgia thus provides a powerful conceptual framework for contextualising and understanding the comments made by the claimants that they feel 'distressed', 'sad' and/or 'angry' at the appropriation and transformation of their country, as evidenced by the 1990 granting of freehold title over the compensation claim area, and the conversion of this area into a commercial nut farm. The 1993 *Native Title Act* only speaks of the 'loss', 'diminution', 'impairment', and 'extinguishment' of rights and interests, and not the loss of, or impairment to, Aboriginal lands and waters. For the claimants, their sense of

'loss' is inextricably linked to the irreversible changes and damage to the environment encompassed by the claim area, which were the result of European occupation and use of this area since 1882. Thus, when one of the claimants described the compensation claim area as 'broken country' he was referring to the environmental changes inflicted on the area by white pastoral, mining, and agricultural practices than to the natural lie of the land.

Given the history of the claim area, it was not so surprising to find that the claimants were unaware that a specific Act, in December 1990, had legally extinguished their rights and interests in regard to the nut farm. This lack of awareness, together with the assertion that the compensation claim area continues to be a part of people's traditional country, effectively created a situation where it was difficult to ascertain what, indeed, were the social effects and emotional impacts of legal extinguishment.

I became increasingly aware of the significant distinction that exists between the legal extinguishment of Indigenous people's rights and interests, and its legal impact, and the actual, on-ground effects of extinguishment, being those perceived and experienced by Aboriginal people, in the form of 'injured feelings', resulting from the loss of solace, which the customary exercise of those rights and interests, on 'home' country, provided. It is also important here to acknowledge a distinction between the actual effect of legal extinguishment on the claimants and the effect of being told about this legal extinguishment by the anthropologist in the course of researching a compensation claim.

Conclusion: The Compensable Landscape of Emotions, and the Role of the Anthropologist

As the work of Fred Myers (1979, 1986, 1988), Franca Tamisari (1998), and Deborah Bird Rose (1992, 1996), among others, have demonstrated, in Aboriginal Australia, 'country', and being a 'countryman', has a profound emotional content and it is associated with a range of affective relationships.[7] As such, 'landscape' has an important psychological relation to Australian Aborigines (see Myers 1979, 35), wherein intimacy and sentiment are important components of 'placedness' (see Weiner 2001, 234). That said, there is also considerable debate and contention among anthropologists about how to characterise the nature and content of Aboriginal people's relationship to land (see, for example, Munn 1970; Tamisari 1998; Ingold 2000; Redmond 2001; Peterson 2011; Descola 2013).

As evident from the Timber Creek case, the award of a solatium payment was informed and influenced by the emotional impact upon Ngaliwurru and Nungali people of the effects of legal extinguishment, identified in the 2016 judgment, and expressed by the Aboriginal witnesses in the trial, in terms of 'pain and suffering', 'reputational damage', 'hurt feelings', 'gut-wrenching pain', 'grief', and 'anxiety'. The award was also heavily influenced by the impact of the claimants' emotional 'pain and suffering' upon Mansfield J, and by his judicial recognition, understanding and subsequent quantification of those expressed emotion concepts.

In her discussion of the Kenbi Land Claim to the Cox Peninsula region in the Northern Territory, Elizabeth Povinelli specifically commented upon the role of the Land Commissioner hearing the case, and she raised the issue of what members of the judiciary think about Aboriginal beliefs, particularly the belief in a sentient landscape, as well as what economic value could be given to such beliefs by the court (1995, 505). Povinelli argued

land rights cases do not evaluate the role of Aboriginal labour action in producing the 'cultural countryside' (1993, 152; 1995, 509), and thus the 'grounds for assessing the value produced by human action in the environment is never addressed in formal legal venues' (Povinelli 1995, 506). Certainly, this seems to be the situation in the Timber Creek case, where the judicial evaluation of the emotional response to extinguishment was separated from 'Aboriginal beliefs about work and Aboriginal productivity and labor action', in relation to the claim area (Povinelli 1995, 509). Yet, as Povinelli's material suggests, the emotional content of Indigenous relations to land is intrinsically linked to the way in which Aboriginal labour, for example, hunting and gathering, and its products, speech and sweat, produces and 'congeals' in the countryside (1993, 152). With its focus upon the 'production of locality' and the creation of a distinctive subjectivity or 'sense of place' (see Appadurai 1996), Povinelli's work provides the ethnographic evidence and conceptual basis for a much broader interpretation of the legal concept of solatium, and the related notions of 'inconvenience', 'hardship' or 'injured feelings' (Stephenson 1995, 147).

As evident from Povinelli's 1995 article, 'Do Rocks Listen', one of the related challenges for the judiciary in Indigenous compensation cases is how to evaluate the quantum of solatium where 'Dreamings' and the 'countryside', and not humans, are said to be 'angry' or 'sad', particularly given, as Povinelli documented in the context of the Kenbi Land Claim, the Western disbelief that 'Dreamings' can listen in anything but a 'metaphorical sense' (Povinelli 1995, 506; cf Peterson 2011:177, who is quite critical of the 'overly literal "relational" ontology' espoused by Povinelli and others). Certainly, the judicial distinction and evaluation of Aboriginal connection to country in the Timber Creek case in terms of 'economic' and 'non-economic' loss, with economic loss assessed in terms of the market value of the land (*Griffiths* at 463), and the characterisation of 'non-economic' loss as 'essentially spiritual' (*Griffiths* at 290), appears to support Povinelli's argument about the 'split' manner in which the law appraises Aboriginal beliefs (1995, 514) and confirm her finding that, 'the value produced by human action in the environment is never addressed in formal legal settings' (1995, 506). Povinelli's work not only raises issues about the evaluative schema of the judiciary in cases involving Indigenous land rights, but it also questions the very ability of the Court to assess the value of Aboriginal environmental interactions, cross-cultural notions of labour, and Indigenous emotional constructions.

In the discipline of anthropology, the consideration of emotions has a relatively long history (see Lutz and White 1986). This history can be summarised as a tension between, on the one hand, universalist and positivist approaches, where emotions are regarded as psychobiological states, and relativist and interpretive approaches on the other, where, among other things, emotions are regarded as cultural concepts, 'socially shaped and socially shaping' (Lutz and White 1986, 417). Regarding studies of Indigenous understandings of emotions, Lutz and White observed that 'translation', or explicating the social meanings of emotions, was one of the common problems encountered (Lutz and White 1986, 418). They also alluded to the problems posed by the assessment of hidden or transformed affects (Lutz and White 1986, 418), identified as the tendency within some cultures 'to variously mute or elaborate conscious recognition of particular emotions' (Lutz and White 1986, 418).

Some of the 'translation' issues identified by Lutz and White were encountered by the anthropologist, Victoria Burbank, in her study of anger and aggression among Aboriginal

women in northern Australia. As Burbank observed, when she learned that a certain Indigenous word meant 'angry', she thought that she knew what the speaker meant. However, she soon found out that she did not, and that she had to 'learn to envision new scenarios based on new scripts and new theories' (Burbank 1994, 47). As Edward Schieffelin remarked, cultural anthropologists routinely assume that words provide an entrée into the conceptualisations of other people (1985), but, as Burbank discovered, the meaning of emotion words cannot be derived from the words themselves (1994, 48). Thus, as Burbank (1994, 47) found, 'cultural translation goes awry when a word that is accessible stands for a whole that is not'.

This was also the experience of Fred Myers in his research among Pintupi Aborigines, where he found that emotion words, such as 'anger', 'fear' or 'compassion', could only be understood within the social structure and cultural context that determined the meaning and content of these emotions (1988, 591). As Myers pointed out, word use by itself does not guarantee feeling, and conversely, 'feelings' are 'notably complex and ambivalent' (1979, 344). As William Reddy (1997, 331) has further argued,

> 'emotion utterances' not only describe a person's feelings to themselves and to others, but they also have the capacity to modify those feelings, signalling the caution needed to be taken when engaged in cross-cultural research into 'emotives' and 'emotion regimes'.

In his 1979 article on 'emotions and the self', Myers alluded to some of the methodological issues encountered by anthropologists researching emotions, and, in this respect, he observed that characterising a feeling is 'not as easy as it first appears', while the 'description of some "feeling" as this or that seems unlikely to account fully for its ambiguity' (1979, 344). As Myers found in his study of emotion among the Pintupi, 'it was frequently difficult to tell whether a person was genuinely "angry" (feeling angry) or whether that display was a "cultural performance"' (1979, 348). In this latter regard, Myers reported that he found it very difficult to elicit private or individual interpretations of Aboriginal experience, related to feelings (1979, 347). Rather, his informants emphasised cultural expectations more than they did self-conscious introspection (Myers 1979, 348). As Myers concluded, 'Pintupi talk of emotion, then, is not necessarily the talk of "raw experience"' (1979, 348). Yet, as evident from the Timber Creek case, it is the public articulation of this 'raw experience', expressed by individuals in terms of 'negative' emotion words, such as 'loss', 'hurt', and 'pain', which is what is required.

While Mansfield J referred to the 'pain and suffering' of individual witnesses, and McGrath has suggested that, 'compensation cases would do well to focus more on individuals rather than societies' (2017, 3), in his 2016 judgment, Justice Mansfield repeatedly observed that native title is a communal title (*Griffiths* at 175, 178, 219). For example, his Honour, explicitly stated that, 'I accept that the component awarded for solatium should be assessed having regard to the communal native and collective ownership of the native title rights and interests' (*Griffiths* at 301). However, as the lay evidence presented in the trial established, the impacts of extinguishment were experienced and expressed by individuals within the claim group, and not collectively, by the claim group, as a whole. Herein lies one of conundrums of native title-related compensation claims, evident in the tension between the varied emotional content of an individual's connection to country (see Myers 1986, 128), or that of a kindred (Myers 1986, 132) on one hand, and the legal reality of communal Indigenous title on the other. As previously

mentioned, the gendered and age-based articulation of Aboriginal connection, and associated land-based responsibilities and obligations, means that not all members of the claim group will be similarly affected by a compensable act.

Unlike Burbank and Myers, who spent several years undertaking fieldwork in Aboriginal Australia, researching the cultural construction and social expression of emotions, and developing enduring relationships with the members of a community, in my experience, anthropologists researching native title claims, including compensation claims, do so in quite limited time frames, often-times with Indigenous groups previously unknown to them. As Burbank found at the beginning of her research into emotions in an Arnhem Land community, Aboriginal women often responded to her probing questions about events that might evoke emotional states with silence or disinterest (1994, 9). While Fred Myers found that a person's claim to 'land ownership' is 'an emotional one' (1979, 358), he also experienced similar difficulties to Burbank in eliciting individual Pintupi 'concepts of the emotions', particularly relating to the death of a relative (Myers 1979, 347). The experiences of Burbank and Myers in researching Indigenous concepts of emotions has obvious implications for the capacity of those anthropologists researching compensation claims, to document and revisit the trauma associated with the loss of country and/or the existential distress resulting from the degradation of that country.

As Myers also found, among Pintupi Aborigines, the idea and experience of separation, from both places and people, evoked a range of what Western observers might regard as disparate and distinct feelings, including 'homesick', 'pining', 'lonely', 'worry', 'sulky', and 'melancholy'. For Pintupi people, these were collectively conveyed in the emotion word, 'watjilpa' (Myers 1979, 361; 1988, 600). As Myers' research demonstrates, there is a conceptual ordering and structure to Pintupi emotion concepts, wherein, for example, sympathy and violence, and compassion and anger, are socially related and culturally coordinated (1988, 595), specifically in relation to Pintupi notions of relatedness and autonomy. Edward Schieffelin, in his study of emotions, among the Kaluli of Papua New Guinea, also found that affect, particularly the emotions of shame, anger and grief, were related to one another as a 'cultural system' (1983, 190), informed by the Kaluli scheme of reciprocity.

In contrast to the 'cultural view of emotions', epitomised by the work of Myers, Schieffelin, and others (see Rosaldo 1989) – with its emphasis upon the social structure and cultural context of specific groups (for example, the 'Pintupi' or the 'Kaluli') in determining the meaning and content of emotions – trans-disciplinary research in Australia documenting the experience of 'solastalgia' examines how emotion concepts are used to negotiate the social reality associated with development-related change and ecosystem distress in a wider community of affected people. This research also provides some useful theoretical insights and methodological guidelines for researching future compensation cases, particularly given the emphasis placed upon the loss of 'solace' in the Timber Creek judgment. As Connor et al. (2004) observed, the concept of solastalgia brings together a range of social, cultural, and historical experiences, which are often lacking in the constructionist view of Indigenous emotions (see Myers 1979). The concept also helps to explain the relationship between profound environmental change and place-based pathologies, and the factors which ultimately contribute to the state of solastalgia. Thus, one of the heuristic values of the notion of solastalgia is that it provides a conceptual structure for understanding emotions, emphasises the relational and broad contextual

aspects of emotions, and recognises the somatic and cultural nature of emotions (Glaskin 2012, 83), similar to the 'social determinants of health' perspective (see Burbank 2011, 1). Significantly, and in contrast to those studies focused on 'lost places' and 'displaced people' (see Read 1996), the concept of solastalgia focuses upon the experience of people, such the claimants in the pastoral station case study discussed in this article, or the Aboriginal residents of Timber Creek, who continue to live on their traditional homelands and, yet, who, for a range of reasons, experience a sense of powerlessness and injustice, and a loss of solace, from their present relationship to that 'home' (Albrecht 2005, 44).

To conclude, with its disciplinary emphasis upon the social meaning and the cultural construction of emotions, anthropological research into the issues associated with compensation claims under the 1993 *Native Title Act* has the real potential to animate the overly legalistic and functionalist presentation of Indigenous native title, as well as provide an important bridge in the cross-cultural understanding of the effects and impacts of Indigenous dispossession. As Lutz and White (1986, 431) observed, '[i]ncorporating emotion into ethnography will entail presenting a fuller view of *what is at stake* for people in everyday life'. As evident from the Timber Creek case, what is at stake in Indigenous compensation claims is ultimately the legal acknowledgment of, and reparation for, the historical dispossession of Aboriginal and Torres Strait Islander people.

Notes

1. One senior lawyer suggested that, given the many legal obstacles that need to be overcome in achieving a successful compensation claim outcome, the 2016 Timber Creek judgment 'offers no more than a glimmer of hope' (Dore, M. 2018, pers. comm., 28 February).
2. In this respect, in the Timber Creek judgment, Mansfield J noted that the Northern Territory *Lands Acquisition Act*, 'supported or required by s 51(4) of the NTA – accommodates the Court compensating for the loss of the use of the land itself, derived from the breaking of the spiritual relationship and disruption to that relationship with the land' (*Griffiths v Northern Territory of Australia* (no. 3) (2016) FCA 900 at 209).
3. Up until July 2017, the Timber Creek decision was under appeal. On 20 July 2017, the Full Federal Court of Australia handed down its appeal decision in the Timber Creek compensation case. The Full Federal Court upheld the primary judge's decision in relation to the award of non-economic/intangible loss (*Griffiths v Northern Territory of Australia* (n. 3) (2016) FCA 900).
4. The Applicant also filed an 'Expert Economists' Report', prepared by the anthropologist, Dr Jon Altman (*Griffiths* at 68). However, because Dr Altman synthesised his views on tangible economic loss with less tangible cultural loss, Mansfield J, who chose to exclude the elements of economic loss from his consideration of the solatium payment, placed 'no particular weight' on Altman's evidence (*Griffiths* at 367). Mansfield J also referred to the work of the anthropologist engaged by the Northern Territory, Professor Basil Sansom (*Griffiths* at 348). These two reports are not publicly available.
5. This example raises the issue about the relationship between 'knowledge of place' and 'emplaced knowledge' (see Rumsey 2001, 12), and the sustainability of that relationship in the context of physical, environmental transformation, for example, or restricted access (see Weiner 2001, 235; Bird Rose 2001, 117) – an issue which lies at the heart of the Timber Creek compensation case. In this respect, I note here Redmond's critique of Nancy Munn's portrayal of Aboriginal country as an 'object-system external to the conscious subject' (Redmond 2001:136).
6. Although the original compensation application has been discontinued, I have been specifically requested by the Aboriginal Representative Body, which represented the Applicants in

this case, not to identify by name, either the claimant group or individual claimants. For this reason, I refer to the Aboriginal people involved in the compensation claim as 'claimants' and/or as the 'claim group'.

7. Although, as Tamisari observed, in Australian Aboriginal studies 'it is only relatively recently that the significance and complexity of the affective and experiential aspects of the relationship between Aboriginal people and land has been considered' (Tamisari 1998, 249).

Disclosure Statement

No potential conflict of interest was reported by the authors.

References

Albrecht, Glenn. 2005. "Solastalgia, a New Concept in Human Health and Identity." *Philosophy Activism Nature* 3: 41–44.

Allingham, Anne. 1977. *Taming the Wilderness: The First Decade of Pastoral Settlement in the Kennedy District*. Townsville: History Department, James Cook University of North Queensland.

Altman, J. C., and D. P. Pollack. 1999. "Reforming the Northern Territory Land Rights Act's Financial Framework into a More Logical and More Workable Model." CAEPR Working Paper No. 5/1999.

Appadurai, A. 1996. *Modernity at Large: Cultural Dimensions of Globalization*. Minneapolis: University of Minnesota Press.

Berndt, C. 1950. "Women's Changing Ceremonies in Northern Australia." *L'Homme* 1: 1–87.

Bird Rose, Deborah. 1992. *Dingo Makes Us Human: Life and Land in an Aboriginal Australian Culture*. Cambridge: Cambridge University Press.

Bird Rose, Deborah. 1996. *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*. Canberra: Australian Heritage Commission.

Bird Rose, Deborah. 2001. "Sacred Site, Ancestral Clearing, and Environmental Ethics." In *Emplaced Myth: Space, Narrative, and Knowledge in Aboriginal Australia and Papua New Guinea*, edited by A. Rumsey and J. Weiner, 99–120. Honolulu: University of Hawai'i Press.

Bottoms, Timothy. 2013. *Conspiracy of Silence: Queensland's Frontier Killing-Times*. Sydney: Allen and Unwin.

Burbank, Victoria Katherine. 1994. *Fighting Women: Anger and Aggression in Aboriginal Australia*. Berkeley: University of California Press.

Burbank, Victoria Katherine. 2011. *An Ethnography of Stress. The Social Determinants of Health in Aboriginal Australia*. New York: Palgrave Macmillan.

Commonwealth of Australia. 1997. *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Canberra: Commonwealth of Australia.

Connor, Linda, Glenn Albrecht, Nick Higginbotham, Sonia Freeman, and Wayne Smith. 2004. "Environmental Change and Human Health in Upper Hunter Communities of New South Wales, Australia." *EcoHealth* 1 (Suppl. 2): 47–58.

Descola, Phillipe. 2013. *Beyond Nature and Culture*. Chicago, IL: The University of Chicago Press.

Glaskin, Katie. 2012. "Empathy and the Robot: A Neuroanthropological Analysis." *Annals of Anthropological Practice* 36 (1): 68–87.

Griffiths v Northern Territory of Australia (no. 3) (2016) FCA 900.

Hunter, Ernest. 1993. *Aboriginal Health and History: Power and Prejudice in Remote Australia*. Cambridge: Cambridge University Press.

Ingold, Tim. 2000. "Hunting and Gathering as Ways of Perceiving the Environment." In *The Perception of the Environment: Essays on Livelihood, Dwelling and Skill*, 40–61. London: Routledge.

Jacobs, Jane M. 1997. "The Consequences of Ruins: Contemplations on Social Memory and Loss of Place in Australia: Review Article." *Journal of Historical Geography* 23 (4): 500–505.

Jebb, Mary Anne. 2002. *Blood, Sweat and Welfare: A History of White Bosses and Aboriginal Pastoral Workers*. Crawley: University of Western Australia Press.
Keating, Paul. 1993. Second Reading Speech. Native Title Bill 1993, 16 November 1993. House of Representatives Official Hansard. *Parliamentary Debates*. No. 190, 1993. Canberra: Commonwealth of Australia.
Lutz, Catherine and Geoffrey M. White. 1986. "The Anthropology of Emotions." *Annual Review of Anthropology* 15: 405–436.
May, Dawn. 1983. *From Bush to Station: Aboriginal Labour in the North Queensland Pastoral Industry, 1861-1897*. Townsville: History Department, James Cook University of North Queensland.
McGrath, Pamela Faye. 2017. "Native Title Anthropology after the Timber Creek Decision." *Land, Rights, Laws: Issues of Native Title* 6 (5): 1–5.
McNamara, Karen Elizabeth, and Ross Westoby. 2011. "Solastalgia and the Gendered Nature of Climate Change: An Example from Erub Island, Torres Strait." *EcoHealth* 8: 233–236.
Munn, Nancy. 1970. "The Transformation of Subjects into Objects in Walbiri and Pitjantjatjara Myth." In *Australian Aboriginal Anthropology*, edited by R. M. Berndt, 141–156. Nedlands: University of Western Australian Press.
Myers, Fred R. 1979. "Emotions and the Self: A Theory of Personhood and Political Order among Pintupi Aborigines." *Ethos (berkeley, Calif)* 7 (4): 343–370.
Myers, Fred R. 1986. *Pintupi Country, Pintupi Self: Sentiment, Place, and Politics among Western Desert Aborigines*. Canberra: Australian Institute of Aboriginal Studies.
Myers, Fred R. 1988. "Burning the Truck and Holding the Country: Property, Time and the Negotiation of Identity among Pintupi Aborigines." In *Hunters and Gatherers: Property, Power and Ideology*, edited by T. Ingold, D. Riches, and J. Woodburn, 52–75. Oxford: Berg.
Nygh, Peter E., and Peter Butt. (General Editors) 1998. *Butterworths Concise Australian Legal Dictionary*. Sydney: Butterworths.
Parker, Kirstie. 2012. "Pssst, Mate. What's This *Mabo* Thing?" In *The Limits of Change: Mabo and Native Title 20 Years On*, edited by Toni Bauman and Lydia Clark, 115–124. Canberra: AIATSIS Research Publications.
Peterson, Nicolas. 2011. "Is the Aboriginal Landscape Sentient? Animism, the New Animism and the Warlpiri." *Oceania; A Journal Devoted To the Study of the Native Peoples of Australia, New Guinea, and the Islands of the Pacific* 81 (2): 167–180.
Poirier, Sylvie. 2005. *A World of Relationships: Itineraries, Dreams and Events in the Australian Western Desert*. Toronto: University of Toronto Press.
Povinelli, Elizabeth A. 1993. *Labor's Lot: The Power, History, and Culture of Aboriginal Action*. Chicago: The University of Chicago.
Povinelli, Elizabeth A. 1995. "Do Rocks Listen? The Cultural Politics of Apprehending Australian Aboriginal Labour." *American Anthropologist* 97 (3): 505–518.
Read, Peter. 1996. *Returning to Nothing: The Meaning of Lost Places*. Cambridge: Cambridge University Press.
Reddy, William. 1997. "Against Constructionism: The Historical Ethnography of Emotions." *Current Anthropology* 38 (3): 327–351.
Redmond, Anthony. 2001. "Places That Move." In *Emplaced Myth: Space, Narrative, and Knowledge in Aboriginal Australia and Papua New Guinea*, edited by A. Rumsey and J. Weiner, 120–139. Honolulu: University of Hawai'i Press.
Redmond, Anthony. 2005. "Strange Relatives: Mutualities and Dependence Between Aborigines and Pastoralists in the Northern Kimberley." *Oceania; A Journal Devoted To the Study of the Native Peoples of Australia, New Guinea, and the Islands of the Pacific* 75 (3): 234–247.
Rosaldo, Renato. 1989. "Introduction – Grief and a Headhunter's Rage." In *Culture and Truth: The Remaking of Social Analysis*, 1–25. Boston, MA: Beacon Press.
Rumsey, Alan. 2001. "Introduction." In *Emplaced Myth: Space, Narrative, and Knowledge in Aboriginal Australia and Papua New Guinea*, edited by A. Rumsey and J. Weiner, 1–19. Honolulu: University of Hawai'i Press.

Schieffelin, Edward L. 1983. "Anger and Shame in the Tropical Forest: On Affect as a Cultural System in Papua New Guinea." *Ethos* 11 (3): 181–191.
Schieffelin, Edward L. 1985. "Anger, Grief and Shame: Toward a Kaluli Ethnopsychology." In *Person, Self, and Experience: Exploring Pacific Ethnopsychologies*, edited by G. White and J. Kirkpatrick, 168–182. Berkeley: University of California Press.
Stephenson, M. 1995. "Compensation and Valuation of Native Title." In *Mabo: The Native Title Legislation*, edited by M. A. Stephenson, 135–155. St Lucia: University of Queensland Press.
Strang, Veronica. 1997. *Uncommon Ground: Cultural Landscapes and Environmental Values*. Oxford: Berg.
Tamisari, Franca. 1998. "Body, Vision and Movement: In the Footprints of the Ancestors." *Oceania; A Journal Devoted To the Study of the Native Peoples of Australia, New Guinea, and the Islands of the Pacific* 68 (4): 249–271.
Weiner, James. 2001. "Afterword." In *Emplaced Myth: Space, Narrative, and Knowledge in Aboriginal Australia and Papua New Guinea*, edited by A. Rumsey and J. Weiner, 233–247. Honolulu: University of Hawai'i Press.