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Land claim legacies, native title, and the rigours of Indigenous politics

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Abstract

My studies in the Northern Territory/Queensland border region of Australia's Gulf Country indicate continuing tense negotiations among Waanyi/Garawa people concerning the inclusion/exclusion of particular persons as traditional owners and recipients of benefits from various economic ventures. Despite commonly expressed Indigenous views that stress the importance of sustaining continuity of traditional 'law', this points to the importance of addressing change, as assuming that the model of traditional ownership articulated in a land claim 40 years ago will not undergo modification would be naïve. Subsequent generations have come to define connections to Country more flexibly than the earlier documented system of inheritance through patrilines and mother's patrilines. Native title, land claims, and mining negotiations on the Queensland side of the border have influenced this outcome. I address risks of legal rigidification of customary law driven by the practical availability of the original Northern Territory land rights research. That earlier completed work has become a focus for appeals to cultural authenticity and strategic traditionalism among Indigenous protagonists fuelled in part by competition for money and related resources. While research such as mine from the 1980s

remains essential in decision-making, it needs to be updated and approached with a methodology open to the significance of cultural change. This difficult area of anthropological work deserves more analytical attention, recognition, and support.

KEYWORDS

applied anthropology, cultural change, Indigenous politics, land claims, native title

1 | INTRODUCTION

In October 2021 I was asked by several Waanyi people, through a law firm representing their interests, for an opinion on family members allegedly being excluded in a meeting to discuss money available due to various activities on the Waanyi-Garawa Land Trust.[1] The Northern Land Council, based in Darwin, had the difficult task of arranging meetings to distribute funds earned through such land uses as contract cattle mustering and mining exploration. The Trust land includes some traditionally significant areas that extend eastwards to straddle the Northern Territory/Queensland border in the mainland Gulf of Carpentaria region. During the early 1980s I had prepared expert opinion documents for the Nicholson River (Waanyi/Garawa) Land Claim (hereafter NRLC). I had carried out anthropological research that encompassed cultural mapping of spiritual affiliations to Country and preparation of genealogies of families asserting traditional connections. In 1985 the Aboriginal Land Commissioner (ALC, 1985) recommended to the relevant Commonwealth minister that the traditional owners be recognised under the *Aboriginal Land Rights (Northern Territory) Act 1976* (hereafter 'ALRA' legislation that is discussed in Francesca Merlan's Introduction to this collection).

At the time of the request, in 2021, several men for whom a significant Rainbow Dreaming estate stands as father's mother's Country and two women for whom it is mother's mother's Country had separately queried why they would not be included among the wider body of decision-making traditional owners. In the case where I was asked to comment, sons of two deceased men who were 'main *junggayi*', persons with senior ritual responsibilities during their lives, had apparently not been invited while the two women felt they were ignored though the Country stands to them as inherited through their maternal grandmother. An implication was that those who felt marginalised did not hold 'primary spiritual responsibility' as defined under the land rights legislation. There was concern from those who felt excluded as to whether local politics more so than customary law was driving decisions about social inclusion and distribution of funds. Though reticent to become embroiled in such contestation, my agreement to prepare a brief report arose from my lengthy working relationship with the families. From years of research in the region I was familiar with the difficult issue of whether it was traditional law or arguments between individuals over money and related tensions that had become the basis for important decisions.

This paper canvasses matters arising from the legacies of the Northern Territory land rights legislation in light of cultural change among Waanyi and other Aboriginal people of the Gulf region. Of particular significance is a vigorous politics of negotiation over multiple adjacent

claims under both the Queensland *Aboriginal Land Act 1991* and the federal *Native Title Act 1993*. Negotiations over mining and national park management in Queensland have similarly had repercussions for how traditional estates in the Northern Territory have been contested following the successful Nicholson River land claim. Communications I have received regularly over the years from Indigenous persons with traditional links to the Land Trust area have focused on interpersonal and family relationships, cultural, financial, and local political interests. A long-established politics of status relations expressed in terms of contested knowledge has appeared to exercise increasing influence over rights in Country.

Relevant matters include beliefs about traditional ownership that were documented during the 1980s that have been subject to modifications over time despite idealist assertions from some residents in the region that traditional 'Law' never changes (Martin & Trigger, 2015). In this context there has emerged a risk of rigidification of orally communicated knowledge that I documented in the Northern Territory land claim research. Deep seated convictions have continued concerning cultural connections to the Country of deceased forebears. However, these beliefs have become entangled with and influenced by forms of strategic traditionalism, loss of certain knowledge, and imperatives to secure funds for a range of reasons, including escaping poverty and advancing the interests of close family members.

It is well documented that Northern Territory land claims benefited greatly from anthropological reports prepared by researchers and expert witnesses (Hiatt, 1982, 1984; Keen, 1984; Peterson, 2006, 2023; Peterson & Langton, 1983; and see other articles in this issue). This work has been of critical importance in translating Indigenous understandings of tradition-derived rights in Country into the legal procedures and definitions of the Land Rights Act. It is also well known that anthropologists aware of the challenges have debated the ethics and practicalities of land claims work. Early assertions about remaining uninvolved in legal cases to avoid compromises arising in such applied social research (Cowlishaw, 1983; Hiatt, 1982, 1983) were quickly superseded by the scale of requests from Indigenous land councils and other parties. While similar disagreements continued among academics into the native title era from the early 1990s (Austin-Broos et al., 2012; Trigger, 2011) there is no question about the substantial role of anthropological expertise in both the practical resolution and intellectual investigation of cultural dynamics implicated in both land claims and native title applications (Burke, 2011; Merlan, 1995, 2007, 2018, 2020).

As far back as the early 1980s, at the time of my research as a young anthropologist engaged to work on the NRLC, the complications of fitting complexities of adapted Indigenous customary law with the legal definitions of the Land Rights Act were recognised (as discussed in Dayne O'Meara's contribution to this collection). Hiatt (1984) edited an informative monograph that in my view could productively receive more attention than appears the case today. In his Introduction he notes the then recent 'union of anthropology and the law' (Hiatt, 1984, p. 6). Importantly for this article, he comments on what was to become the widely recognised outcome that land rights brought official recognition as 'traditional owners' (TOs), whereby people who achieved that standing potentially stood to gain materially. They would also achieve 'influence and status within the general Aboriginal community' (Hiatt, 1984, p. 8) or, put another way, 'a potential springboard to fame' (p. 28). His discussion has been prescient for the case I deal with here in that issues of financial benefits as well as competitive status relations regarding traditional knowledge have informed debates over Waanyi Country now for decades.

2 | TRADITIONAL LAND LAW IN THE 1980s

My report prepared for the Northern Territory land claim concluded that people had a primary spiritual responsibility for Country inherited from their father, and where known, their paternal grandfather. It could be described in English as 'my home country', and according to the formal system of land tenure articulated by senior claimants, people were known as *mingaringgi* (also termed *nimaringgi*) for land inherited through patrifiliation. Both men and women had a *mungguji* relationship, an essential spiritual identity, with that land. My efforts in translating this customary aspect of land tenure were that through a male line of descent people inherited primary spiritual responsibility, using the wording of the Land Rights Act, for totems or 'Dreamings' and the Country and ceremony that was based on them. Distinguishable 'estates' affiliated with one of the four semi-moiety or 'skin' categories were mapped though boundaries between them were much more like zones of transition than precise cartographic borders. These findings were consistent with earlier academic study in the region (Sharp, 1935, 1939), as well as research for the Borroloola land claim that had been carried out some 4 years prior, to the northwest of the Nicholson River block (ALC, 1979; Avery & McLaughlin, 1977).

Also listed as claimants were those for whom discrete areas stood as mother's father's Country. My report dealt in some detail with structural aspects of the status as *junggayi* for a person's *buwaraji*, Country inherited through their maternal grandfather. Senior claimants explained the significance of this relationship as 'just like a JP', 'for security', and like a 'policeman', indicating an oversight role in looking after mother's cultural property. The intimacy of connections to mother's Country was reflected in the English expression 'my milk' referring to breast milk. In the ideal system, subject to the usual negotiations through everyday social interaction, a kinship skewing rule could be used to facilitate all close relatives affiliated to an estate through their mother's father being classified as siblings in a way that effaces intergenerational distinctions (McConvell, 2012, p. 250; Scheffler, 1978, pp. 396, 416; Trigger, 1982, p. 25). The significance of rights to mother's father's Country and whether this should have been a basis for inclusion as claimants under the land rights legislation was at the time debated among anthropologists and lawyers (Gumbert, 1981, pp. 114, 115; Maddock, 1983; Morphy & Morphy, 1984). A key question was, as now, to what extent should or can 'ownership' rights granted under Australian law endeavour to mirror precisely the complexities of customary law?

In traditional law, the respective rights of *mingaringgi* and *junggayi* were arguably ranked while being complementary in the formal system of ceremony linked to customary land tenure. There was among some of the NRLC claimants with whom I worked a stress on the primacy of spiritual connections to father's Country such that mother's father's lands were a less spiritually intimate form of cultural custodianship. However, as described by Bern and Layton (1984), writing in relation to another Gulf Country claim (Cox River), many claimants also recognised that people were linked traditionally to the estates of all four of their grandparents. In the context of my work on the NRLC, apart from whether this aspect of traditional law might enable such a broad group to have 'traditional owner' rights recognised, there was the clear importance of considerable cultural change. It was common for people to lament a loss of intergenerational knowledge about such discrete kinds of genealogical inheritance of connections to Country.

In one way of looking at my data, for those who had been born and lived under the Mission administrations at Doomadgee and Mornington Island in Queensland (Dalley & Memmott, 2010; Memmott, 2012; Trigger, 1992), it made sense to put forward all of their Waanyi forebears as transmitting rights. Many middle-aged and younger people, it seemed at the time, would have been comfortable with that outcome. However, in 1982, some influential senior claimants committed

to what they understood to be a more traditional form of rights in land took the less expansive position that people should be included just for their paternal and maternal grandfathers' estates. Nonetheless, including *junggayi* (or 'managers' as termed in the anthropological literature) was thereby still more expansive compared with groups based in the west at Borroloola, where ceremonial life had continued and where connection through father was primary. As decided by the Aboriginal Land Commissioner (ALC, 1979) in the Borroloola land claim, the children of female members of patriclans did not hold primary spiritual responsibility for land, and hence did not come under the legal definition of traditional owners. For most Waanyi persons among the NRLC claimants there was, in contrast, little interest in whether a mother's patriclan Country inheritance was somehow less like 'land ownership' than father's Country.

In relation to maternal grandfather's land connections, all but two people in the Waanyi claim were included as TOs simply on the basis of their known genealogical connection to an estate through their mother's patriline. Proceeding in this way, at the direction of senior claimants, the Waanyi case downplayed if not ignored a range of complications that I was aware of at the time. Subsequently, the significance of these complications was elaborated on and confirmed 5 years later when I was engaged to research the Robinson River Garawa land claim not far to the northwest. Among the Garawa claimants in the late 1980s, whose traditions had undergone less change than among Waanyi people based in Queensland, *junggayi* were spiritually connected primarily to particular sites rather than to the overall cultural landscape in their mother's Country. Furthermore, spiritual responsibility for and affiliation to sites among those structurally in the position of *junggayi* was ranked among claimants according to recognised seniority.

In my Robinson River (Mugularrangu) Land Claim report (Trigger, 1989), addressing rights among Garawa people whose language was mutually intelligible with Waanyi, I discussed whether all claimants could be understood as holding primary spiritual responsibility for their mother's patriclan Country. As with the earlier Borroloola claim the decision among senior people was that mother's Country was not a basis for being recognised as a TO under the Land Rights Act (ALC, 1991). Of some importance was the view that there was a clear designation of 'leader' or 'main' *junggayi* persons distinct from individuals yet to attain sufficient seniority to be holding primary rights in their mother's Country. Furthermore, these senior *junggayi* were not necessarily actual children of women whose father's Country was at issue, as their rights arose from embodying the appropriate 'skin' or subsection/semi-moiety relationship with particular sites. Hence the spiritual connections of the most significant *junggayi* were commonly based on putative descent from totemic ancestors (Trigger, 1989, pp. 18–23).

Owing to greater cultural change and loss of traditional knowledge in the vicinity of the Queensland border, the latter kind of inclusion as 'leader *junggayi*' only applied in the earlier Nicholson River Land Claim for two men, both defined by the Land Commissioner as 'incorporated'. This was based on claimants' evidence, as well as my anthropological opinion, namely:

> ... that their general semi-moiety affiliation makes them both *junggayi* for the estates; that they have senior ritual responsibilities; and that they are perceived to be descended from the same mythic ancestors as the other members of those groups.
>
> (ALC, 1985, pp. 11, 12)

For one such 'leader *junggayi*', Ned Lewis (Dambadamba), he explained (Trigger, 1982, p. 75) that he was 'offsider *junggayi*' for a NRLC estate that stood to him as *buwaraji*, mother's Country, as he had been assigned this responsibility by the then deceased senior man for whom it was father's Country. His cultural knowledge was widely acknowledged, as was his view that

substantive spiritual responsibility awaited a younger man for whom the estate was actual mother's Country. That man would then be *junggayi* for the important sites on the land when sufficiently senior to manage esoteric aspects of the totemic features of the estate.

In both the NRLC and Robinson River cases I was also careful to document the aspect of customary knowledge whereby individuals could potentially 'take over' the role of *junggayi* from their father. This occurred when the person's traditional knowledge status was sufficient. To use the language of the Land Rights Act, persons could take over primary spiritual responsibility for their actual or putative paternal grandmother's Country. As Ned Dambadamba said, 'I'm taking over from my father—he was *junggayi*, now I'm *junggayi*' (Trigger, 1982, p, 26). This appears to be common in literature addressing traditional land tenure across the Gulf region. In their contribution to the 1980s anthropological debate about the rights of *junggayi* in Country further to the northwest of the Nicholson River land claim, Morphy and Morphy (1984, p. 49) similarly note that 'sons of djunggayi' could 'inherit their father's status through the acquisition of knowledge'.

Hence, in the context of the 2021 complaints about being marginalised from significant decisions regarding benefits from the Waanyi-Garawa Land Trust, flexibilities evident in the research from the early 1980s supported those arguing that they should have been included for their paternal grandmother's Country about which they asserted senior cultural knowledge. They suggested, reasonably in my opinion based on relevant research over many years, that they had accumulated and managed knowledge of the Rainbow Dreaming estate. The three men had been initiated in Garawa Country to the northwest, and this embrace of traditional law was not the case for many other Waanyi men included in the 2021 meeting. My data from the early 1980s was less definite in light of the query from two women about their exclusion from the meeting discussing their maternal grandmother's Rainbow estate. The research found that individuals held a form of secondary spiritual connection to their '*gugudi* [grannie] Country'. They were *mingaringgi* with secondary rights though this was discussed particularly in relation to expected roles in ceremonies that had in fact ceased in the Northern Territory/Queensland border area for many decades. It is significant, however, in the context of cultural change over some 40 years since the NRLC outcome, that the two women were hardly deterred from suggesting they held intimate cultural connections to their 'grannie Country'. An inconsistency was also likely in that others who attended the meeting were similarly connected to the Land Trust through a maternal grandmother.[2]

Before addressing the implications of cultural change, especially in the context of native title legislation and outcomes for Waanyi people in Queensland immediately adjacent to the Waanyi-Garawa Land Trust, it is important to also broach other flexibilities built into the system of traditional land tenure as I had come to understand it in the 1980s. Given the extent to which the Land Council compiled its register of land interests over the years, we can expect the original evidence from claimants and the findings presented by me as the anthropologist to have informed decisions over time about who are the 'traditional owners' as discussed in Dayne O'Meara's contribution to this collection. The Land Commissioner's report, in particular, will have influenced considerably the list of TOs and hence who should be attending decision-making meetings like the one that prompted the subsequent approach to me in 2021.[3]

However, in an important contribution relatively early in the land rights era, anthropologist Smith (1984) points out that the Land Council is not legally bound by Commissioners' findings in relation to the list of TOs. The Land Council actually has a discretionary role of preparing and monitoring an authoritative list which need not be identical with the Land Commissioner's original finding. The events swirling around the 2021 meeting at Doomadgee, including considerable public disputation, indicates how this responsibility can leave anthropological, legal, and other

Land Council staff with the stressful task of resolving what have been for many years now often highly contentious matters encompassing the rigours of Indigenous politics.[4]

Smith (1984, p. 86) further discusses that the statutory definition of traditional ownership was unsuited to the flexibilities and complexities evident in the diverse ways Aboriginal people relate to land:

> It has become apparent that Aboriginal people recognise a variety of rights in land, some deriving from sources not anticipated in the Act (e.g. rights and spiritual affiliation to mother's land, to land where one was conceived and/or born, to land where one grew up, and to where one's father died).

Hence from an early stage of land rights it was foreshadowed as an especially important option that the land councils would adopt a flexible approach over time and respond to the forms of negotiation contemplated under the requirements of traditional beliefs.

This was implied, though not explicitly acknowledged in the NRLC findings, in the Land Commissioner's acceptance of the negotiable transferability of rights across persons and families of the same semi-moiety, an issue that had been raised from the time of the first land claim in the Gulf region at Borroloola. The anthropologist assisting the Land Commissioner in the Borroloola claim had defined semi-moieties or 'skin' groups as like 'clans' with a commonly owned suite of Dreamings and Country (Reay, 1977, p. 10). Subsequent anthropological research among Yanyuwa people in the region arrived at the same conclusion (Bradley, 2010).

This and the wider range of potential assertions about rights in Country that were articulated by Smith were evident in my early 1980s land claim report though they remained marginal to the Land Commissioner's final legal definition of who were the TOs holding 'primary spiritual responsibility'. Nevertheless, the Commissioner's findings allowed for future modification to the list of traditional owners. When succession between estates, based on 'skin' affiliations and geographic proximity, was canvassed in the proceedings, it was accepted that this was embedded in an ongoing oral tradition that did not typically entail formal decisions that are unchanging forever. The judge quoted from the transcript of my expert opinion evidence that communal assent to succession arose over time and will prevail if there is a lack of challenge from key senior individuals. I made the point that this was done 'where such decisions are really codified by the spoken word'. It was my conclusion that agreement was not required from every member of the community (ALC, 1985, pp. 27, 28).

Similar flexibilities enabled intergenerational negotiation over those who should be recognised in Waanyi customary law as holding primary rights in locations subject to beliefs about spiritual conception. There were resulting intimate relations for individuals connected to particular sites. During land claim research, several older persons were believed to have been spiritually 'found' (or 'made') at places resulting in a personal totemic connection there. The location was described as 'my Dreaming' and as embodying the close intimacy of a *mungguji* relationship using the same descriptor as for father's Country. For a small number of older individuals, physical likenesses between the person and the totem present at the conception site were pointed out (Trigger, 1982, p. 29), a belief found across the Australian continent (Berndt & Berndt, 1988, pp. 235, 236). By way of illustration, Tommy George, one of the two 'main *junggayi*' whose adult son and brother's sons complained of being excluded from the 2021 Land Council meeting, explained during preparation of the land claim report that a mark on his chest was where his father had speared a goanna that then behaved unusually leading to recognition of that animal as Tommy's personal conception Dreaming. The location of the recounted and broadly recognised event on

the Queensland side of the border was adjacent to his mother's Rainbow Country, so not on the actual land claim area, but the fact of this spiritual identification with nearby lands underscored Tommy George's influence over decisions. While by the 1980s most claimants for what became the Waanyi-Garawa Land Trust area were conceived and born elsewhere, the conception places of a number of living and deceased forebears have continued to be proclaimed in disagreements over decision-making about Country and associated money distributions.

3 | IMPACTS OF NATIVE TITLE

The Waanyi native title claim research, undertaken some 20 years after the NRLC in 2003–2004, illustrates further forms of cultural change in tradition-derived connections to Country. Written jointly with anthropologist colleague Pauline Fietz, our expert anthropology report contributed to a legal consent determination for 17,900 km^2 of land in Queensland abutting the Northern Territory border (Trigger & Fietz, 2003). Unlike the adjacent part of Waanyi Country in the Northern Territory, claimed under the Land Rights Act, native title rights were framed much more broadly on the basis of general descent from any recognised Waanyi person. Many claimants also had forebears with other language group affiliations and/or non-Aboriginal identities. One similarity with the earlier land claim was that adoption was broadly accepted. In the case of some individuals' lengthy absence from the native title claim area there were negotiations over people seeking to achieve group acceptance. In 2009 this resulted in a formal court hearing addressing contestation over a large family group's desire to achieve legal recognition based essentially on descent from an alleged Waanyi forebear who had not been put forward in the land claim 20 years earlier (Trigger, 2015a). The family had not been included to take part in the land claim proceedings.

Modifications to the system of traditional 'law and custom' as it is defined in native title terms were documented in our research. In particular, while discrete Dreamings, associated 'skin' categories, and Waanyi place names were recognised in different sub-areas across the claim in Queensland, the distinguishing of these parts of the Country arose from English labels of cattle stations or major watercourses. Some 70 years after Sharp's almost exclusive stress on patrifilial inheritance of rights, there had clearly been very substantial change whereby connection to father's Country was only one customary assertion. The transformation that was evident, albeit successfully minimised by influential persons in the early 1980s land rights claim, had been subsequently solidified in the native title era. There was now an accepted cognatic mode of reckoning links to land with a general acceptance that any form of descent from a Waanyi forebear was licit and deserving recognition in Australian law. In the context of native title research, this change has been discussed generally by Sutton (1998, pp. 45, 46, 67–69), whereby matrifiliation and other forms of connection become important principles of relations with Country as sedentarisation, disruption to previously followed marriage rules, non-Aboriginal parentage, and other social adaptations occur. The genealogies for the native title claim indicated that it was common for there to be an irregular zigzag of filiative steps by which the living trace connections to both male and female nodal ancestors (Sutton, 1998, p. 66).

Furthermore, a host of bases for claiming rights in Country emerged, including historical residence and assimilation of cultural knowledge about Country, particularly on cattle stations. Included as significant in the lives of some male forebears was when they were known to have been a 'king' of a cattle station or other Whitefella settlement. The substantial historical involvement of Aboriginal people on the pastoral properties led to the introduction by station

Whitefellas and policemen of designating certain Aboriginal men as holding the status. Kings were identified for particular station properties, a once important Turn Off Lagoon police depot that operated between 1889 and 1936, and a small-scale mining settlement through the 1890s until around 1920. Individuals were given 'king plates' to wear as a recognisable symbol of their authority (Trigger, 1992, pp. 51, 52; Trigger & Devitt, 1992; Troy, 1993). They acted as middlemen between Aboriginal camp populations and local Whitefellas. The designation of men understood to be influential as kings was devised as a tool to further assist the advancement of pastoralism and broader settlement activities in the region.

The maternal grandfather of brothers Tommy George and Don George, two 'main *junggayi*' for the Rainbow Dreaming estate that straddles the Northern Territory/Queensland border, was King George Gundawarinya. In an estate that was part of both the 1980s land rights claim in the Northern Territory and the native title claim in Queensland, he was known as a key Waanyi forebear. His nickname 'Wild Horse' was said to have been inscribed on his breast plate but it has never been found. Gundawarinya's personal history has been for years celebrated by many of his descendants, though with intergenerational negotiations over versions of the past he is nowadays at times transposed to memories of other 'kings' across the region. He came east during 'Wild Time' from his father's Country just across the border in the Northern Territory, was wounded likely by a native police party at a site on the Queensland side and was captured on the Nicholson River around 1907. He escaped and then was detained again and persuaded to come in to Turn Off Lagoon police depot. Oral accounts indicate that Gundawarinya was made 'king' of Turn Off Lagoon and acquired five wives and much influence (Trigger, 1992, p. 230).

Other forebears proclaimed as 'kings' also became key apical ancestors for families asserting tradition-based rights in cultural landscapes encompassing cattle stations. In the case of Lawn Hill, with a history of European settlement from 1875, a number of men known to have worn breast plates were proposed as underscoring their descendants' joint rights to the Country in which their earlier generations had succeeded to customary ownership. Ganduwarrmanyi, said to have been 'the oldest' and known as 'king blanta [belonging to] Wild Time', was likely named for the site Ganduwarra on the Nicholson River in the centre of the Land Trust, his life trajectory indicative of Waanyi eastern movements from the 1890s from estates in what became the Waanyi-Garawa Land Trust following the Land Rights Act claim (Figure 1). 'King Pedro', and at times also 'King Darby', were spoken of in speculation to have been sons of Ganduwarrmanyi partly because they were younger and given their own king plates (Figure 2). Pedro was known as the 'king blanta [belonging to] ringers [stockmen]' to indicate his status during the first decades of the 20th century when Aboriginal men were much involved in cattle work.

Pedro's descendants were claimants in the Nicholson River land claim as *mingaringgi* for father's Country and also *junggayi* for their mother's patri-Country. However, beginning with King Pedro's generation, customary ties arising from adapted cultural traditions became bases for 'taking over' Country to the east in what had been previously the domain of two language groups whose members did not survive the aftermath of colonisation (Trigger, 2015b). Pedro was said to have moved to Lawn Hill 'when they were shooting people down' according to his son Cubby Pedro, and he was among the Aboriginal people listed by pastoralist Frank Hann as resident at the station in 1895–96 (Trigger & Devitt, 1992, p. 31). His grandson Len Cubby subsequently became a significant Elder for both an ancestral estate on the NRLC Land Trust area and the families later asserting native title rights over what they named 'Lawn Hill Country' on the Queensland side of the border. They were, in the native title claim, together with descendants of certain other forebears known as the 'Lawn Hill mob'.

FIGURE 1 King (Breast) Plate, Ganduwarrmanyi, likely transcribed as 'Contawonmunga', unusual round shape, taken from Lawn Hill Station gate, 1970s. Cleaned, mounted and preserved. Courtesy of Ranald McKay and Susan Elder.

While the successful native title determination in Queensland Waanyi Country was ultimately achieved formally in December 2010,[5] by consent from the state government without the need for a trial, this had followed a tranche of multiple legal procedures involving various named Waanyi organisations, families, and individuals who contested the issue of who were the right traditional owners. The claims and counter claims were presented on a range of bases and differed starkly from the Land Rights Act claim that had occurred in the Northern Territory in 1982. By October 1996 there were at least four separate claims under the Queensland *Aboriginal Land Act* over the large area of Lawn Hill National Park.[6] The Waanyi parties included an organisation named 'Traditional Waanyi Elders Aboriginal Corporation',[7] a group associated with what was labelled the 'Dingo Law Dreaming Ceremony',[8] the 'Opal Aboriginal Corporation',[9] and 'Carpentaria Land Council'.[10] In late 2000 the Queensland Aboriginal Land Tribunal consolidated the claims under one named Waanyi Aboriginal Land Claim Association on behalf of all Waanyi people.[11] In 2001 a further claim was made by a Brisbane-based family identifying with the Nguburinji

FIGURE 2 King (Breast) Plate—King Pedro, Lawn Hill Station. Cleaned, mounted and preserved. Courtesy of Ranald McKay and Susan Elder.

language name on the basis of a proposed Nguburinji apical ancestor and arguing that Waanyi people had not achieved customary succession according to traditional law and custom.[12]

All of these legal matters, most of which involved my formal engagement to provide research-based expert opinion evidence, included much contestation as to culturally licit bases for traditional rights in Country. There was no settled approach to implementing what had been the *mingaringgi/junggayi* system of connections to land that was central to the NRLC. Indeed, there was considerable lack of knowledge across the parties making claims in Queensland of the details of the 'skin' system which underpinned the distinctions between the different estates in what became the Land Trust area. Dreamings, 'skin' significance, and related knowledge of spiritual features of land and waters were part of assertions about which families belonged across the cattle stations and other historical residences of Waanyi people in Queensland. However, the knowledge base and the trajectory of Indigenous evidence in the various attempted land claims and native title applications on the Queensland side of the border were a greatly modified version of the Land Rights Act claim in the Northern Territory.

Nevertheless, the influences on cultural knowledge over time had also been commented on in a forthright manner among the older generation of claimants in both my academic research and the studies for the earlier 1980s Northern Territory land rights claim. There was an acknowledged disjunct between individuals' life histories on cattle stations, as well as at Doomadgee Mission with its authoritarian Christian Brethren administration, and the new legal options that offered recognition of traditional land connections. I recorded such statements as: 'I been forget now, too much cattle and horse been mak'im me silly', 'We didn't worry for that [traditional culture], work for the white man all the time', 'I don't know much because I left my family when I was young and worked for white man'. These quotes are from the 1980s and by the time of the early 2000s native title claim the forms of cultural loss and adaptation in connections to Country were acknowledged openly as representing both continuity and change (cf. Martin, 2023).

In the context of the 2021 dispute over money distribution and rights to participate in decisions about Country, modified knowledge of identifiable estates and their associated spiritual

and material features has been constantly revisited for the Waanyi-Garawa Land Trust area. This has occurred together with acknowledgment of the identities and connections to Country of earlier generations. In relation to most of the 'estates', the genealogies documented for the claim have been subsequently valued highly and consulted for much debate about the forebears of those now identifying as Waanyi people. At the upper level the 'family trees', as they are termed, typically show an individual or set of siblings or parallel cousins for whom particular named estates were their patriclan Country. However, when given the opportunity under native title legislation, claimants asserted rights and interests across a *range* of areas labelled as 'Countries' on the Queensland side of the border that extended eastwards beyond where the ancestral traditional estates had been identified. The connections in the native title claim resulted partly from a process of succession over many years such that there are now multiple criteria used within Waanyi law and custom to describe the logic of connections between people and land. This legal recognition of change and flexibilities in defining who belongs where on Waanyi Country has clearly impacted the repeated negotiated designations of which persons should hold primary rights to speak about the ancestral estates in the Land Trust. It is hardly surprising that this has prompted vigorous politicking over decisions about financial benefits of the kind that were central to the 2021 meeting that involved considerable disagreements and intra-community tensions.

4 | LAND CLAIM LEGACIES, NATIVE TITLE, AND THE RIGOURS OF INDIGENOUS POLITICS

The request to me for an opinion about marginalisation from the meeting in 2021 arose from my continuity of contacts with families with whom I began working from the late 1970s. Issues of cultural connection and associated life trajectories of now deceased people who worked mapping Country and providing genealogical details have informed local and regional politics. Arguments about financial benefits arising from such opportunities as heritage surveys and agreement amounts funded by mining companies have loomed large in the queries and requests I have regularly received. There is considerable reliance on the data I documented from now deceased TOs in researching the land rights claim in the early 1980s. It has been common to hear people say with some despair they are tired of all the arguments that have arisen since 'the old people's knowledge' underpinned the land claim as well as the subsequent native title claim. 'Since you left it's all mixed up', were the words of one man in 2019, when phoning me to get support to 'stop Country being taken over by wrong people'. His mother's father's Country was mostly in Queensland but with a significant site just over the border inside the Land Trust area.

Oral traditions have continued to inform the views of younger generations who nevertheless at times struggle with the mix of retaining recounted stories and drawing on documented cultural materials that have been assembled for the host of legal cases and heritage surveys that have occurred over the past 40 years. The negotiations have focused on such matters as individuals' paternity, affiliations with Country, and the related rights of their descendants. A wide range of contested assertions have become swept up into the question of 'what the old people said'. Some matters involve personal family decisions such as formally lodging on a birth certificate a deceased parent's or grandparent's 'bush name' for a new baby. In one case it surprised me how potentially sensitive could be placing a forebear's bush name on a purchased tee shirt when I was phoned to advise how best to write the name to ensure it would be regarded as correct. The broad Indigenous cultural heritage of the region has become a combination of remembered verbal discourses and efforts to access now partially available documentary records.

Arguments swirling around legitimate bases for rights to receive funds and participate in decisions about Country have included reinterpretations of genealogies prepared for the land claim. Matters of disagreement have broached different assertions about whether several forebears were adopted rather than having been a biological descendant as shown on the family trees. There have been situationally specific accusations about non-Aboriginal parentage, particularly during emotionally fraught disagreements. Were certain men actual biologically related brothers through a common genealogical connection to a known deceased forebear or classified as siblings through their 'skin' identities? Where forebears' life circumstances led them and their descendants to live distant from traditional Country there is an increased tendency to encounter competitive challenges to their Waanyi connections. In all of this the land claim documents have become a significant form of currency subject to reinspection and debate informed by contemporary tensions amidst the rigours of Indigenous politics.

A particular resentment among the brothers who felt excluded from the 2021 meeting decisions was that they had actually maintained most knowledge of the cultural landscapes of their paternal grandmother's Rainbow Country. While it was their father's mother's land they argued they knew more about it than did many relatives, some of whom inherited the Country patrilineally. The men have been initiated at communities to the west, unlike many others based in Queensland with legally recognised rights as TOs as defined in the land claim. Ceremonial participation can, however, be regarded ambiguously on the Queensland side of the border. Many men who have not 'gone through the law' do not accept a lesser role in decision-making. This, despite their reliance at times on proclaiming the ceremonial reputations of their own deceased male forebears.

Senior cultural knowledge holders in the communities to the west, for whom patrilineally inherited Country has remained central, can be understandably wary of being drawn into requests from relatives in Queensland for ritual assistance in managing the spiritual features of land and waters. They have at times provided support while remaining critical of what is regarded as the loss of knowledge and failure to hold to the 'old people's law' in the Queensland communities. 'Leave my name out of it' is heard on occasions when knowledge holders across the border are aware of disputes such as those swirling around the 2021 meeting at Doomadgee. The traditionalists in the west generally prefer meetings about the Waanyi-Garawa Land Trust to be held where they regard the relevant regional cultural knowledge to have been maintained rather than where the majority of TOs reside in Queensland.

Indicative of disapproval among Elders in the west is how the important term *junggayi* has come to be used at Doomadgee. In contrast to the specific meaning of rights and responsibilities inherited for the Country of a maternal grandfather the concept appears now used in a way to mean general custodianship. In 2022 a new organisation was formed at Doomadgee named 'Gunawuna jungai' to provide services to residents including those identifying as Waanyi people along with others.[13] The term *gunawuna* is a Ganggalida word meaning 'child' or 'baby', so the corporation's name is understood to connote 'looking after children', and impliedly future generations. In contrast to the Northern Territory communities of Borroloola and Robinson River, where the specific meaning of *junggayi* (spelt 'jungai' in the new organisation's name) is for cultural property inherited through the mother, the term and concept has been adapted in Queensland to depict a formal organisational purpose of looking after the secular and spiritual futures of all town residents. The traditional kind of connections to Country and associated ritual significance of *junggayi*-ship has been diminished, if not ignored, in being reshaped towards the important purpose of practical welfare and 'closing the gap' for Indigenous people of the Gulf region. This move appears to have arisen particularly among influential Ganggalida people at

Doomadgee for whom the concept of *junggayi*-ship has been remote from everyday life for several generations.

5 | CONCLUSION

Amidst the legacies of land rights evident in arguments over a 2021 meeting, I have been aware of both the importance and risks of anthropological research engaged with these legal processes. With my long view in the region, I regard my research to have achieved a translation of traditional land tenure in adapted form, without which the land rights and native title claims would likely have been less successful. It is also evident how the claims have been an important catalyst for revitalisation of traditional knowledge, especially in Queensland where there has been considerable cultural loss with the impacts of settler colonialism.

It is also clear, however, that codification of oral traditions has gone hand in hand with considerable intra-Indigenous negotiation over who among those descended from earlier generations hold rights to make decisions and benefit from the claims' outcomes. While there is ample data to enable a conclusion that Indigenous political life has always encompassed tensions and changes regarding rights in Country, it is clear enough that the establishment of the Waanyi-Garawa Land Trust has provided a vehicle for vigorous disputation informed by interpersonal and inter-family disquiet about who are the right people for Country. Especially in the border region where very different forms of recognition arise from native title claims there is little likelihood that the model of traditional ownership on which the original land claim was based will remain unchanged from the 1980s.

In light of how the cultural knowledge of the 'old people' will continue to be adapted and changed with coming generations, a key issue for the Land Councils, as addressed by Dayne O'Meara in this special issue, is deciding the inclusion/exclusion of particular individuals and families. Unravelling genuine customary beliefs that are widespread and legitimated across the relevant Indigenous jural public from vigorous arguments informed by interpersonal disagreements and resentments is an extremely difficult task.[14] It can be a hugely stressful sector in which employees and consultants may choose to work. In the end they can only do their best and outcomes will rarely please everyone. In my view, there are no easy or straightforward ways to make the jobs less likely to limit how long anthropologists, lawyers, community development professionals, and others will remain. A big negative with this outcome is that many who develop knowledge and skills in particular regions where land trusts have been established will exit their careers once pressures become overwhelming or simply exhausting.

Standing back from the difficult settings of meetings and tense exchanges I have broached in this paper, what we can stress is the importance of addressing change, as to assume that the model of traditional ownership articulated 40 years ago will not undergo modification would be naïve. Most members of subsequent generations have come to define connections to Country more flexibly than the orthodox system of inheritance through patrilines and mother's patrilines. The issues are perhaps likely to arise more broadly across the Northern Territory, particularly when a group such as Waanyi have Country that straddles a state/territory border. However, in any regions where native title claims follow Land Rights Act claims, the matter understandably becomes confusing given different ways of reckoning rights to be recognised in Australian law.

Research such as mine from the 1980s will doubtless remain a highly valuable resource in managing Country by TOs, their broader Indigenous communities, and the land councils established to assist with this task. It is essential in addressing decision-making roles that the

originally documented cultural knowledge be revisited. The information now held archivally valuably underpinned the benefits of land rights and it needs to be updated and approached with a methodology open to the significance of cultural change. Neither land rights nor native title law should be allowed to lock future generations into an unchangeable definition of those with traditional rights in Country. Addressing this matter openly is essential in moderating, if not avoiding, counterproductive intra-Indigenous disputation that has become widespread.

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DATA AVAILABILITY STATEMENT

The data that support this article are available in the public domain apart from two documents in part subject to confidentiality issues.

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Endnotes

[1] The formal name for the land that was successfully claimed is 'Waanyi-Garawa Land Trust and Indigenous Protected Area, Northern Territory'. While the technically correct spelling of the Garrwa language is presented in some linguistic and other research publications (Mushin, 2013) I continue to prefer the spelling Garawa that results in recognisable pronunciation among younger generations of Gulf Country Aboriginal people when reading my work.

[2] Furthermore, by 2021, and subsequently, members and directors of a long-established corporation formed to represent the interests of the Rainbow Dreaming estate included persons with connections through maternal grandmothers. See the entry for 'North Ganalanja Aboriginal Corporation' on the public register of the Office of the Registrar of Indigenous Corporations. https://register.oric.gov.au/PrintCorporationSearch.aspx?corporationName=NORTH%20GANALANJA%20&icn=.

[3] In his detailed discussion of legal issues in the Land Rights Act, Neate (1989, p. 359) notes that 'while a Commissioner's findings are not binding on a Land Council', '[w]here land claims have been presented, the Commissioner's findings will form the basis of a Land Council's list'.

[4] There was considerable social media regarding the marginalisation, if not exclusion, of those who asked me to write a report in 2021. The issue at times conflated intense interpersonal tensions with alleged pro-mining decisions implicated in the matters addressed at the meeting. See, for example, https://www.buzzsprout.com/1757577/11590224-episode-20-my-brother-barwunda-verses-nlc-rio-tinto?t=0; https://www.youtube.com/watch?app=desktop&v=9CD_0T-SPZM.

I was also aware of occasional challenges to one of the excluded men because of his Whitefella biological paternity and adoption by his mother's Waanyi husband, seemingly a strategic deployment in emergent Indigenous

politics that could be regarded as an 'ideology of bloodline descent', as described in Paul Burke's paper in this collection.

[5] Aplin on behalf of the Waanyi Peoples v State of Queensland [2010] FCA 625 (18 June 2010).

[6] The Queensland legislation enabled claims on one or more grounds of traditional affiliation, historical association, or economic or cultural viability. Traditional affiliation is defined more generally than in the *Aboriginal Land Rights (Northern Territory) Act*, being established if claimants prove a 'common connection' with the land 'based on spiritual and other associations' (Neate, 2002, p. 98).

[7] This organisation was among several involved in negotiating the Century Mine Agreement during the 1990s with a formal outcome in 1997. The Traditional Waanyi Elders Aboriginal Corporation largely supported signing an agreement for the mine to proceed with benefits flowing to Indigenous communities (Blowes & Trigger, 1999).

[8] This claim was formally named 'James Taylor Waditija, the Kalkadoon Dancers Aboriginal Corporation, the Kalkadoon People for Customary Law and Culture Retention and all tribal groups in the Gulf, Mornington Island and Northern Territory associated with the Dingo Law Dreaming Ceremony'. On 8 August 1996 I received correspondence personally on letter head of the Kalkadoon Dancers Aboriginal Corporation with what was presented as cultural and historical information supporting the existence of a regional 'Dingo Lodge' on which this claim was based. Proclaimed by a resident in the town of Mt. Isa it did not proceed to any formal outcome.

[9] This claim was based on asserted connections to a certain area of Waanyi Country in Queensland known as Louie Creek among some of the descendants of Aboriginal woman Opal and her Chinese husband Sam Ah Bow. It did not proceed to a formal outcome.

[10] Correspondence from the Queensland Aboriginal Land Tribunal made available to me by Carpentaria Land Council also mentioned a further claim made by Ms. Ina Donaldson on behalf of the Waanyi people which I knew from my academic and commissioned research to be based on the applicant's father's ceremonial initiation at a particular location within 'Lawn Hill Country'. Ultimately it was the broad native title claim coordinated by the native title representative body Carpentaria Land Council which proceeded to the formal outcome in the Federal Court.

[11] Aboriginal Land Claim Bulletin No. 17, October 1996. 'Lawn Hill National Park claim by Waanyi People, Waanyi Aboriginal Land Claim Association', Mt. Isa November 2001. This part of Waanyi Country has since been named Boodjamulla National Park, using a particular spelling of the term *Bujimala*, Rainbow Serpent Dreaming, and is now jointly managed by the native title holders and the Queensland Government. See https://statements.Queensland.gov.au/statements/95342.

[12] The claim book was comprised of a report prepared by anthropologist Tony Jeffries. Following a court hearing the claim did not proceed to a successful outcome.

[13] https://jungai.com.au/doomadgee-aboriginal-organisation/.

[14] Legal practitioner and scholar Graeme Neate (1989, pp. 360, 361) noted 35 years ago that the task is a 'delicate and complex one', with particular risks where financial benefits are involved, and that it can be expected that disputes will 'continue to be a source of concern in the operation of the Act'.

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