

Chapter 8: 'No vacancies at the Starlight Motel': Larrakia identity and the native title  
claims process  
Benedict Scamبارy  
2007

Benedict Scamبارy is an anthropologist with over 10 years experience working with the Native Title Act in the Northern Territory. As an employee of the Northern Land Council he was involved in the coordination of the Larrakia native title claims over Darwin. He has recently completed a PhD in anthropology through the Centre for Aboriginal Economic Policy Research, The Australian National University. [Note: Ben is now CEO of NT Aboriginal Areas Protection Authority. WBD]

[Extracts only]

**Native title and the colonial process**

Mansfield in his determination specified that under s. 223 (1) of the Native Title Act 1993 (Cwlth) (NTA) Larrakia had to satisfy three criteria to be successful in their claim. These were: that Larrakia were united in and by their acknowledgement and observance of a body of accepted laws and customs at 1825 when sovereignty over Larrakia country was assumed by the colony of New South Wales; that such laws and customs now are 'in essence' the same as those practiced by Larrakia ancestors; and finally that there has been a continuation and substantial non-interruption of the acknowledgement and observance of such laws from 1825 to the present (Mansfield J 2006 [6–8]). The histories of Larrakia people are diverse, and subject to the many vagaries of the colonial process in Australia. Mansfield found that Larrakia had satisfied the first criterion of the NTA with evidence being drawn from the archaeological, linguistic, and historic record. He noted, 'the Larrakia community of today is a vibrant, dynamic society which embraces its history and traditions' (Mansfield J 2006: [11]). Despite this the judge found that the settlement of Darwin, an influx of Indigenous people into the claim area, and the impacts of assimilationist government policy had adversely impacted on the ability of Larrakia people to maintain a continuation of traditional laws and customs (Mansfield, 2006).

The decision demonstrates the narrow focus of the NTA in accounting for of the impacts of the colonial process on Indigenous rights and interests, and its limited ability to recognise the dynamics of change that are encompassed by the term tradition. As Glaskin notes, 'Aboriginal tradition in the native title context tends to be reified towards a pre-colonial moment so that contemporary traditions must be demonstrably continuous from this period' (Glaskin 2005: 297–8). This is despite an increasing body of research highlighting that reinterpretation, reinvention and in some cases revival of cultural practice are integral elements to the maintenance and assertion of tradition (Glaskin 2005; Hobsbawm and Ranger 1983; Keesing and Tonkinson 1982; Otto and Pedersen 2005; Weiner and Glaskin 2006) David Martin, in an interview on Stateline Northern

Territory noted that the necessity to prove a continuity of tradition between the present and the society in existence at the time of sovereignty clearly confronts Indigenous people with a test that is not applied to the rest of the Australian population. He cited revitalisation of the celebration of ANZAC day as an example that would not meet the test of ‘continuing tradition’ as applied by the NTA.[2]

From its earliest establishment Darwin was a segregated city. In 1911 the Commonwealth assumed responsibility for the Northern Territory from South Australia and adopted the Aborigines Act 1910. Under the provisions of this Act, Larrakia became institutionalised within Darwin, their place of residence confined to reserves, and their movement at the discretion of the Chief Protector of Aborigines. Larrakia camps at Lameroo Beach in the city centre, which predated European settlement of the area, were relocated to the Kahlin Compound around 1911. Children of mixed descent were further segregated within the camp. Mansfield J in his decision notes an early report of Beckett, a Protector of Aborigines, that the intent of establishing Kahlin compound was aimed at ‘keeping the unemployed natives out of Darwin’ (Mansfield J 2006: [247]). Early assertions by Larrakia in the media of their ‘special’ status vis-à-vis other Indigenous people resident in Darwin, particularly in relation to rations and housing provisions at Kahlin Compound were dismissed by Mansfield J as not being demonstration of a traditional right (Mansfield J 2006: [179-183], [255-256]).

With increasing expansion of Darwin, the Kahlin compound was closed and Larrakia were moved further away from the European population to the Bagot Reserve. Those who had been granted an exemption from the restrictive provisions of the Aborigines Act 1910, and the Aborigines Ordinance 1918 (NT), and also the later provisions of the Northern Territory Welfare Ordinance 1953, by law had to cease contact with ‘full blood’ relatives. Exemption allowed the right to undertake paid employment, which was denied those subject of the various laws. Unable to reside in the town centre, or designated reserves, many of these people lived primarily in the enclaves of the Parap Camp and Police Paddock. Darwin also had a significant Chinese and Malay population who were engaged in activities such as gold mining, pearling, and market gardening. Inter-marriage between these groups and Larrakia people was common. Stigmatised by their Aboriginality in the white town of Darwin, many Larrakia came to expediently identify as being of Asian descent, and to deny publicly their indigeneity. World War II saw further disruption to Larrakia identity and social institutions with the evacuation of many Larrakia to southern States.

Inter-marriage also occurred with members of other proximate Indigenous groups, particularly from the Daly River and West Arnhem regions, who were also residing in Darwin, and upon Larrakia land. In addition members of the Kiuk, Beringgen, Emienthal, Wadjigyn and Mariatjben have occupied Larrakia country on the Cox Peninsula west of Darwin in a caretaker role

since migrating north from the Daly River region around the turn of the twentieth century. These groups are now commonly referred to as 'the Belyuen' (Povinelli 1993).

The conditions of control in early Darwin have dictated the identity of contemporary generations of Larrakia and significantly and unevenly affected both the extent and transmission of traditional knowledge of the Larrakia estate. Familiarity within the Larrakia polity was also heavily impacted in these years of administration, and has led to much disputation in relation to Larrakia identity and group membership. Despite this, many Larrakia have maintained and developed their identity as Larrakia through a complex of family and social relations, centred on continued residence in the Darwin area and in reserves, the Parap Camp and Police Paddock. Institutions such as the Sunshine Club, and the Buffaloes sporting club, which have typically been the domain of 'Darwin Aboriginal families', and loosely the Larrakia, have also been an important focus of Larrakia identity.

In the second run of the Kenbi land claim before Justice Gray (1995–2000), the Northern Land Council (NLC) made a strategic decision to divide the claimant group into those descended patrilineally from apical ancestor Tommy Lyons, and the wider Larrakia, who claim their descent cognatically from nine Larrakia apical ancestors. This division fuelled intense contestation about membership of the group. Many Larrakia found their authenticity as Larrakia was challenged by inclusion in the larger group, which, because of its descent model had less chance of fitting the criteria of the Act. In the course of the land claim many of the senior Larrakia passed away. With increased disputation, the long-standing cooperative arrangements with the 'Belyuen' became tenuous. The decision of the 'Belyuen' group to also contest the claim as traditional owners, despite their custodial relationship with Larrakia in regard to the claim area, created considerable tension, and further challenged the authenticity of Larrakia.

Justice Gray handed down a positive recommendation in 2000, finding in favour of the six descendants of Tommy Lyons (Gray J 2000). The decision, though successful, was devastating for the approximately 1600 Larrakia people who were not recognised as primary traditional owners. The Northern Territory government, which had opposed the Kenbi land claim throughout its 21 year history, asserted that the Commissioner's decision was 'bound to have far reaching detrimental effects on the entire population of the Northern Territory' (Commonwealth of Australia 2001: 22262). Prominent journalist Paul Toohey summed up the adverse public opinion in Darwin in relation to Larrakia in an article in *The Australian*:

The people Darwin folk grew up with have suddenly become Aborigines ... Twenty years ago, these people were not thought of as Larrakia, perhaps because back then they did not loudly proclaim themselves as such ... will the majority of the Larrakia, who live in houses, watch TV and speak only English, now cross the harbour to dress in lap-laps, and dance in

ochre paint? In Darwin, there is a widely held view that these people never were real Aborigines. But if they have suddenly become Aborigines, then let's see the spears and corroborees.[4]

Whilst the Land Commissioner made his positive recommendation in 2000 the grant of title by the federal Minister for Aboriginal Affairs has not occurred and is still pending the settlement of detriment issues.

Prior to the conclusion of the Kenbi Land Claim, three non-claimant applications under the NTA were lodged by the Northern Territory government in respect of a proposed subdivision in Palmerston,[5] the new East Arm Darwin port,[6] and the site for the liquid natural gas plant at Wickham Point[7] in Darwin Harbour. Native title claims lodged in response were cast as Larrakia attempts to halt these major developments, and as an attempt by Larrakia to claim the 'backyards' of Darwin residents (Stone 1998).

In 1994, on the eve of a Northern Territory election, a prominent member of the Danggalabba clan, who assert their separateness and primacy over the 'post-classical' new Larrakia Tribe as described by Sutton (Sutton 1998), held a press conference in the public bar of Darwin's Don Hotel to announce a native title claim over all of Darwin. The claim was not lodged, but the impact on the election result was spectacular, with the CLP increasing its already considerable margin over the ALP. The election campaign itself was characterised by the incumbent CLP government's platform that the ALP intended to introduce a separate legal system for Indigenous people. This position was central in a campaign of 'push polling', a practice that was relatively new in Australian politics (Williams 1997). Speculation and debate that the announcement was made in return for \$50 000 grant funding from the incumbent CLP occurred in the 1994 Sessional Committee on Constitutional Development (Northern Territory Government 1994). The announcement of this claim had a divisive impact on the already fragile Larrakia polity and prompted a considerable public backlash, which expressed itself in the election outcome. The leader of the ALP in attempting to downplay the claim announced that the Larrakia could not demonstrate continuing occupation of the Darwin area, while the incumbent CLP government used the announcement to vigorously state that the claim would halt development in Darwin.

Debate about the vexatious nature of Larrakia claims continued until 1996 when the first proactive Larrakia native title claim over all vacant crown land and reserve land in Darwin was lodged. It was the first such claim over an Australian capital city. Larrakia claimants sought to assure the residents of Darwin that their aspirations for public beaches and reserves concerned Larrakia involvement in the management of these culturally important areas, not the exclusion of non-Larrakia (Carey and Collinge 1997). However, a public backlash occurred, fuelled by political comment from the Darwin Lord Mayor, Chief Minister Stone, and Prime Minister Howard—the

latter describing the claim as ‘an extravagant ambit claim’ (Carey and Collinge 1997: 21). The NLC received a significant amount of mostly anonymous hate mail, including a newspaper photograph of Larrakia claimants at a press conference that had been modified by the drawing of targets with bullet holes on their foreheads (Wells 2003).

Due to the unknown nature of native title in these early years, and significant development proposals within the city limits, increased pressure came to bear on Larrakia people to respond to the demands of developers, the government, the general public and agencies such as the NLC and the Aboriginal and Torres Strait Islander Commission (ATSIC). In addition a heightened awareness and recognition of prior Indigenous occupation nationally meant that there was an increased demand for Larrakia people to open events such as conferences, art exhibitions, and festivals. At a number of these occasions Larrakia individuals publicly contested each other’s affiliations and therefore rights to perform as Larrakia in such forums. At an organisational level, a number of competing Larrakia organisations, whose membership was based around family and historical association, competed for the authenticity of their memberships in the arena of native title consultative processes, and within the newly formed Larrakia Nation Aboriginal Corporation (LNAC). This organisation is a coalition, initially facilitated by the NLC, of Larrakia families, individuals and factions, with the primary purpose of providing a corporate identity for Larrakia against increased pressure from external agencies to ‘know’ whom the Larrakia were. Mansfield J, in his assessment of Larrakia tradition, pointed to a ‘breakdown in decision making structures’, noting ‘it is clear that the decision making process among the Larrakia people has been largely transferred to the Larrakia Nation. Its composition is not traditional’ (Mansfield J 2006: [832]).

#### References

- Carey, C. and Collinge, A. 1997. ‘Larrakia native title: the long march’, *Indigenous Law Bulletin*, 4 (2): 21.
- Commonwealth of Australia 2001. Senate Official Hansard, No. 2, 2001, 39th Parliament, First Session, Eighth Period, Parliament of Australia, Canberra.
- Day, W. 1994. *Bunji: A Story of the Gwalwa Dariniki Movement*, Aboriginal Studies Press, Canberra.
- Day, W. 2001. *Aboriginal Fringe Dwellers in Darwin, Australia: Cultural Persistence or a Culture of Resistance?* PhD Thesis, University of Western Australia, Perth.
- Gibbins, R. 1988. *Federalism in the Northern Territory: Statehood and Aboriginal Political Development*, North Australia Research Unit, The Australian National University, Darwin.
- Glaskin, K. 2005. ‘Innovation and ancestral revelation: the case of dreams,’ *Journal of the Royal Anthropological Institute*, 11 (2): 297–314.
- Gray, J. 2000. *The Kenbi Land Claim*, Report of the Aboriginal Land Commissioner, Australian Government Publishing Service, Canberra.
- Hobsbawm, E. and Ranger, T. (eds) 1983. *The Invention of Tradition*, Cambridge University Press, Cambridge.
- Howse, C. 2000. ‘Towards a dealing just and kind’, *Alternative Law Journal*, 25 (3): 108–30.

- Keesing, R. M., and Tonkinson, R. (eds) 1982. 'Reinventing traditional culture: the politics of Kastom in Melanesia', *Mankind* (Special Issue) 13 (4): 297–399.
- Mansfield, J 2006. *Risk v Northern Territory of Australia*, FCA 404, 13 April 2006.
- Memmott, P. and Fantin, S. 2001. 'The Long Grassers': A Strategic Report on Indigenous 'Itinerants' in the Darwin and Palmerston Area, Version 2, Vol. 1, Aboriginal Environments Research Centre, University of Queensland, Brisbane.
- Newman, G. 1997. 'Northern Territory election 1997', Research Note 7 1997-98, Parliamentary Library, Parliament of Australia, Canberra.
- Northern Land Council (NLC) 2003. *Northern Land Council Annual Report 2002–2003*, NLC, Darwin.
- Northern Territory Government 1994. *Debates: Sessional Committee on Constitutional Development, Seventh Assembly First Session 27 June 1994*, Parliamentary Record No: 1, Northern Territory Government, Darwin.
- Olney, J 1991. *The Kenbi Land Claim: Report of the Aboriginal Land Commissioner*, Australian Government Publishing Service, Canberra.
- Otto, T, and Pedersen, P. (eds) 2005. *Tradition and Agency: Tracing Cultural Continuity and Invention*, Aarhus University Press, Aarhus.
- Parish, K. 2002. *The Parish Pump* [blog site, Darwin], available at <<http://www.ntu.edu.au/faculties/lba/schools/Law/apl/blog/stories/genlaw/170.htm>>. Accessed 16 October 2005.
- Parsons, D. 1998. 'Kenbi Land Claim: 25 Years On', *Indigenous Law Bulletin*, 4 (8): 15–17.
- Povinelli, E. A. 1993. *Labor's Lot: The Power, History, and Culture of Aboriginal Action*, University of Chicago Press, Chicago.
- Stone, S. 1998. *Eighth Assembly First Session 17/02/98 Parliament Record No.3*, Northern Territory Government, Darwin.
- Sutton, P. 1998. *Native Title and the Descent of Rights*, National Native Title Tribunal, Perth.
- Wells, S. 2003. *Negotiating Place in Colonial Darwin. Interactions between Aborigines and Whites 1869–1911*, PhD Thesis, Sydney University of Technology, Sydney.
- Williams, G. 1997. 'Push polling in Australia: options for regulation', Research Note 36 1996-97, Parliamentary Library, Parliament of Australia, Canberra.
- Woodward, A. E. 1973. *Aboriginal Land Rights Commission: First Report*, Australian Government Publishing Service, Canberra.
- Weiner, J. and Glaskin, K. (eds) 2006. *Custom: Indigenous Tradition and Law in the 21st Century*, *The Asia Pacific Journal of Anthropology*, Special Issue 17 (1).