



# FROM ILLUSTRATION TO EVIDENCE

HISTORICAL PHOTOGRAPHS AND ABORIGINAL NATIVE TITLE CLAIMS IN  
SOUTH-EAST QUEENSLAND, AUSTRALIA



MICHAEL AIRD, JOANNA SASSOON AND DAVID TRIGGER



Royal Anthropological Institute

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*We dedicate this paper to the memory of the Australian anthropologist  
Roslyn Poignant, a generous scholar, mentor and long-standing friend to many.*

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*Cover image: “William” “King Johnny” “King Fred” “King Sandy” Queensland Blacks – Moreton Bay District’.  
William, Johnny, Fred and Kirwallie Sandy, Deception Bay, c.1896. Photographer: Thomas Bancroft. Courtesy:  
State Library of Queensland.*

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## Introduction: historical photographs and Australian native title claims

Historical photographs have long been used as aide-mémoires for families with disrupted pasts or trans-generational disconnections between people, communities and places (Hirsch 1997; Pinney and Peterson 2003). When 'returned' to their domestic context, their contents can reignite memories, rebuild genealogies and reunite families (Goodall 2006; Lydon 2010; Payne 2016; Peers and Brown 2006; Poignant 1996; Smith 2003). However, there is more to a photograph than what it is 'of' (Sassoon 2007:139), and in the context of Australia's post-settler society's engagement with the legacy of colonialism, historical photographs – when contextualized with archival research – are potentially an important resource for researchers, legal teams and Indigenous people working on native title claims.

The native title process in Australia is guided by national legislation that followed a major court decision in the early 1990s.<sup>2</sup> Over the past twenty-five years Aboriginal claimants, respondent parties including governments, and the courts have grappled with the kinds of evidence that addresses continuities and changes in Aboriginal customary rights. The legislation

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2 Native title was first accepted into the common law by the High Court of Australia's decision in 1992 (*Mabo vs Queensland (No 2)* 1992). The subsequent *Native Title Act 1993* (Cth) gives statutory recognition to, and protection of, native title rights regarding land and waters. Subject to successful claims, native title rights and interests are recognized as arising from traditional laws and customs. Claims through the legal process thus seek to determine whether Indigenous groups have maintained traditional connections to an area of 'country' over the generations since the establishment of British sovereignty.

requires an assessment of ongoing connections to place, commonly referred to as 'country' among those asserting traditional rights to land and waters, based usually on a mix of archival and contemporary ethnographic data. In the context of Indigenous Australia, the concept of 'country' encompasses the physical and spiritual characteristics of land and its species. The stakes for claimants include achieving rights to access and use lands and waters, sometimes a bargaining position with regard to development projects pursued by industry and government, and symbolic recognition of continuing traditional attachments and rights to country.

Our research addresses the evidential value of historical photographs in the native title context. Can the locations and subject matter of photographs constitute evidence of traditional and/or historical connections to country among Aboriginal people at the time the images were recorded? Relatedly, how do photographs illustrate geographic movements of, and demographic change among, Aboriginal people since early European settlement? Are there adaptations and continuities that can be understood from the images? Our research investigates potential ways for studies of the photographic record to inform anthropological and historical expert-opinion reports in native title legal cases.

Oral traditions encompassing memories of claimants sit alongside archival documents recounting historical aspects of previous generations' lives. Photographs form part of those archives, though they appear to have been used only modestly in presenting research data that goes into evidence in legal cases. Our approach is that the photographs we examine present aspects of an otherwise 'unseen or unseeable cultural past' (Edwards 2001:157) that can become central to legal claims of continuing traditional

connections to land. A mixture of portraits, residential circumstances and re-enactments of cultural traditions (Edwards 2001:157–80), their role in reconstructing traditional connections to country is of considerable potential value. At the least, given the opportunity for the photos to be 'reworked' (Lydon 2005:4), through consideration of contextual information available, it would seem obvious that archival photographs are a source of information that should not be ignored.

Our project addresses photographs that illustrate the locations of, and related information about, deceased Indigenous forebears, such that the images may become evidence of prior occupation and cultural connection to land in native title legal cases. In doing so, we add to the scant anthropological attention that has been paid to Indigenous engagements with place in the ethnographic photographic archive (Morton 2015:254). As illustrations of Aboriginal persons situated in places, the images enable both researchers and claimants to produce particular narratives about the individuals' possible relationships with 'country'. In the context of examining early Aboriginal photographs circulating on postcards, Peterson (2006:11) contrasted Indigenous images as illustrations, with the photographs interpreted as evidence to confirm viewers' 'pre-existing' views. However, in the legal context, photographs become evidence not so much when they confirm already held assumptions, but rather when they are admitted for consideration by a Federal Court judge in a native title case. It is therefore through relevant archival contextual information about the photograph, and potentially also through oral testimony from claimants, that the images may be mobilized as evidence in the legal sense. When tensions arise between the photographs and related archival data in the colonial archive,

and current claimant understandings, we find ambiguity as to the evidential status of the images. In part the ambiguity may derive from the authority of such documents to question or confirm received local histories (Morton 2015:255). Thus, while historical photographs may enrich the data prepared for a case, they may also potentially create difficulties for the native title aspirations of Indigenous groups.

Photographs can be a rich source of ethnographic information, regardless of whether they were originally taken as part of anthropological research (Edwards 1992:13; Sassoan 2004). In the context of First Nations' negotiations of cultural memory, photographs have become a focus for cultural critique regarding colonial hegemony, and also feature as documentary material relevant to a broad range of contemporary indigenous interests in post-settler societies (Edwards 2013). Land claims and, in the Australian setting, native title are key elements in legal efforts to secure indigenous rights and related aspects of cultural recuperation.

While historical images created by a range of photographers have been addressed in Canadian research on First Nations land claims (Ray 2011:104 and 211), their relevance as evidence of traditional connection to areas may be challenged if there is ambiguity regarding the human subjects being affected by government policies of removing some people from their homelands. Information concerning the provenance of photographs and the identity of people is important in interpreting native title evidence. The large Tindale archive held by the South Australian Museum gains its evidential value from its relationship to rich contextual genealogical and location information, which can potentially inform contemporary evidence from both Aboriginal claimants and

expert researchers in legal proceedings.<sup>3</sup> Photographs are an integral part of the rich 'ecosystem' (Stylianou-Lambert 2019) of the Tindale archive, and provide a layer of context to the genealogies and associated written records. In addition to their visual information, they prompt personal and cultural questions about individuals, including their willingness to have participated in Tindale's enquiries, that may be answered by looking at the images in conjunction with the written and oral record.

The introduction of photographic evidence into the courtroom in the nineteenth century greatly contributed to the current understanding of the category of 'demonstrative evidence' (Mnookin 1998). There is a long history of photographs being used as evidence in the English legal tradition (Carter 2010). Photographs are considered 'documents' for evidentiary purposes and are subject to the rules of evidence. The admissibility of photographs generally relates to the oral testimony of a witness with first-hand knowledge of the taking of the photograph and/or its subject, its provenance, its chain of custody and relevance to the matter to hand. There is common agreement across disciplines, including archival and photographic theory (Schwartz 1996), forensic science (Porter and Kennedy 2012) and in lengthy legal precedent (Mnookin 1998), that photographs gain their evidentiary value from understanding what they are 'of' in relation to their context of creation and the reasons they were originally created (Schwartz 2020:525). It may take more extensive research to restore some of this more general contextual information about early photographs of Aboriginal people. In addition, broad-based research on relevant images may result in well-

informed conclusions about the context in which they were taken and used, and why people were in particular locations.

Photographs of Australian Aboriginal people have been produced, printed, published, circulated and exhibited from the nineteenth century (Aird 2013; Donaldson and Donaldson 1985; Peterson 2006; Rae-Ellis 1992). Multiple versions of a single image may be widely dispersed in public and private collections, in which their contents, and their individual contexts and histories, are documented with varying degrees of detail. In recent decades photographs from these collections have begun to be more widely circulated amongst Aboriginal people, and when incorporated into family photograph collections, they are often highly valued for their genealogical potential (Aird 1993; Macdonald 2005).

A key aspect of research related to native title claims is the investigation of the ways connections to country have both continued and changed over time. Anthropological studies, usually based on ethnographic fieldwork and archival research, seek understanding of assertions that contemporary claimants are descended from deceased forebears who were owners of particular areas of land at the time of European colonization. To this end, oral data from interviews and participant observation and written records all play critical roles in the assessment and substantiation of the historical depth and continuity of connections to country (Anker 2005; Choo and Hollbach 2003; Finlayson 1999; Koch 2008; Palmer 2018; Sutton 2003). While it is noted that photographs may prove to be useful sources (Neate 1997:312–13), there has been limited discussion of case material that is focused on the potential weight, admissibility

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<sup>3</sup> The extensive archive of the anthropologist Norman Tindale is held at the South Australian Museum. Accession number AA 338.

and value of photographs as evidence in the native title context.<sup>4</sup>

Our case study builds on the current acknowledgement that photographs may be included in expert reports (Queensland Department of Natural Resources and Mines 2016), while at the same time addressing the limited profile of photographs used in native title claims. Starting with a specific image showing four individuals at an early stage of European settlement, we investigate other photographs of the same persons, and the implications for their apparent connections to places and, hence, for native title claims. By connecting what we understand as visual biographies of the four men shown in these photographs, we note patterns of presence and absence, of movement and historical associations between people and places over time.

### **Case study: four Aboriginal visual biographies in south-east Queensland**

An instructive photograph (Figure 1) of four senior men seated together on the ground at Deception Bay (Map 1) was taken by Thomas Bancroft, who was a medical doctor and naturalist with an inclination towards scientific research. Bancroft had an interest in amateur photography and was sufficiently conversant with chemistry to process his own negatives and prints. His surviving photographs are dated from 1884 onwards, and depict his family, and the homes and industries with which he was associated (Bancroft *et al.* 2004). More than thirty-five of his photographs of Aboriginal people taken between October 1884 and c.1897 are internationally dispersed,

including a number of portraits and images of men engaged in a range of cultural activities.<sup>5</sup> He also created several albums.<sup>6</sup>

Thomas Bancroft's personal 'red album' contains the only known original print of the photograph of the four men, and it is the source of the first generation of copy negatives now held in public institutions. The large print measures 11.5 × 9 5/16 inches, and the caption, in Thomas Bancroft's hand, below the image on the album page is: "William" "King Johnny" "King Fred" "King Sandy" – Queensland Blacks – Moreton Bay District'.

Bancroft's caption indicates his understanding that the four men are from the Moreton Bay region, which encompasses, in part of its north-western vicinity, the smaller stretch of water known as Deception Bay. The Bancroft family owned two near-adjointing properties – one inland in Burpengary, and the other extending to the coast at Deception Bay. The photograph (Figure 1) appears to be taken near the coast at Deception Bay, likely in close proximity to the site of the two Bancroft family homes located on high ground (Bancroft *et al.* 2003:4).

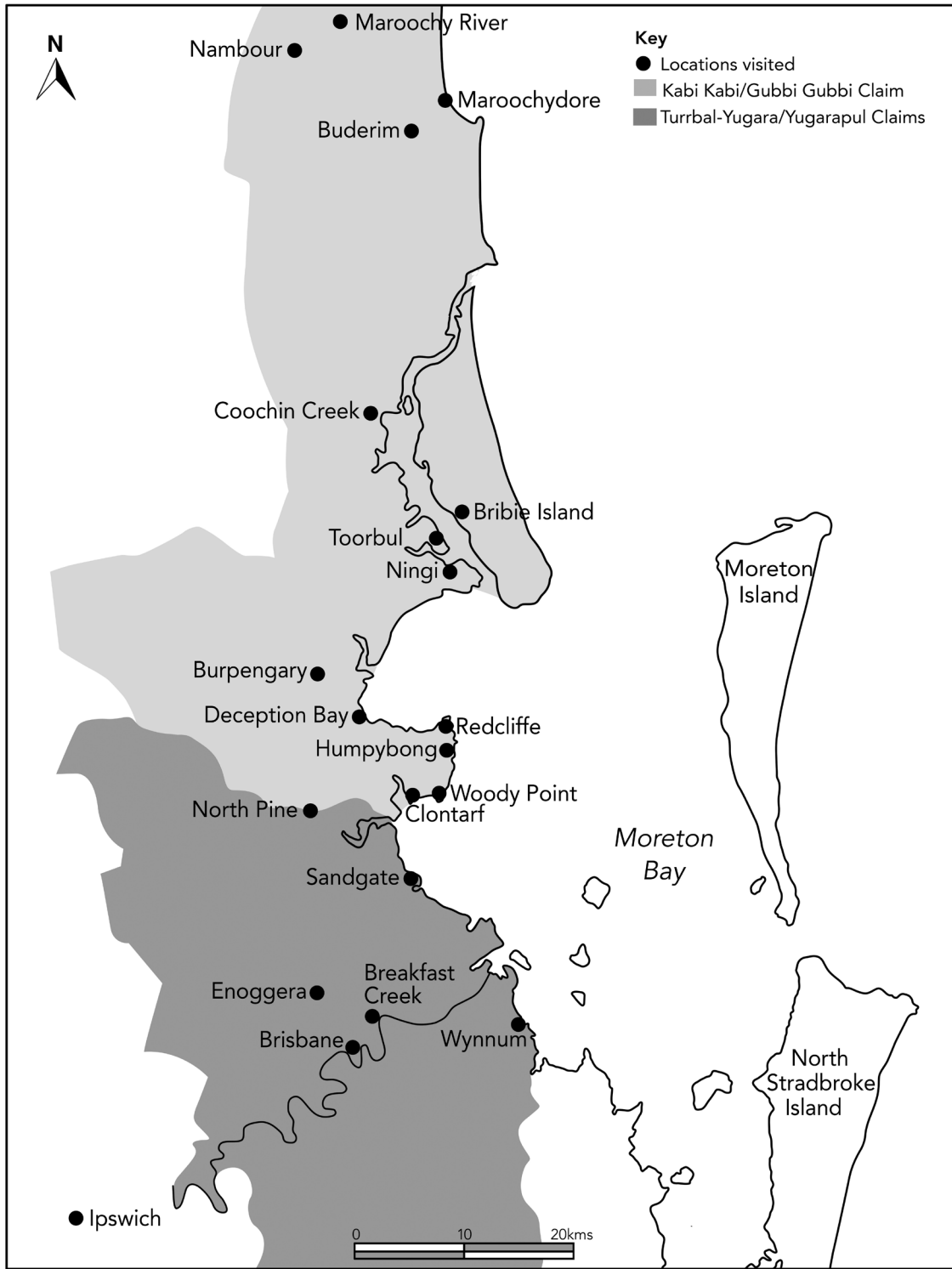
Bancroft himself did not date the photograph, but the Moreton Bay Regional Council Local History Collection estimated it was taken c.1890. Bancroft dated his other photographs of Deception Bay Aboriginal people as between

4 Judicial findings of direct relevance include *Risk v Northern Territory of Australia* 2006 FCA 404 [37, 590, 774], *Harrington-Smith on behalf of the Wongatha people v Western Australia* 2007 FCA 31 [1822, 1825, 1833], and *De Rose v State of South Australia* 2002 FCA 1342 [370].

5 In addition to holdings in Australia, there is a substantial collection of photographs taken by Thomas Bancroft at the Pitt Rivers Museum, University of Oxford.

6 A large collection of Bancroft's prints and albums remain in a private collection.





Map 1 Named places in the study and claim regions.



William King Johnny King Fred King Sandy  
Queensland Blacks  
Moreton Bay District

Figure 1 “William” “King Johnny” “King Fred” “King Sandy” Queensland Blacks – Moreton Bay District’. William, Johnny, Fred and Kirwallie Sandy, Deception Bay, c.1896. Photographer: Thomas Bancroft. Courtesy: Bancroft family.

1885 and June 1896.<sup>7</sup> Given available dates for other photographs of the men in Figure 1, our estimate is that the image of the four of them can be dated to between 1895 and 1897.<sup>8</sup> From the starting point of this one photograph, we have traced a rich body of thirty-five further photographs of the four men, taken by a number of photographers, as well as, in the case of one of them, ten paintings located in a range of institutions. When brought together and surrounded by contextual data drawn from the fragmentary colonial archive, these photographs enable the assemblage of visual biographies for each of the men. These speak to their location in place and time, and hence support inferences about their associated connections to land. In at least one case, our research apparently reaches back beyond claimants' memories, and in doing so provides evidence of an apical ancestor a generation earlier than is identified in the current native title claim to the Deception Bay area.

William appears on the far left in the group photograph. It has not been possible to identify where he was born or died, or whether he was married or had children. William appears in

fourteen other known photographs, the majority of which were taken by Bancroft, while at least two seem to be taken by an unidentified professional photographer. The majority of his images appear to be on Bribe Island and in the Burpengary and Deception Bay region (Map 1), enabling an inference that this area was his traditional country. There is also a photograph of him further north on the Maroochy River, and one closer to Brisbane at Sandgate. Given that we have found no record of other Aboriginal men named 'William' in the area at this time, it may be that he is the man named William being refused a blanket by the police sergeant at Sandgate in 1894.<sup>9</sup> The refusal was likely because he was spending a considerable amount of time in Brisbane, some 20 km away from the distribution location. His working life between Brisbane and the area to the north where he was mostly photographed is evident in a settler's letter supporting his blanket application:

*William has a boat and trades his crabs between Redcliffe, Sandgate and Brisbane ... I have known him for many years as an industrious fellow and did good service years ago tracking Campbell.<sup>10</sup>*

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7 The first photograph of an Aboriginal person dated by Bancroft in his handwriting is 'Johnny Boat – Brisbane Blackfellow 1885'. Brisbane is some 30 km south of Deception Bay. Copy prints are held in the State Library of Queensland (JOL.179594) and the Queensland Institute of Medical Research (Berghofer QIMR.028). A vintage print is held in the Pitt Rivers Museum with a generic caption and date PRM1998-270-14-1. Bancroft's latest photograph of an Aboriginal person is dated to 1896, is of an older man climbing a tree, and is held at the State Library of Queensland JOL186732.

8 Fred was photographed in Brisbane by Thomas Mathewson in the 1870s (QAGOMA Collection), then again in 1884 by T.B. Hutchison (SLQ Collection JOL.4734). Bancroft took a series of well-dated photographs of William and Johnny in 1894 and there is a well-dated series of photographs of Sandy taken by James Trackson in 1897 (SLQ and QM Collections). These are the four men in Figure 1.

Johnny appears second from the left in the photograph (Figure 1). He appears in thirteen other known photographs. Two were taken by unidentified photographers: one at the Enoggera camp, in the northern region of the growing city of Brisbane; and one on the Maroochy River, some 100 km further to the north. Bancroft took the other photographs depicting Johnny at Bribe Island, Burpengary and the Deception Bay area,

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9 Blankets were distributed to Aboriginal people according to government policy at the time (Evans *et al.* 1993:119).

10 Colonial Secretary's Office. Inwards correspondence. File number 94/5250 Queensland State Archives. Item ID 847501. Johnny Campbell was a bush-ranger.

again enabling an inference about his traditional connections to that region. No genealogical information has been traced about Johnny, and no images exist of him wearing a breast-plate, even though at times, such as in the caption of Figure 1, the title of ‘king’ was attached to his name.<sup>11</sup>

As with William, we have no information about Johnny having any children. These two men appear to have been close socially, being photographed together in ten images, and they both spent considerable time with Bancroft assisting with his scientific and ethnographic research (Pearn and Powell 1991:72). One photograph shows Johnny and William in what the caption notes as ‘a Bungwall swamp on Bribie Island’ (Figure 2). Bancroft’s 1894 publication concerning the ‘bungwall fern’ (*Blechnum serrulatum*) was the first to document one of the most important Aboriginal vegetable foods in the area (Bancroft 1894; Pearn and Powell 1991:72).<sup>12</sup>

Fred appears as second on the right in the photograph (Figure 1). Born around 1836, in three photographs – two studio portraits, taken by Brisbane commercial photographers (Figure 3), and in Bancroft’s photograph – he is wearing his breast-plate.<sup>13</sup> His breast-plate names King Fred, his wife Queen Elena and two daughters Johana

and Rosie, and places them at a location known as the Coochin Creek sawmill.<sup>14</sup> Thomas Welsby, a politician, businessman and former resident of the Moreton Bay region, reports that the breast-plate was given ‘on account of some meritorious deed done by him [Fred]’ (Welsby 1937:109). There is no indication that Elena was awarded a breast-plate in her own right. A ‘King Fred’ died of senile decay, aged sixty-four, in 1900, and was buried in an unsurveyed plot in the Redcliffe Cemetery, 16 July 1900.<sup>15</sup> It is reasonable to assume that this King Fred is the man photographed by Bancroft. He lived and died in the same area as William and Johnny.

Sandy (known as Kirwallie Sandy) appears on the far right in the photograph (Figure 1). He was born about 1830 and died at Wynnum (Map 1) in May 1900 (Petrie 1904:187). He formed a union with Sarah Naewin, and their daughter, Sarah Sandy/Moreton (c.1850–1907), herself produced a number of children. Even though it is unlikely that all surviving photographs of these four men have been traced, Kirwallie Sandy stands out as being one of the most well-documented Aboriginal people in the Brisbane region in the late 1800s. We know of seventeen photographs and ten paintings of Kirwallie Sandy, dating from the 1860s onwards. He was

11 Breast-plates (also referred to as king-plates) were used to create intermediaries, often persons who negotiated between Europeans and Aboriginal ‘tribes’. The broker status of the individual was commonly confirmed through this form of attributed status (Trigger 1992:51–2). However, caution is needed if relying on information inscribed on breast-plates alone as evidence locating people in their traditional country.

12 Early settlers, including the government botanist identified this fern as *Blechnum serrulatum*. However, *B. serrulatum* is now provenanced to overseas, while *B. indicum* is provenanced to Australia (Perrie *et al.* 2014).

13 A c.1880 photograph by Thomas Mathewson is held by Queensland Art Gallery and Gallery of Modern Art (acc. no. 2010.578) and a copy negative by T.B. Hutchison is held by the State Library of Queensland (JOL 4732).

14 This transcription comes from a 1987 photograph of the breast-plate when it was owned by the Campbell family, and is held at the Sunshine Coast Council Library. The current whereabouts of the original breast-plate is unknown (pers. comm. Sunshine Coast Library, 11 April 2019). The Coochin Creek sawmill was established in 1881 by James Campbell. The associated township known as Campbellville on the mainland near the north of Bribie Island (Map 1) closed in 1890, once the railway took over from shipping to transport the logs.

15 Edith Tognollini (undated). *Typescript from Register of Burials – Redcliffe General Cemetery*. Redcliffe Historical Society. This typescript shows information that is no longer visible on the Register. Queensland State Archives Item ID2453283, Pers. comm. 26 April 2019.



Figure 2 'Bungwall Swamp on Bribie Island *Blechnum serrulatum*'. Johnny and William, Bribie Island, 1894. Photographer: Thomas Bancroft. Courtesy: Queensland Institute of Medical Research.

photographed by a number of commercial and amateur photographers, and the artist Oscar Friström is known to have painted at least eight portraits of him. In addition to being the subject of studio portraits in central Brisbane, he was also photographed at the Enoggera camp, to the north of the city, in 1897.

There is likely to be a combination of reasons for the large number of surviving portraits of Kirwallie Sandy. He was well known to key figures in Brisbane through his long acquaintance with

Tom Petrie, the explorer and grazier, whose associations with the Aboriginal community in the region are well documented (Hall 1974; Petrie 1904); and with the Parry-Okeden family, who had properties at Redcliffe and Toorbul. Kirwallie Sandy was possibly seen as a key intermediary between the Aboriginal and settler communities, and as a source of linguistic and cultural information, including knowledge of place names (Meston 1923a; 1923b). That he was the subject of so many portraits, photographs



Figure 3 Fred, Brisbane, 1880s. Photographer: Eddie Hutchison. Courtesy: State Library of Queensland.



*Figure 4 Kirwallie Sandy, Brisbane, 1890s. Photographer: Oscar Friström. Courtesy: Queensland Museum.*

and paintings (Figure 4) suggests his physique and general appearance would have conformed to the racist and romantic ideal of the time as to what an Aboriginal man was supposed to look like (Maynard 1985:99).

### **Visual biographies, connections to country and implications for native title claims**

Photographs of these four men show various engagements with bush resources, indicating their customary knowledge about the land and its species. As well as the traditional shelters, tree-climbing and fishing methods shown in the photographs (Figures 5–8), the broader context of their traditional knowledge is illustrated by such accounts as Bancroft's in 1894, when he photographed Johnny and William on Bribie Island, and they explained how stones found at the base of a cypress pine were used to bruise the bungwall rhizome to prepare it for consumption (Bancroft 1894:26; Pearn and Lawrie 1991:45).

For Aboriginal people, living on private properties on traditional country was often safer than residing on public lands (Aird 2003:25). This is illustrated by the case of Kirwallie Sandy, who in working for Petrie and being settled for a time on his property at North Pine, was likely able to travel with him and remain attached to a broad expanse of his country. The relationship with Petrie appears to have been reciprocal, given benefit to the employer of Sandy's Indigenous bush knowledge. Thomas Bancroft may also have been motivated to retain relationships with the men he photographed on country they knew well, in order to further his own ethnographic and botanical studies.

Photographs drawn from a range of collections and sources have been appended to expert reports for native title claims in the region. In the Yugara/Turrbal native title claim

in our study area (Map 1), photographs were appended without research data linking them to traditional connections to country (Macdonald 2010:219–22). In a rare set of comments about photographs in native title decisions, Justice Jessup acknowledged several photographs and captions included as attachments to an expert report; though the source of one image was said by him to be not adequately 'identified' and another photograph was 'unexplained in the text'. The judge remained unclear about the significance of the photographs, and this reduced their evidentiary weight.<sup>16</sup>

Examination of the locations of the thirty-five photographs taken of the four men in our case study has enabled the assemblage of visual biographies that provide reference points mapping their patterns of movements across the region. Map 2 shows that the photographs were taken to the north of Brisbane. The men were not photographed to the south of the city. The photographic and archival record indicates their presence within two native title claim areas: Yugara/Turrbal, which was the subject of an unsuccessful claim in 2015; and Kabi Kabi, which entered into the Native Title Tribunal register in 2019 and is at the time of writing being researched.<sup>17</sup> Our data enable considerations that have potential implications for these claims. Just because these four men were documented in a particular place does not prove the extent to which they held traditional rights in those locations. However, the patterns of their movements over their lives raise the question as to where their core country was, and what their connection was to a broader region

<sup>16</sup> *Sandy on behalf of the Yugara People v State of Queensland (No 2)* (2015) [272, 274].

<sup>17</sup> *Sandy on behalf of the Yugara People v State of Queensland (No 2)* (2015); *Kabi Kabi First Nation* (Federal Court of Australia application number QUD20/2019).





Figure 5 'Camp on Bribie Island Jan 24th 1894'. William and Johnny, Bribie Island, 1894. Photographer: Thomas Bancroft. Courtesy: Queensland Museum.

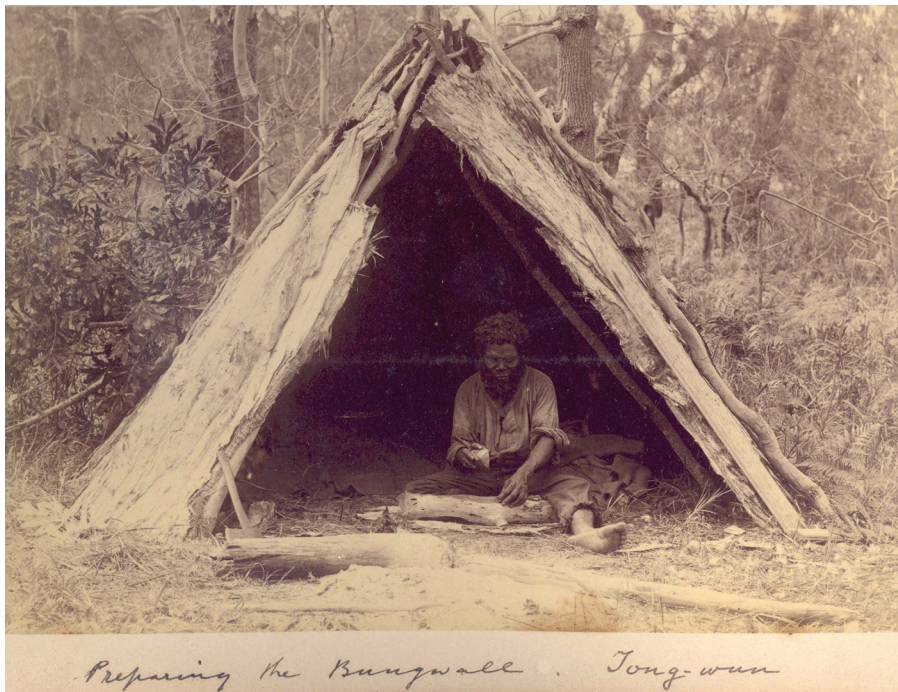


Figure 6 'Preparing the Bungwall. Tong-wun'. Johnny, Bribie Island, 1894. Photographer: Thomas Bancroft. Courtesy: Queensland Museum.



Figure 7 'King Johnny climbing a tree with a vine, Burpengary'. Johnny, Burpengary, 1890s. Courtesy: State Library of Queensland.

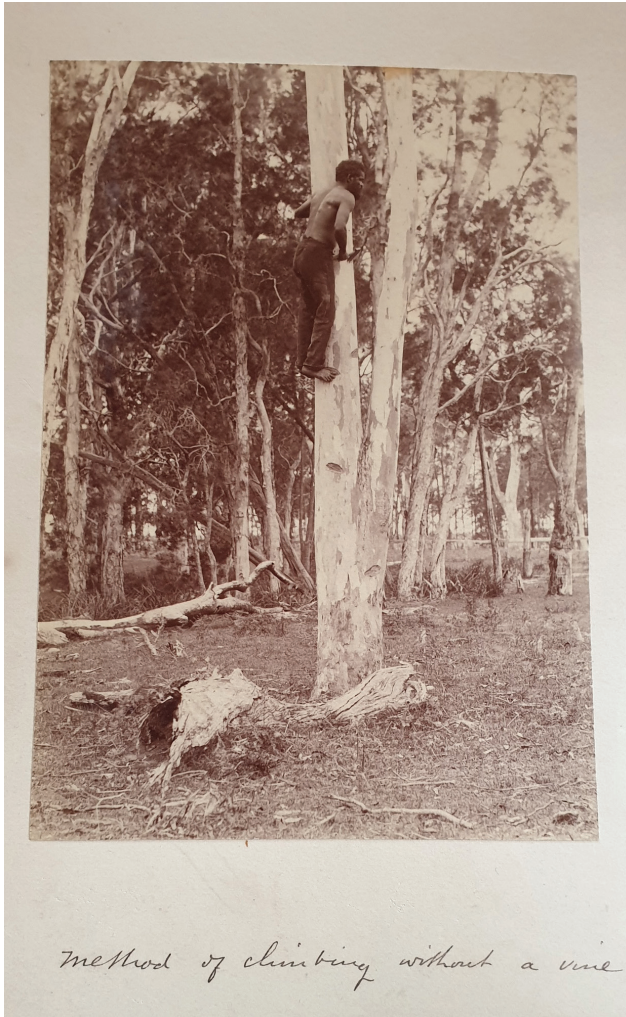


Figure 8 'Method of climbing without a vine'. Johnny, Deception Bay region, 1890s. Photographer: Joseph Bancroft. Courtesy: Bancroft family.

commonly understood in anthropology reports as the domain of a cultural bloc or regional 'society'. The normative system of traditional law, as it is defined in the relevant legislation, emerges from both the ethnographic record and research among living claimants as a domain of underlying customary land connections, within which proximate traditional title is held to particular claim areas. This then raises the question as to how adequately the visual biographies of these

men have been studied as part of native title research into the two claim areas encompassed within their documented presences.

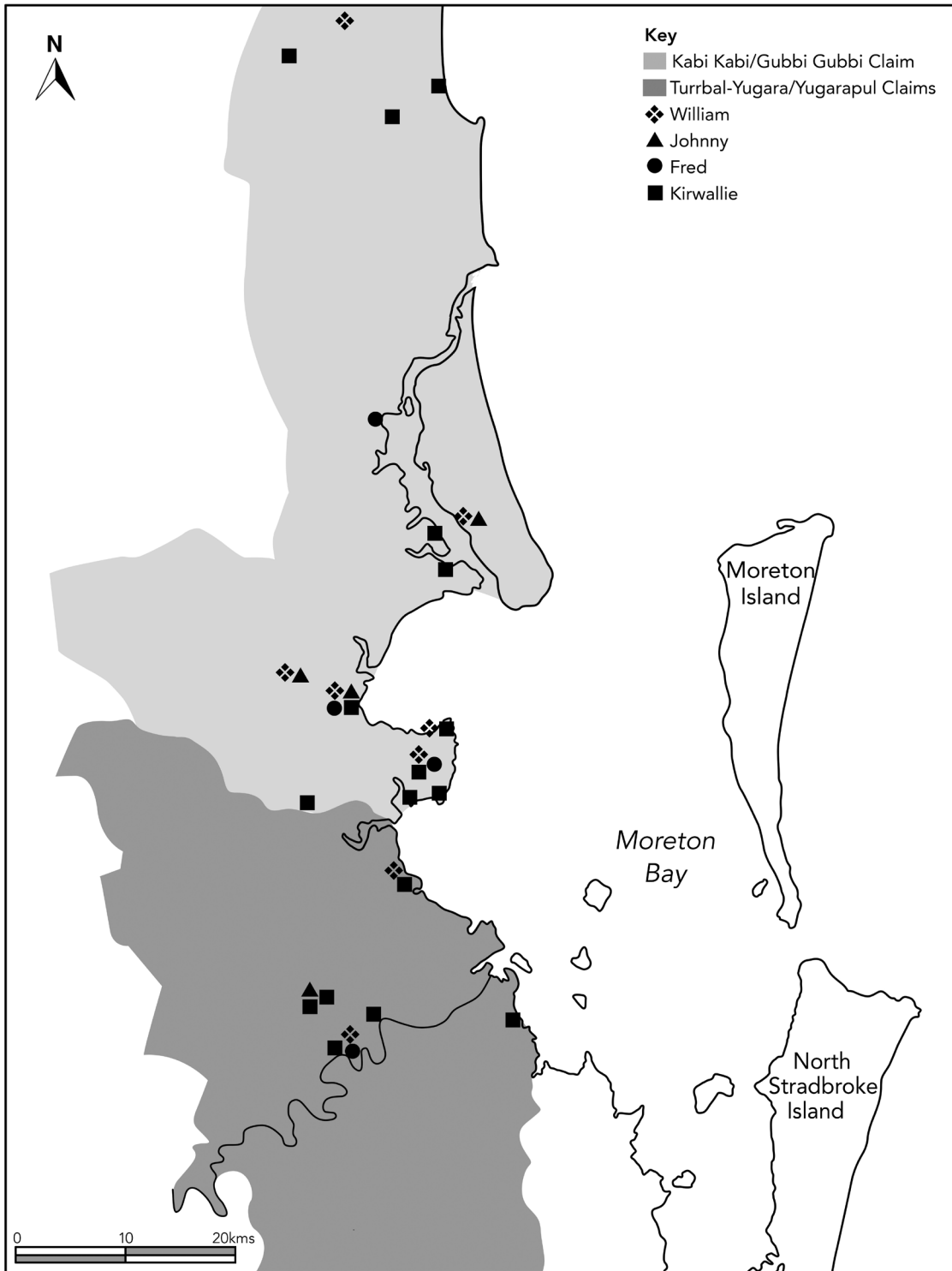
William, Johnny and Fred were photographed mostly within a relatively defined area, shown on Map 2 as lying within the southern part of the current Kabi Kabi claim.<sup>18</sup> There is little to indicate research attention to them in the Yugara/Turrbal claim, regarding the land adjacent to the south, which is understandable if the men went to Brisbane (most likely to trade seafood). In her anthropological report for the Yugara/Turrbal claim, Macdonald (2010:157) does note that 'King Fred and Queen Elena' lived with others in a camp at the site of the sawmill at Coochin Creek, north of the claim she was researching, and that both were presented with brass gorgets.<sup>19</sup> The fact that the three men are not mentioned in available native title claim documents relating to the Kabi Kabi claim area may well be due to a loss of knowledge among those currently asserting traditional connections.

We note that Fred's two daughters, Johana and Rosie, seem to disappear from the archival record.<sup>20</sup> While William and Johnny may not have produced progeny, we would expect some discussion of these two men given their presence in the historical photographs demonstrating traditional knowledge of the country being claimed. These issues arise compellingly for Kirwallie Sandy, the fourth person in Figure 1.

18 Johnny and Fred were also photographed at times in the Yugara/Turrbal claim area.

19 While Macdonald suggests this was around 1915, our data indicates Fred died in 1900.

20 Various individuals appear in government records by the names Rosie and Johana, for example in 1897 two individuals aged between 17 and 20, and named 'Rosie' and 'Joanna' were removed from Brisbane to Fraser Island, however this information is insufficient to confirm whether or not these are Fred's daughters (List of Removals 1897, Queensland State Archives, item 302580).



Map 2 'Places visited by the four men and claim regions.

The visual biography of Kirwallie Sandy shows him moving across the region from Brisbane city, north to Nambour, and at one time travelling further north to the Mary River region with Thomas Petrie and William Pettigrew in search of timber (Petrie 1904:187). The only record of Kirwallie Sandy going south of the Brisbane River was a visit in 1900 to Wynnum, where his daughter Sarah Sandy was living at the time, and where he died in May 1900 (Petrie 1904:187). Photographs show he wore a breast-plate inscribed 'King Sandy – Brisbane', though his main place of everyday residence was more likely in the Moreton Bay region to the north of Brisbane, in particular the broad area around Sandgate and Redcliffe (Craig and Craig 1908; Parry-Okeden 1930; Petrie 1904:187 and 195).

When the visual biography of Kirwallie Sandy, the most detailed record among the four men in our case study, is mapped to show his movements over time, the result sits ambiguously with the modern native title claims. Kirwallie Sandy and his wife Sarah Naewin were identified as apical ancestors in the Yugara claim over the Brisbane region.<sup>21</sup> Evidence was tendered that included a photograph with a caption stating Kirwallie Sandy was 'of Brisbane'. However, to quote from the judge's legal decision:

*In Petrie's Reminiscences there is a photograph of this man, above the caption "KING SANDY OR 'KER-WALLI' (TOORBAL POINT OR NINGI NINGI TRIBE)". If this was a description of the land with which he was associated, whether as a leader or otherwise, it would be well to the north of the claim area.<sup>22</sup>*

Also in the evidence was a historical report of Kerwallie Sandy recounting, while at Sandgate in 1875, that he was the 'king of the tribe where Brisbane now stands', and that the Government had taken his land from him and had given him a brass plate instead.<sup>23</sup>

Ultimately, the arguments in the Yugara/Turrbal native title claim about Kerwallie Sandy's traditional country were moot, as the Federal Court judge found that 'the evidence discloses no kind of ancestral or other relevant connection between King Sandy and the Yugara applicants'.<sup>24</sup> In our data drawn from his visual biography, this clearly influential man was connected most directly to the Kabi Kabi claim area to the north of Brisbane. He is also known to have spent considerable time in the emerging city of Brisbane, with his visits including work on Petrie's boats transporting timber, and the trading of seafood obtained at locations in the northern parts of Moreton Bay.

A number of reports point to Kirwallie Sandy's core country being in the northern Moreton Bay region, between Brisbane and Redcliffe. In 1862 he and his wife Sarah Naewin were working with Petrie some distance from Brisbane – most probably at or about Petrie's property on the North Pine River – and he was unable to present himself in the Brisbane area to collect his blankets.<sup>25</sup> A number of reports corroborate Kirwallie Sandy as taking sea resources in Deception Bay in an area known for its high-quality oysters and mud crabs (Craig and Craig 1908:148; Kerkhove 2018;

21 *Sandy on behalf of the Yugara People v State of Queensland (No 2)* [2015] FCA [17].

22 *Sandy on behalf of the Yugara People ...* [291].

23 *Ibid.*

24 *Sandy on behalf of the Yugara People ...* [291–2].

25 *Sandy on behalf of the Yugara people ...* [290]

Parry-Okedon 1930).<sup>26</sup> In a 1932 memoir, Parry-Okedon named Aboriginal people who ‘fished and oystered up the passage and roundabout Toorbul Point, Deception Bay and Humpybong’, including ‘King Sandy’ (Parry-Okedon 1932:4). He noted that: ‘Most of these old people belonged to the Toorbul and Ningi Ningi tribes’, that is in country now subject to the native title claim named Kabi Kabi (*ibid.*).

The captions for photographs and painted portraits are significant in locating Kirwallie Sandy’s core country. Bancroft’s caption of the four men specifically identifies them as ‘Queensland Blacks – Moreton Bay District’, and the contextual data we have reviewed locates them together at Deception Bay which is in the current Kabi Kabi claim area. More specifically, the caption under the photograph of Kirwallie Sandy published in Petrie (1904:195) states ‘KING SANDY OR “KER-WALLI” (TOORBAL POINT OR NINGI NINGI TRIBE)’, which places him in the same areas as properties owned by the Bancroft and Parry-Okedon families, who have documented his associations there.

There is some recognition of Kirwallie Sandy’s lineage connections to the Deception Bay area, as his daughter, Sarah (Sarah Di:naba Moreton) is listed as an apical ancestor in the current native title claim covering this region.<sup>27</sup> While it appears that in fact Kirwallie Sandy should be presented as the earliest known deceased forebear and apical ancestor, the omission may be due to

current claimants’ greater knowledge of Sarah Sandy/Moreton. Sarah is a generation closer to living claimants, though the photographic material concerning her father Kerwallie Sandy, if investigated for the native title claim, would seem to be highly relevant for framing the description of the native title group’s forebears.

## **Conclusions**

In current native title claims in Australia, the issue of investigating individuals’ connections to country is central to the application of anthropological research directly to legal cases. The nature of change and mobility is especially fraught in regions such as south-east Queensland, where the impacts of colonization have been present since the early to mid 1800s. Establishing who are the ‘right people for country’, as it is often put among Aboriginal people, is both analytically challenging and politically charged, and yet is of great practical import across the wider Australian society.

Our research introduces the potential for wide-ranging enquiries focused on the rich archive of historical photographs to be included in the data subject to investigation by anthropologists, other researchers and legal practitioners engaged to progress resolution of native title claims. Noting the judge’s comments regarding difficulties in using photographs as evidence in the claim over the Brisbane area of south-east Queensland, the importance of archival institutions in creating trustworthy copies of photographs is clear. Anthropologists and other researchers are unable to influence the archival practices that make the photographs available, and thoroughness in assessing the copies has proven essential.

If our review and cartographic presentation of the case material relating to the photograph of four men has prompted questions and/

26 For example in December 1875 visiting Scottish naturalist James Craig recorded Sandy was selling crabs in the Sandgate region (Craig 1908:148) and in his memories of the early days of Redcliffe, Parry-Okedon described Aboriginal people as doing odd jobs for residents but ‘who mostly lived by fishing and oystering, the Government supplying them with boats. King Sandy was ‘boss’ (Parry-Okedon 1930)

27 *Kabi Kabi First Nation* (Federal Court of Australia application number QUD20/2019).

or doubts about certain current native title boundaries and potential apical ancestors, our aim of elaborating the potential significance of this data will have been achieved. Our research introduces a method to transform a significant number of photographs into visual evidence that reveals patterns of historical connection to country, though we acknowledge the challenges of reaching firm conclusions when interpreting the locations and content of the images. There will commonly be complex historical reasons for individuals' movements, and it is important to differentiate between the core traditional country of photographic subjects, and locations they may have moved safely and have felt comfortable in or have needed to be in for economic, welfare or regional cultural/ceremonial reasons.

Our conclusion from this study in a region of Australia with a lengthy post-settler history is that well-researched visual biographies that show patterns of connection between people and place can potentially be of considerable value in informing both expert opinion and lay evidence from Indigenous native title claimants. That is because well-researched photographs present instructive data in what is a politically charged environment, and where there may be quite fragile Indigenous community memories of forebears and traditional country.

While the evidential force of photographs is mobilized, quite powerfully we would suggest, when claimants can speak to the images, this case study draws out from the archive rich contextual information associated with a photographic record. In doing so, it highlights the possibility of an awkward moment, when the colonial archive may be more authoritative than claimants' oral memory. However, in addressing historical images that are likely to be unseen and/or unknown without systematic research, we foreshadow potential opportunities for claimants

to repossess ancestors whose existence has been beyond their memory.

We suggest that, when they are available, visual biographies in native title claims will be most productively studied by an expert photographic historian, together with anthropologists and other scholars who work in this area of applied research. To ignore this source of photographic material would, in our view, be inconsistent with the high-quality research required as Australia seeks to address important aspects of the colonial legacy.

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