

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QG 6017 OF 1998

BETWEEN: SAIBAI ISLAND COMMUNITY
Applicant

AND: STATE OF QUEENSLAND
First Respondent

SAIBAI ISLAND COMMUNITY COUNCIL
Second Respondent

FAR NORTH QUEENSLAND ELECTRICITY
CORPORATION
Third Respondent

TELSTRA CORPORATION LIMITED
Fourth Respondent

TORRES STRAIT REGIONAL AUTHORITY
Fifth Respondent

AL MOLLER-NIELSON, BARRY EHRKE, GARY JOHN
DUFF, GEOFFREY DONALD MCKENZIE, GEOFFREY
PAULING, GREG KEITH SVENDSEN, JOHN DEUBLE,
KENNETH JAMES MCKENZIE, LESLIE TREVOR
DELLAWAY, PHILLIP JOHN HUGHES, RAYMOND
MOORE, RAYMOND NEIL HANCOCK, THEO PETROU,
TONY LUDVIGSSON AND DEBORAH HORNE
Sixth Respondents

JUDGE: DRUMMOND J

DATE: 12 FEBRUARY 1999

PLACE: CAIRNS

REASONS FOR JUDGMENT

1 This is an application under s 87 the *Native Title Act 1993* (Cth) for orders determining that native title exists in relation to Saibai Island and associated islands which are located in the northern part of Torres Strait. Mediation by the National Native Title Tribunal has proceeded to the stage where agreement has been able to be reached by all

parties to the application for native title made on behalf of the Saibai people.

2 The Court is not asked to impose any orders on any of the parties to the case. Instead, the hearing is being held to give effect to the agreement to which reference has already been made between the Saibai people, the Government of Queensland and other persons who each have an interest in the islands in question. By this agreement, all the parties recognise that the Saibai people are the traditional owners. The Saibai people, in turn, recognise that others of the parties have certain rights and interests in their lands.

3 I have considered the material before me and am satisfied that it is appropriate to make orders consistent with those proposed by the parties in their agreement which they filed before the Court which takes the form of a draft determination. As the Attorney-General for the State of Queensland has said, this is the second determination made today. They are the only determinations that have been made so far in respect of islands in the Torres Strait since the *Mabo v The State of Queensland (No 2)* (1992) 175 CLR 1 decision and it is a matter of some note that they come before this Court in circumstances where consensus has been reached by all people with interest in the lands in question.

4 The Court therefore makes the following orders, declarations and determinations. Firstly, a declaration in terms of par 1 of the draft determination, which is to the effect that native title exists in relation to Saibai Island, Mawalmay Thoera Island, Thawpay Kawamag Island and Kuykuthal Kawamag Island, save for certain areas of land on those islands which it is agreed are not covered by the determination.

5 The Court also makes a declaration in terms of par 2 of the draft determination that the persons holding the communal and group rights comprising the native title, who will be called the common law holders, are the Saibailgal people, also called the Saibai people. The Court also makes a determination in terms of par 3 of the draft, with the proviso to the order in 3(c)(iii) that such persons whom the Saibai people decide as being native title holders are to be, in each case, a "Torres Strait Islander" within the meaning of that phrase in the *Native Title Act 1993* (Cth). This second determination is to the effect that the nature and extent of the native title rights and interests in relation to the determination area are the rights and interests of the common law holders to possess, occupy, use and enjoy the determination area, subject to some orders I will make in a few moments, but always subject to and in

accordance with the traditional laws and customs of the Saibai people.

6 As I have indicated, the agreement recognises the interests of other persons and organisations in the Saibai Island and associated islands, so the Court will make a determination in terms of par 4 of the draft identifying the nature and extent of those interests. They include the rights of indigenous inhabitants of Papua New Guinea to enter, live on and/or use the determination area in accordance with and subject to prior permission of the Saibai people under their traditional laws and customs.


7 The Court also makes a declaration in terms of par 5 of the draft, which will regulate the relationship between the rights of the Saibai people as the native title holders and those other persons I have just referred to in the fourth order who are accepted as having interest in respect of the Saibai Islands and associated lands. The fifth determination the Court makes will be to the effect that the native title rights and interests of the Saibai people are exercisable concurrently with, but subject to, these other rights and interests.

8 The Court also makes a determination in terms of par 6 of the draft, which will be to the effect that always subject to and in accordance with the traditional laws and customs of the Saibai people, and subject to the fourth and fifth orders that I have already referred to and to the laws of the Commonwealth and of the State of Queensland, the native title rights and interests confer possession, occupation, use and enjoyment of Saibai Island and the associated islands on the Saibai people to the exclusion of all others.

9 The Court makes orders in terms of par 7 of the draft, which contain various definitions of terms used in the draft determination; and the Court finally makes an order in terms of par 8 of the draft to the effect that the native title that I have referred to is to be held in trust by the Saibai Mura Buway (Torres Strait Islanders) Corporation.

I certify that the preceding nine (9) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Drummond.

Associate:

Dated:  12 February 1999

Solicitor for the Applicant: Mr P Hayes

Counsel for the First Respondent: The Honourable Attorney-General for the State of Queensland Matt Foley and Mr A Preston

Solicitor for the First Respondent: Crown Law

Solicitor for the Second Respondent: Mr P Hayes

Solicitor for the Third Respondent: McDonnells

Solicitor for the Fourth Respondent: Holding Redlich

Solicitor for the Fifth Respondent: Mr P Hayes

Solicitor for the Sixth Respondent: Clayton Utz

Date of Hearing: 12 February 1999

Date of Judgment: 12 February 1999