



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): QUD6035/1998  
NNTT Number: QCD1999/002

**Determination Name:** [Mualgal People v State of Queensland](#)

**Date(s) of Effect:** 12/02/1999

**Determination Outcome:** Native title exists in the entire determination area

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## Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

**Determination Date:** 12/02/1999

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Mualgal (Torres Strait Islanders) Corporation RNTBC  
Agent Body Corporate  
C/- Kubin Village,  
MOA ISLAND Queensland 4875

*Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations [www.oric.gov.au](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

The Mualgal people, namely:

(a) The persons who are the descendants of the apical Mualgal ancestors at the date of sovereignty in 1872, including the Samukie and Tuku, Babun, Kupad, Goba, Maga, Kanai, Kulka, Anu Namai, Maiamaia, Geia, Nakau, Aiaga and Dadu, Waina and Jack Moa, and Koia family groups; and

(b) Such other persons whom the descendants of the Samukie and Tuku, Babun Kupad, Goba, Maga, Kanai, Kulka, Anu Namai, Maiamaia, Geia, Nakau, Aiaga and Dudu, Waina and Jack Moa, and Koia family groups regard as being members of the Mualgal people provided each is a "Torres Strait Islander" or a member of the "Aboriginal peoples" within the meaning of those terms in the Native Title Act 1993 (Cth).

### MATTERS DETERMINED:

1. Native title exists in relation to the determination area, that is, the land and inland waters of Moa Island on the landward side of the high water mark, but not including the following:

- (a) Lot 8 on Plan TS161, being Crown Reserve R257 (State School, Kubin);
- (b) Lot 9 on Plan TS162, being Crown Reserve R263 (State School Residence, St Pauls);
- (c) Lot 10 on Plan TS162, being Crown Reserve R264 (State School, St Pauls);
- (d) Lot 9 on Plan CP894532, being Crown Reserve R341 (Landing Ground for Aircraft);
- (e) Special Lease No 24154 described as Lot 2 on TS36; and
- (f) Any road on the landward side of the high water mark of Moa Island.

2. The persons holding the communal and group rights comprising the native title ("the common law holders") are the Mualgal people, namely:

(a) The person who are the descendants of the apical Mualgal ancestors at the date of sovereignty in 1872, including the Samukie and Tuku, Babun, Kupad, Goba, Maga, Kanai, Kulka, Anu Namai, Maiamaia, Geia, Nakau, Aiaga and Dadu, Waina and Jack Moa, and Koia family groups; and

(b) Such other persons whom the descendants of the Samukie and Tuku, Babun Kupad, Goba, Maga, Kanai, Kulka, Anu Namai, Maiamaia, Geia, Nakau, Aiaga and Dudu, Waina and Jack Moa, and Koia family groups regard as being members of the Mualgal people provided each is a "Torres Strait Islander" or a member of the "Aboriginal peoples" within the meaning of those terms in the Native Title Act 1993 (Cth).

3. The nature and extent of the native title rights and interest 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 in accordance with Order 6, but always subject to and in accordance with their traditional laws and customs, and in particular to:

- (a) live on and build structures on the determination area;
- (b) maintain and manage the determination area for the benefit of the Mualgal people, including to:
  - (i) conserve and safeguard the natural resources of the determination area;
  - (ii) make decisions and impose conditions about the use and enjoyment of the determination area and its natural resources by the Mualgal people and other persons; and
  - (iii) make decisions and impose conditions about access rights to the determination area by other persons;
- (c) use and enjoy the determination area and its natural resources for social, cultural, economic, religious, spiritual, traditional and customary purposes, including to:
  - (i) hunt, fish and gather;
  - (ii) exercise and carry out economic activities on the determination area including to grow, produce and harvest; and
  - (iii) engage in trade;
- (d) exercise cultural, spiritual, religious, traditional and customary rights and discharge such responsibilities on the determination area, including to:
  - (i) preserve sites on the determination area of significance to the Mualgal people and other Torres Strait Islanders;
  - (ii) decide on, carry out and pass on the culture, traditions and customs of Mualgal people which apply to the determination area;
  - (iii) conduct and maintain cultural, spiritual and religious practices and institutions through ceremonies and proper and appropriate maintenance and use of the determination area;
  - (iv) inherit, dispose of or give native title rights and interests in the determination area to others;
  - (v) resolve disputes between the common law holders and other parties in relation to the determination area; and
  - (vi) conduct burials on the determination area.

4. The nature and extent of any other interest in relation to the determination area are:

- (a) the interests of the Kubin Island Council under the Community Services (Torres Strait ) Act 1984 (Qld) and the Land Act 1994 (Qld) to exercise its statutory powers and discharge its statutory functions;
- (b) the interest of persons under the Deed of Grant in Trust granted on 17 October 1985 under the Land Act 1962 (Qld) to the Kubin Island Council;
- (c) the interest of the St Pauls Island Council under the Community Services (Torres Strait) Act 1984 (Qld) and the Land Act 1994 (Qld) to exercise its statutory powers and discharge its statutory functions;
- (d) the interest of persons under the Deed of Grant in Trust granted on 17 October 1985 under the Land Act 1962 (Qld) to the St Pauls Island Council;
- (e) the interest of the Far North Queensland Electricity Corporation Limited as an electricity entity exercising statutory powers and as owner and operator of electricity generation, transmission and distribution facilities and associated infrastructure in existence at the date of this determination to access, use, maintain and repair the facilities and infrastructure at any reasonable time in accordance with law;
- (f) the interest of Telstra Corporation Limited as an entity exercising statutory powers and as owner and operator to telecommunications facilities situated on the determination area; including:
  - (i) the right to enter upon the determination area in accordance with law; and
  - (ii) its interest under a Deed of Agreement dated 3 February 1999 between it and a representative of the common law holders;
- (g) the interests of the holders of leases validly existing at the date of this determination and issued under the Aborigines and Torres Strait Islanders (Land Holding) Act 1985 (Qld);
- (h) the interests of indigenous Papua New Guinea persons in having access under Ailan Kastom to the determination area for traditional purposes;
- (i) the interests recognised under the "Treaty Between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area Between the two Countries including the Area known as Torres Strait, and Related Matters" as in force at the date of this determination; and
- (j) other interests that may be held by reason of the effect and operation of laws of the Commonwealth and of the State of Queensland.

5. The relationship between the native title rights and interests in Order 3 and the other interests in Order 4 in relation to the determination area is as follows;

The native title rights and interests described in Order 3 are exercisable concurrently with the other interests described in Order 4, but in those circumstances where they cannot be so exercised, the rights of the holders of the other interests may regulate, control, curtail, restrict, suspend or postpone the exercise of those native title rights and interests.

6. Subject to and in accordance with the traditional laws and customs of the common law holders and the effect and operation of the laws of the Commonwealth and of the State of Queensland and, to the extent that the interests referred to in Order 4 prevent or limit it, the native title rights and interests confer possession, occupation, use and enjoyment of the determination area to the exclusion of all others.

7. The words and expressions used in this order have the same meanings as they have in the Native Title Act 1993 (Cth) except for the following defined words and expressions:

- (a) "Ailan Kastom" has the meaning given to it in the Acts Interpretation Act 1954 (Qld);
- (b) "fauna" has the meaning given to it in the Fauna Conservation Act 1974 (Qld)
- (c) "gas" has the meaning given to it in the Petroleum Act 1923 (Qld);
- (d) "high water mark" has the meaning given to it in the Land Act 1994 (Qld);
- (e) "laws" include the common law;
- (f) "minerals" has the meaning as "mineral" in the Mineral Resources Act 1989 (Qld);
- (g) "natural resources" means animal, plant, fish and bird life found on or in the determination area from time to time and all water, clays and soils found on or below the surface of the determination area and all other matter comprising

the determination area excluding each of minerals, petroleum, gases, fauna and any other natural resources provided that these exclusions shall operate only to the extent to which native title has been extinguished or affected by or under the laws of the Commonwealth and of the State of Queensland;

(h) "petroleum" has the meaning given to it in the Petroleum Act 1923 (Qld); and

(i) "road" means any land open for immediate use as a public road, and any land being used as a public road at the date of this order.

And the Court further orders that:

8. The native title is not to be held in trust.

9. The rights and interests from time to time comprising the native title area to be held by the common law holders.

10. A representative of the common law holders is to nominate in writing given to the Federal Court, within three months of the commencement of regulations prescribing body corporates for the purposes of s 57(2) the Native Title Act 1993 (Cth), the Mualgal Torres Strait Islanders Corporation:

(a) to be the prescribed body corporate for the purposes of s 57(2) the Native Title Act 1993 (Cth); and

(b) to perform the functions mentioned in s 57(3) of that Act after becoming a registered native title body corporate.

11. There be liberty to apply in respect of Order 10.

#### **REGISTER ATTACHMENTS:**

1. Attachment A - Federal Court Reasons for Judgement - Justice Drummond, 1 page - A4, 12/02/1999

2. Attachment B - Map of Determination area - Determination in relation to land only, 1 page - A4, 12/02/1999

*Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.*