

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QG 6035 OF 1998

BETWEEN: **MUALGAL PEOPLE**
Applicant

AND: **STATE OF QUEENSLAND**
First Respondent

TELSTRA CORPORATION LIMITED
Second Respondent

TORRES STRAIT REGIONAL AUTHORITY
Third Respondent

ST PAULS ISLAND COUNCIL
Fourth Respondent

NAGA PEOPLE
Fifth Respondent

KAURAREG PEOPLE
Sixth Respondent

ROBERT SAGIGI
Seventh Respondent

GARY DUFF, MARK MILLWARD and RAYMOND MOORE
Eighth Respondent

MICHAEL CLINCH, NORMAN CLINCH and GEOFFREY
McKENZIE
Ninth Respondent

JUDGE: **DRUMMOND J**

DATE: **12 FEBRUARY 1999**

PLACE: **CAIRNS**

REASONS FOR JUDGMENT

This is an application under s 87 the *Native Title Act 1993* (Cth) for orders determining that native title exists in relation to Moa Island itself, an island located in the

Torres Strait. The island is the subject of two Deeds of Grant in Trust by the Queensland Government under the *Land Act 1962* (Qld): one to the Kubin Island Council, the other to the St Pauls Island Council. Mediation by the National Native Title Tribunal has resulted in agreement being reached by all parties to the application for native title made on behalf of the Mualgal people.

2 The Court was thus not asked to impose any decision on any of the parties to the case. The hearing was held, instead, to give effect to an agreement between the Mualgal people, the Government of Queensland and other persons, including the St Pauls community, who each have an interest in the island. By this agreement, all the parties to the case recognise the Mualgal people as the traditional owners. They, in their turn, recognise that others of the parties have certain rights and interests in respect of the island.

3 I have considered the material before me and have, on a number of directions hearings in Brisbane at which all the parties were represented, considered the form of draft agreement as it has evolved in these hearings before the Court. I therefore am fully familiar with the final form of agreement that has been signed and filed with the Court. I have also had regard to the anthropological evidence and am satisfied, on all this material, that it is appropriate to make orders consistent with those proposed by the parties in their agreement, that is, in the draft determination they have put before the Court.

4 This is, as I understand the case, the first determination in respect of the Torres Strait since the common law decision of the High Court in the *Mabo v The State of Queensland (No 2)* (1992) 175 CLR 1 case itself. It will be the first such determination in respect of the Torres Strait under the *Native Title Act 1993* (Cth). The Court therefore orders, declares and determines, in accordance with par 1 of the draft determination, which is to the effect that native title exists in relation to Moa Island, save that native title is acknowledged as not existing in respect of certain limited areas on the island, which include the state schools and the landing ground for aircraft.

5 The Court also makes a declaration in terms of par 2 of the draft determination to the effect that the persons holding the communal and group rights comprising this native title are the Mualgal people. The Court makes orders in terms of pars 2(a) and 2(b) of the draft, with the proviso to the order in 2(b) that such other persons whom the Mualgal people regard as

being members of that people are to be, in each case, a Torres Strait Islander or a member of the Aboriginal peoples within the meaning of those terms in the *Native Title Act 1993* (Cth).

6 The Court also makes a declaration in terms of par 3 of the draft determination to the effect that, subject to certain qualifications which I will refer to in subsequent orders to be made, the nature and extent of the native title rights and interests in relation to Moa Island are declared to be the rights and interests of the common law holders to possess, occupy, use and enjoy the determination area, but subject always to and in accordance with their traditional laws and customs.

7 The Court also makes an order in terms of par 4 of the draft, which recognises the existence of other interests in relation to Moa Island. The Court further makes a declaration in terms of par 5 of the draft determination, which is a declaration to the effect that the native title rights of the Mualgal people are exercisable concurrently with, but subject to, the other interests that are the subject of the fourth order which I have just made. The Court also makes a declaration in terms of par 6 of the draft determination, which is to the effect that, subject to and in accordance with the traditional laws and customs of the common law holders, the Mualgal people, and subject to the qualifications recorded in orders 4 and 5, the native title rights and interests confer possession, occupation, use and enjoyment of the determination area on the Mualgal people to the exclusion of all others. The Court also makes an order in terms of par 7 of the draft determination.

8 The Court further orders in terms of par 8 of the draft determination that the native title is not to be held in trust; and will further order in terms of par 9 that the rights and interests from time to time comprising the native title are to be held by the common law holders. An order will be made in terms of par 10 which will lead to the ultimate appointment of the Mualgal Torres Strait Islanders Corporation to be the prescribed body corporate for the purposes of s 57 the *Native Title Act 1993* (Cth) and the final order by the Court will be in terms of par 11 of the draft that there be liberty to apply in respect of the preceding order.

I certify that the preceding eight (8) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Drummond.

Associate:



Dated:

Solicitor for the Applicant: Phillips Fox

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: Holding Redlich

Solicitor for the Third Respondent: Mr P Hayes

Solicitor for the Fourth Respondent: Williams Graham & Carman

Solicitor for the Sixth Respondent: Mr T Pocock

Solicitor for the Eighth Respondent: Clayton Utz

Solicitor for the Ninth Respondent: Clayton Utz

Date of Hearing: 12 February 1999

Date of Judgment: 12 February 1999