

GENERAL DISTRIBUTION

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY**

QG 6062 OF 1998

**BETWEEN: MABUIAG PEOPLE
APPLICANT**

**AND: STATE OF QUEENSLAND
FIRST RESPONDENT**

**TORRES STRAIT REGIONAL AUTHORITY
SECOND RESPONDENT**

**TELSTRA CORPORATION LIMITED
THIRD RESPONDENT**

**ERGON ENERGY CORPORATION LIMITED
FOURTH RESPONDENT**

**AL MOLLER-NIELSEN, BARRY EHRKE, BARRY WILSON,
BERNARD BRADLEY, BRUCE ROSE, CARL D'ARGUIAR,
DARYL O'HANLON, FRANK SWINBURNE, MARK
MILLWARD, MARK WILLIS, NEVILLE DAVIES, PAUL
GREEN, PHILLIP HUGHES
FIFTH RESPONDENTS**

**JUDGE: DRUMMOND J
DATE: 6 JULY 2000
PLACE: MABUIAG ISLAND**

REASONS FOR JUDGMENT

1 I have before me today an application for determination of native title on behalf of the people of Mabuiag. The determination is sought with the consent of all parties to these proceedings.

2 It is clear that for many years before Mabuiag Island was annexed to the State of Queensland in the 1870s, the people of Mabuiag were its traditional owners. This fact and the nature of the links between the people of Mabuiag and their lands was observed by officials of the Queensland Government who came to the island soon after annexation. The

Acting Government Resident at Thursday Island, Hugh Milman, who visited this place in 1886, noted these things and reported to his superiors that there is no doubt that every acre has a reputed owner, that every grove or single tree of any value has its proper and legitimate hereditary owner.

3 The people of Mabuiag in the past included distinguished marine hunters as well as fierce warriors. They were not only experts in exploiting their surrounding seas, but they were highly skilled as seafarers who travelled far distances in order to obtain desired resources through trade or warfare. These long-held traditions are reflected in the splendid welcoming ceremony performed today.

4 People gathered here today on this island, like their ancestors before them, have occupied it and maintained the connection with it for hundreds of years. Today they continue to speak their traditional language, they practise historic fishing, hunting and collecting and in doing that, they make use of the specialised knowledge accumulated over centuries. They perform customary dances and songs, they manage sacred sites. They utilise their traditional kinship system to organise social and economic life. They are in all respects the owners of this land.

5 Australian law today, as the Attorney-General for Queensland has pointed out, does not confer native title on the people of Mabuiag. By this Court's orders, that law recognises the fact that that native title has long existed. There will therefore be a declaration that native title exists in respect of Mabuiag Island and the adjacent islands and a further declaration that the persons holding that title are the Gumulgal, the people of Mabuiag.

6 The determination is made by consent. The Court does not impose any decision upon any of the people with interests in this island. Just as Australian law today recognises the traditional rights of the Mabuiag people to these lands, so do the Mabuiag people, by their consent to this determination, recognise that others have interests in their lands. They recognise that the Diocese of Carpentaria is interested in the church lands, that the State of Queensland is interested in the roads and the airstrip and that Ergon Energy and Telstra, service providers on the island, have their own interests in the lands in question.

7 The Court has had the opportunity to consider the draft determination and it has no

difficulty accepting that orders should be made in terms of the draft. In addition to the declarations as to the existence of native title and to ownership of that native title by the Gumulgal people, there will be declarations defining the nature and extent of the Gumulgal people's native title rights as recorded in Order 3 of the determination. There will be a declaration as to the nature and extent of the interests of others in the lands recorded at Order 4 of the determination. There will also be declarations in terms of Orders 5, 6 and 7 of the determination.

8 Since the native title will be held in trust for the people of Mabuiag, there will also be an order that it will be held in trust by the Gumulgal (Torres Strait Islanders) Corporation.

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: 8 August 2000

Solicitor for the Applicant: Ms H Loban

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

Solicitor for the First Respondent: Crown Solicitor

Solicitor for the Second Respondent: Ms H Loban

Solicitor for the Third Respondent: Blake Dawson Waldron

Solicitor for the Fourth Respondent: McDonnells

Solicitor for the Fifth Respondents: Gore & Associates

Date of Hearing: 6 July 2000

Date of Judgment: 6 July 2000