

GENERAL DISTRIBUTION

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

QG 6248 OF 1998

**BETWEEN: DAUAN 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: DAUAN ISLAND

REASONS FOR JUDGMENT

1 I have before me an application for a consent determination of Native Title on behalf
of the people of Dauan.

2 Long before 1879, the Dauan People lived on this land. They gained their subsistence
by gardening, fishing, hunting, foraging and trading. They were a maritime people who had
frequent contact with people from other Torres Strait Islands and from the Papua New Guinea
mainland. They actively defended their homes and their lives from often unfriendly
neighbours. They had a system of law which regulated relationships among themselves and
governed the use and the ownership of the land.

3 On 5 December 1879, Captain Pennefather of the Queensland Government Steamer
"Pearl" came to Dauan, mustered all the inhabitants of the island and told them that
henceforth they would be amenable to the laws of the white man, as the island now formed
part of the territory of Queensland. Whatever this may have meant to those people on Dauan
on that night, it is unlikely that they believed that they were being dispossessed of their land
by Captain Pennefather's declaration. And in fact, according to Australian law, they were not
dispossessed.

4 Today, Australian law recognises by the Court's determination that native title has
existed and continues to exist over the island of Dauan. It further declares that the holders of
the communal and group rights constituting that native title are the Dauan people.

5 The Court is not convened to impose any decision upon any of the parties. Its
judgment is, as representatives from the bar table have mentioned, a consent determination.
Just as Australian law, by this determination, recognises the traditional rights of the Dauan
people, so do the Dauan people recognise the interests that others have in their ancestral
lands. They recognise the interest of the State of Queensland in the school lands, and the
interests of the energy and communication authorities in the lands they need for the
installations they have upon the island.

6 The Court has had the opportunity to consider the draft determination, Exhibit 1, and I
am of the opinion that it is appropriate to make orders and declarations in terms of that
exhibit. There will therefore be a declaration that native title exists in relation to the island of
Dauan as shown on the map annexed to Exhibit 1. There will be a further declaration that the
persons holding the communal and group rights comprising the native title are the Dauan
people. There will be a declaration in terms of Order 4 as to the nature and extent of the
other interests in the island of Dauan.

7 There will be orders in terms of Orders 5, 6 and 7 of the declaration. It being the
intention of the Dauan people to have their native title held in trust for and on behalf of the
Dauan people, the Dauanalgaw (Torres Strait Islanders) Corporation is to be the trustee of
that native title, and there will be a declaration accordingly.

I certify that the preceding seven (7)

NNTR attachment: QCD2000/002
Attachment C: Federal Court Reasons for
Judgement, Page 2 of 3, A4, 06/07/2000

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: Mr P Hayes

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: Mr P Hayes

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