

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY

QG 6068 OF 1998

**BETWEEN:** MASIG 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

QG 6050 OF 1998

**BETWEEN:** DAMUTH 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:** 7 JULY 2000  
**PLACE:** MASIG ISLAND

**REASONS FOR JUDGMENT**

1 Although the proposed determination of native title that I have before me today has  
the consent of all the parties, it is necessary for the Court to be satisfied by reason of  
provisions of the *Native Title Act 1993* (Cth) that it is proper for the Court to make a  
determination along the lines proposed in Exhibit 1.

2 The Masig people of Masig, Damuth and the associated islands say they descend from  
the people who lived principally on Masig and Damuth Islands at the time of their annexation  
to the then Colony of Queensland in 1879. They claim the rights to use those islands and the  
associated uninhabited islands for customary subsistence and cultural purposes.

3 That there has long been identified in the historical records of Australia since white  
settlement the existence of a separate people known as Masig is well demonstrated by the  
evidence available to me. The Attorney-General for the State of Queensland has touched  
upon some of the history, according to written record, of the Masig people. But those records  
are full of references to them as a separate and distinct people living on Masig and the  
surrounding islands.

4 Captain Bligh sailed through these waters on HMS Providence in 1792. He named  
the islands Yorke and Dalrymple, as recorded in the journal of one of his midshipman,  
Matthew Flinders.

5 In the 1840s John Macgillivray, on a naval expedition to New Guinea and the Torres  
Strait, noted the difficulties that he had in identifying the tribal groupings in the Torres Strait.  
But he did observe that "at all events the natives of Masig belong to a distinct tribe, judging  
from their language, and they are known as the Massilegas ...".

6 It was the Masig people's traditional trading activities that made them so well known and brought them into contact, not only with the other peoples of the Torres Strait and mainland, but also with the European seafarers, traders and settlers. Again, the historical records are full of references to the Masig people as seafaring traders. We find reference in John Sweatman's journal of an encounter with a large number of natives in York Bay in 1846 on the Australian mainland. He noted that the people of the Cape York were connected with some of these natives he identified as Masig people.

7 John Macgillivray, to whom I have already made reference, noted that the Masig Islanders in 1848 were in the habit of coming down to Cape York on a visit to the Australians there, often extending their voyage far to the south and visiting many islands in search of turtle and remaining away for a month or more.

8 Beetes Jukes, who was a member of the surveying exhibition conducted by HMS Fly in the middle of the 1840s, also made observations about the Masig people. He visited Masig and described the island as having many coconuts and as always being inhabited. "They cultivate coco-nuts and the banana, and there was spring of water in the centre of the island." The islanders told him the principal food was coconuts and yams. Jukes made a similar observation of the settlements that he saw on nearby Damuth.

9 The historical records contain numerous references to the extent of the trading activities of the Masig people. Papuan canoes frequently visited Masig, as well as a small number of other islands in the Strait, and the Masig people are recorded as having been traditional intermediaries in trade exchanges between coastal Papuans. The Masig people themselves took turtle and dugong meat to exchange for items with the Papuans, including bows and arrows, yams, taro, sago, drums, and skins for drums.

10 It is important to note that that traditional trade exchange continues to this day, with items such as sago and woven mats continuing to be exchanged between the Masig and Papuan people, together with more modern goods such as flour, sugar and petrol.

11 The material before the Court demonstrates that the Masig people continue to identify with their traditional lands and to maintain customary exchange relations. The Masig system of land tenure has responded to change and it has adapted over time. External influences as

well as the internal dynamics of Masig society have shaped that society which has been modified to suit the needs of the Masig people, both prior to annexation and since contact with Europeans and others. This adaptability of the Masig is not recent: the material demonstrates that it must be understood as a traditional ongoing aspect of Masig culture.

12 Since sustained contact with Europeans and others, the Masig have altered the aspects of their way of life and the way they live and the way they use their land, without undermining the traditional system of land tenure. While the location of homes on their islands has shifted from traditional village sites and different building materials are now used, the fundamental tradition of living on Masig Island and building dwellings has not altered. People inherit land according to the principles and laws which derive from those which existed and applied prior to annexation. They continue to observe the traditional authority of the elders in relation to land matters and the integrity and fundamental principles, laws and customs determining and regulating land ownership, management and use have remained constant.

13 The identity of the claimants, Masig people, as traditional owners of the lands the subject of the claim is evident from the material available to the Court. It is evident from the ongoing adherence by the Masig people to customary principles, laws and regulations of social organisation and kinship.

14 The Masig people have never been dispossessed of their lands by British or Australian Governments. External influences have been incorporated into Masig society well prior to sustained contact with Europeans, but this has not undermined the Masig people's adherence to their traditional systems.

15 The material before the Court well establishes the right of the claimants to a declaration in terms of Order 1 of Exhibit 1 that native title exists in relation to Masig Island, Damuth Island and the surrounding islands. The material also demonstrates the claimants' entitlement to a declaration that the people holding the communal and group rights comprising this native title are the Masig Islander people.

16 There will be orders and declarations in terms of Orders 1 and 2 of Exhibit 1. There will also be declarations and orders in terms of Order 3 of the draft determination which

describes the extent of the Masig people's native title rights.

17 As has been mentioned from the bar table, this Court today does not impose any orders on anyone. The Masig people and everyone else with interests in these islands have reached agreement on the arrangements that should be incorporated in the Court's orders. Just as by the determinations that I have already made, the Masig people are recognised as the traditional holders of the islands, so do the Masig people give recognition to the interests of those other persons or organisations who have been mentioned in what has been already said from the Bar Table.

18 There will be declarations and orders in terms of Orders 4, 5, 6 and 7 of Exhibit 1. Since it is intended that the native title which has been recognised today is to be held in trust, there will be an order that it be held in trust by the Masigalgal (Torres Strait Islanders) Corporation.

I certify that the preceding eighteen (18) 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 Applicants: 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