

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QG 6087 OF 1998

BETWEEN: PORUMA 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 6073 OF 1998

BETWEEN: WARRABER PEOPLE
APPLICANT

AND: STATE OF QUEENSLAND
FIRST RESPONDENT

TORRES STRAIT REGIONAL AUTHORITY
SECOND RESPONDENT

AUSTRALIAN MARITIME SAFETY AUTHORITY
THIRD RESPONDENT

TELSTRA CORPORATION LIMITED
FOURTH RESPONDENT

ERGON ENERGY CORPORATION LIMITED
FIFTH RESPONDENT

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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
SIXTH RESPONDENTS

JUDGE: DRUMMOND J
DATE: 7 JULY 2000
PLACE: PORUMA ISLAND

REASONS FOR JUDGMENT

1 I have before me two applications for determinations of native title, one by the Poruma people and one by the Warraber people. Though the determinations are to be made by consent, the Court is required by the provisions of the *Native Title Act 1993* (Cth) to be satisfied that it is proper to make orders in terms of what the parties propose.

2 The European history of these islands going back to before they were annexed by the then Colony of Queensland in 1872 attests to the fact that they were the home of various native families and groups. For example, in December 1849, one of the officers of Captain Owen Stanley's ship, HMS Rattlesnake, landed on Warraber and he wrote this description in his journal of what he saw:

"It is of coral sand formation, low and thickly wooded. Some coconut trees grow at the west end of the island, where there is a native village. It consists of several long huts thatched with grass. Many of the people, both men and women, ran down to the beach, waving green branches to induce us to land. Others were sitting down under temporary sheds made by stretching large mats, the sails of their canoes, over a framework of sticks.

The inside of one large enclosure was concealed by a fence six feet high and an adjacent shed under which some cooking was going on, completely covered with some recent shells of turtle, apparently about 30 in number. Three very large canoes were hauled up on the beach, protected from the sun by matting. Two smaller ones were kept afloat."

3 It needs but little imagination to confirm by observations today that we are in the same place. A little while later, Captain Robert Fraser, of "The Lady Peel", passed, but did not land on, Poruma. He saw, however, something of the people of that island. He noted in

his journal that Coconut Island was deserving of mention because of the fine grove of coconuts, and it was inhabited:

"The natives were in great agitation and seemed to be splitting their very lungs to induce me to stop, but I passed them like a flying cloud. They frequently had tortoiseshell in considerable quantities to trade away for tools. There was but one boat on the beach."

4 That these islands were inhabited by the native peoples is not only established by the recollections of the people who live here today, but also by the observations of early seafarers and traders.

5 The law which came to this country in the wake of those traders, originally the common law of England, now the common law of Australia, today, by order of this Court, acknowledges that the people of Poruma and Warraber gathered here today as the descendants of the men and women who lived on these islands when those early seafarers passed by are the traditional owners. The evidence is amply sufficient to satisfy the Court that the people living on these islands today are the descendants of those who lived on these same lands prior to annexation in 1872.

6 Members of the Poruma people and the Warraber people are closely connected by ties of kinship and common language. They both continue to live under an ongoing system of land tenure that predates annexation. As part of this continuing system of land tenure, the Warraber and Poruma islanders continued to exercise and enjoy the rights, to gather, hunt, fish, camp, garden, live, manage, maintain and visit each other's land the subject of the present claims. Continuous physical connection with the lands the subject of these claims is well established. Further, the peoples of these islands maintain their traditional trading practices. Frequent exchanges of trade continue to this day with people as far afield as those in Papua New Guinea.

7 The Court is well satisfied that orders in terms of the draft sought should be made. There will accordingly be, in the case of the Poruma people's claim, a declaration that native title exists in respect of Poruma Island, and there will be a further declaration that the persons holding communal and group rights comprising that native title are the Poruma people. In the case of the Warraber claim, there will be a declaration that native title exists in relation to

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Warraber Island and the associated islands, and there will be a declaration that the persons holding communal and group rights comprising that native title are the Warraber people.

8 As has been mentioned by various of the representatives of the parties, the Court does not sit today to impose any decision on anyone. The determinations are by consent, so that just as the other parties to the claims, the respondent parties, recognise the traditional claims of both the Poruma and Warraber peoples to their ancestral lands, so do the Poruma and Warraber people recognise the rights and interests of the various other parties to the proceedings.

9 There will be, in relation to the Poruma claim, declarations and orders in the terms proposed in Exhibit 1. Since it is intended that the native title be held in trust for the Poruma people, there will be an order and declaration that that native title is to be held in trust by the Porumalgal (Torres Strait Islanders) Corporation. In relation to the Warraber claim, there will be declarations and orders in terms of Exhibit 2; and since that native title is to be held in trust for the Warraber people, there will be a declaration and order that native title is to be held in trust by the Warraberalgal (Torres Strait Islanders) Corporation.

I certify that the preceding nine (9) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Drummond.

Associate:

Dated: 8 August 2000

QG 6087 OF 1998

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

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Solicitor for the Third Respondent: Blake Dawson Waldron

Solicitor for the Fourth Respondent: McDonnells

Solicitor for the Fifth Respondents: Gore & Associates

Date of Hearing: 7 July 2000

Date of Judgment: 7 July 2000

QG 6073 OF 1998

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: Department of Premier & Cabinet

Solicitor for the Fourth Respondent: Blake Dawson Waldron

Solicitor for the Fifth Respondent: McDonnells

Solicitor for the Sixth Respondents: Gore & Associates

Date of Hearing: 7 July 2000

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