

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QG 6001 OF 1998

BETWEEN: McNAUGHT NGALLAMETTA ON HIS OWN BEHALF AND
ON BEHALF OF THE WIK AND WIK WAY PEOPLES
APPLICANTS

AND: STATE OF QUEENSLAND
COUNCIL OF THE SHIRE OF AURUKUN
NAPRANUM ABORIGINAL COUNCIL
PORMPURAAW ABORIGINAL COUNCIL
COOK SHIRE COUNCIL
PORTS CORPORATION OF QUEENSLAND
A NUMBER OF COMMERCIAL FISHING AUTHORITY
HOLDERS
CAPE YORK LAND COUNCIL
RESPONDENTS

JUDGE: DRUMMOND J
DATE: 3 OCTOBER 2000
PLACE: CAIRNS

REASONS FOR JUDGMENT

1 I have before me today an application for a consent determination in respect of part of the lands the subject of the native title claim brought on behalf of the Wik and Wik Way peoples ("the Wik peoples"). It is worth noting that, for present purposes, the proceeding commenced with an application filed under the *Native Title Act 1993* (Cth) on behalf of the Wik peoples in March 1994. Shortly thereafter, the National Native Title Tribunal gave public notification of the claim and by early September 1994, the Tribunal had commenced mediation. These things seemed to have come to something of an impasse for a very long period of time.

2 It was not until late last year that it appeared that a partial resolution by agreement of the claim might be achievable. Things moved along through the present year and ultimately I ordered that the Wik peoples claim be heard in two separate parts. It is the first of those parts, called Part A, which is the subject of the hearing today.

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3 Part A involves, in addition to the Wik peoples as claimants, eight respondent parties. The other part of the claim which is yet to be determined, Part B, involves a total of twenty-three parties, including the nine involved in today's matter. The case is complicated enough, but it is by no means the most complex native title case before the Court. The lands in Part A with which we are concerned today are confined to lands that have always been unallocated Crown lands or lands that have only ever been subject to forms of title granted for the benefit of Aboriginal peoples. That is subject to the qualification that there are interests in inland waters held by a small number of fishermen under permits issued under the Queensland fisheries legislation.

4 The lands in Part A do not include any lands the subject of pastoral or mining titles. It is Part B of the Wik peoples claim that contains lands held under seven pastoral and four mining titles. The determination today deals only with the simplest part of the Wik peoples claim, yet it has taken six and a half years to achieve this limited result. To date, the widely held view has been that the only practicable pathway for resolving the mass of native title claims before the Court is by negotiated outcomes. Yet the practicability of negotiation must be put into serious question when issues before the Court today that are relatively uncomplicated in comparison with many of the issues in the balance of the Wik peoples claim, and in the large number of other native title cases in the Court, have taken so long to be brought to an agreed result.

5 I still accept, at least for the moment, that an agreed resolution of the balance of the Wik peoples claim is preferable to a Court-imposed result. That is so because that is more likely to provide a more useful framework than a court decision limited to specific issues for dealing with the resolution of conflicting interests of the Wik peoples and particularly the pastoralists over the specific access and usage questions that are likely to arise in the future.

6 But the Court cannot allow the remainder of the Wik peoples claim to be the subject of yet more protracted negotiations. The cost benefits of such a negotiated resolution of a case, if that is ultimately achievable, in comparison with the costs of a Court-imposed decision are likely to be largely illusory. The uncertainty for all with interests in the Wik peoples lands, if allowed to continue for any extended further period, is unacceptable both to the public interest and to the interest of all the parties involved in this litigation.

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7 Long continued uncertainty may well destroy the willingness of the Wik claimants themselves and of one or more of the various respondents to engage in the process of compromising, by giving up part of what each considers to be their full legal rights, that is essential if there is to be an agreed rather than a Court-imposed result.

8 I regret I cannot agree with everything that has fallen from the Crown Solicitor. Today's determination is, in my opinion, not so much a cause for celebration by the Wik peoples as an occasion for all parties to this still unresolved case - the Wik peoples, the State of Queensland, the Commonwealth of Australia, the pastoralists and the miners - to resolve anew to co-operate with each other in an endeavour to achieve much more quickly than Part A of the claim has been resolved, a mutually acceptable accommodation of their various interests, though this may require each to give up part of what they may consider to be their full legal entitlements.

9 It is worthy of note that litigation rarely results in the complete vindication of the position of any one party. Much more commonly the Court, after having the opportunity to hear and consider all the evidence from all the parties, comes to the conclusion that there is at least some merit in the arguments put forward by each party. Few litigants win 100 per cent of their cases. I do not expect native title litigation to be any different in this respect.

10 All the Court can do today, it being satisfied as to the propriety of so acting, is to make determinations and orders in accordance with the draft determination Exhibit 1. There will be orders and declarations accordingly.

11 As I have said, further time must be allowed to the parties to Part B of the claim to try to reach a negotiated settlement, but the parties should anticipate that period will be measured in months rather than years. If a settlement cannot be reached promptly, the Court will consider fixing a date for the start in the first half of 2002 of the trial. This will require directions for the exchange of pleadings, and evidence to be given in about the middle of the coming year, 2001, at the latest. *Prima facie*, it is the Tribunal, rather than a Court appointed or a privately agreed mediator, who should have the opportunity to try to bring the parties to a final resolution of the outstanding claim. To enable the Court to have an informed opinion on the likely prospects of a prompt settlement of Part B of the claim, I intend to seek more frequent reports from the Tribunal as to the progress of mediation of the outstanding issues

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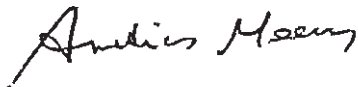
than has hitherto been done.

12 Initially, I will direct, pursuant to s 86E the *Native Title Act 1993* (Cth), that the Tribunal, which no doubt has accumulated fairly extensive information about the positions of all the parties, provide the Court with a report by 16 November 2000 setting out what it considers, after discussions with all parties, to be a practicable program for attempting to mediate to an agreed resolution Part B of the Wik peoples claim.

13 The Tribunal, in preparing this program, will bear in mind that, unless it is apparent by mid 2001 that there are good grounds for thinking that a settlement of all of the issues in Part B will be achieved in the latter half of 2001, the Court will give directions in about mid 2001 designed to make sure that the case will come to trial in the first half of 2002.

I certify that the preceding thirteen (13) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Drummond.

Associate:



Dated: 12 October 2000

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| Solicitor for the Applicants: | Ebsworth & Ebsworth |
| Counsel for the State of Queensland: | Mr C Lohe |
| Solicitor for the State of Queensland: | Crown Solicitor |
| Solicitor for the Cape York Land Council: | Ms Goodchild |
| Solicitor for the Pompuuraaw Aboriginal Council: | Farrallys Solicitors |
| Solicitor for the Napranum Aboriginal Council: | Suzette Coates |
| Solicitor for the Aurukun Shire Council: | Bottoms English |

