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Important Information

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Affidavit

No. VID622 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

PABAI PABAI AND GUY PAUL KABAI

Applicants

COMMONWEALTH OF AUSTRALIA

Respondent

Affidavit of: **Fred Pabai**
Address: [REDACTED]
Occupation: Retired
Date: 13 December 2022

I, **FRED PABAI** of [REDACTED] retired, say on oath:

1. I make this affidavit from my own knowledge unless otherwise stated. Where I make statements on the basis of information provided to me, I set out the source of my information and my belief that that information is true.

Personal Background

2. My full name is Fred Victor Pabai. My island name is Yamba.
3. I was born on [REDACTED] 1957. I am the brother of Pabai Pabai, the First Applicant in this proceeding. I am part of the Guda Maluyligal nation.
4. My biological parents, who are also the parents of Pabai Pabai, had 11 children. I am one of the 6 boys that they had. I also have 5 biological sisters.
5. I was adopted out when I was very young, when I was first born. This type of traditional adoption is a pretty common thing on Boigu. It often happens when two people from different clans get married, to help cement the families, and as a way of celebration.



6. My family adoption goes like this. According to our cultural lore, my mother was adopted out to my family, the Ganaia family. It is cultural lore that when she is ready to marry and leave the family, she needs to leave somebody behind to replace her. That is me. That is why I was left with the Ganaia family.
7. My mother was adopted to the Ganaia family by Judah Ganaia. My last name should be Ganaia, not Pabai, because they are my adopted family.
8. Although I know that I am a Pabai, I have been raised in the emu clan, which is different to crocodile clan. The emu clan's sacred places and ceremony places are located all over Boigu, including camping places in the south, ceremonial places around the village, and places on the east side of the river. I talk about these more below.
9. When a child is born, and is to be adopted, they try to cut you off from the mother, otherwise you smell the breast milk. So, I did not grow up with my natural mum and dad. I grew up on the other side of the island with my grandfather Judah Ganaia, and they gave me coconut milk to feed me, in the proper old-fashioned way. I didn't know my natural mum and dad until I was 15 or 16 years old. The adopted family will tell you about your natural parents when the time is right. Otherwise, there could be bloodshed between the families. So, it is kept top secret until they think the time is right.
10. I grew up on Boigu. I am a traditional owner of Boigu and I have native title rights over Boigu. I was taught the traditional knowledge of Boigu from a young age by my grandfather who was a traditional custodian of Boigu, as well as my adopted parents who are traditional custodians of the island. This is the Ailan Kastom. They are the Ganaia and Toby families. Other respected elders also taught me traditional knowledge. They taught me so I can deliver that information to the younger generation. In our culture, the old people find a child that they think would be capable of handing down the culture, the tradition and the customs. So all this was taught to me, not only by my grandfather, but all the elders, from a very young age. They authorised me to be a traditional custodian of Boigu.
11. The old people believed that I should be taught the cultural knowledge first. So, I didn't go to school until I was in about grade 4 or 5, about 9 or 10 years old. All my early learning was cultural knowledge, that included traditional stories and songs, hunting, how to read constellations, and learning the tides.
12. For grades 4 and 5 I went to school on Boigu. Then I went to Thursday Island for grades 6 and 7. Then for grade 8 they moved my school to Bamaga and I did grade 8

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there. Then I finished my schooling in grades 9 and 10 at Townsville Grammar School.

13. After I left school, I did a lot of other jobs. For my first job I went back to Boigu, helping my community carry stones and rocks from the reef to build the seawall. Then I did a bit of construction work in Townsville. Then I went to Western Australia and worked for a pearling company called PPL as an underwater diver. Then I went back to Townsville for construction work. Then I joined the army, when I was about 19 or 20 years old. I was in the army for about 3-4 years. I was stationed in Townsville.
14. After I left the army, I came back to Boigu for about 6 months. Then I went to teacher's college at TAFE in Cairns, when I was about 23 years old. That was for about 2-3 years. This qualified me to become a community teacher. But the diploma did not qualify me to become a registered teacher. So, then I went to James Cook University to study teaching. That was another 3 year course. I finished that course when I was about 25 or 26.
15. After I finished my teaching course my first job as a teacher was in the Torres Strait, I think it was on Mabuiag Island. I then had many teaching jobs in the Torres Strait, including on Boigu, Badu, Thursday Island, and at Bamaga, in Cairns, and on the Gold Coast, for about 30 years. My speciality is teaching music and cultural heritage programs. What I taught depended on the school. I am both Aboriginal and Torres Strait Islander, so I have rights to teach both cultures. For example, I taught the story of the Pabai name. In that story you can teach literacy, numeracy, science. You can teach everything. So, I put that story into my planning, and talked to the principal, and I taught that to the students. Then everyone was knocking on my door saying, we want to incorporate that into our curriculum. I became a senior educator before I retired.
16. I retired in 2005. After I retired, I moved to Brisbane in 2006 to be closer to the hospital. I have lived in Brisbane since 2006. I travel back and forth to Boigu regularly.
17. I got married in about 1986 in Cairns. My wife is from Mabuiag Island. I met her at teaching college. She is also a teacher.
18. I have 9 children, 4 adopted children, and 20 grandchildren. Three children live with us in Brisbane. Our son lives next door.

Cultural Knowledge

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Songs and Stories

19. The first teaching came from traditional stories. Then the songs. Within those stories and songs there is cultural teaching. Something like a message.
20. I also compose songs about Boigu. For example, I composed a song recently. The song talks about the wind changing direction, before the monsoon season starts, and how the southwesterly wind is blowing very gently and lifting up and beautifying the island, and I'm feeling sorry because my island is beautiful and I am imagining I am on the island, but I live in Brisbane.
21. One example of a story goes like this. Dogai Metakurab, the female spirit, lived inside the mound of a wild fowl. One day, Dogai Metakurab was disturbed when Guiguisanalnga, a Boigu man, was digging in the mound for eggs. It was dry season, and many families were camping in the garden places on the south side of the island. It was the season when the wild fowl laid their eggs. During this time people would dig the eggs out for food. Guiguisanalnga was living at Dhug on the Western end of the island. One day, he took a basket and went to Toewan Koesa. He had sores on his feet so he couldn't go very far. He was digging in the mound, but he found no eggs. He dug a little more, but still no eggs. He dug deeper and deeper because he was sure he was going to find eggs. But still nothing. By this time he had dug a big hole. Deep inside the hole he saw something strange. He wondered what it was. It looked like the hair of a woman, so he touched it to make sure. It was Dogai Metakurab's hair and she said, somebody's touching my hair. Suddenly she was very angry. She kicked so hard she flew out of the nest and landed on her feet next to the nest. Guiguisanalnga ran with great speed. His feet were very painful, but he was so frightened he kept running, until he got to the first camping place. The people at the camping place asked, what's the matter? He said, there's something terrible coming this way, so bring me some food and water and I'll tell you about it. As he ate and drank, his strength returned. He then told the people that Dogai Metakurab was coming there. First, she'll send the sandflies, which is a warning. Then she'll send butterflies, beautiful butterflies, which is a sign. Then a big wind will blow and she will come. As he spoke, the fear was still in his eyes. He said, we must run before she comes any closer. Before she came, his friends got their bow and arrows to kill the Dogai. But the Dogai was so scary that they turned and ran. They ran to the next village, and then to the next village, letting people know that Dogai Metakurab was coming. Dogai Metakurab chased them and all the villagers all the way from the Western side of the Island to the Eastern side of the Island, to Kerpay Gizu. Everyone was frightened except a man named Bu, who was the head warrior of

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Kerpay. He said, if the Dogai comes here, I'll kill her. Everyone waited for the Dogai to appear. Dogai then appeared. The people were frightened, but Bu was not. He stood up and shot an arrow in her rib. The Dogai was wounded, but still alive. However, her power was broken. The people came with clubs to finish her off. Before they killed her she said, before you kill me, I want to tell you something. I chased you from one side of the island to the other, and I disturbed you all, and that makes me happy. Then the villagers killed her. They dragged her body onto a surka nest and then they burned it.

22. This story teaches people not to wander off. It teaches children to listen to their parents and let them know before they go anywhere. It stops young people from doing things that are not right.
23. A lot of the places that are described in this story have been impacted by erosion and flooding. A lot of these places are disappearing.
24. A lot of hidden knowledge is stored with me. I am like a living librarian. For example, there are certain parts on Boigu that are sacred. And some that are used for traditional warfare. A lot of people don't know that. Red clay represents traditional warfare. White clay represents celebrating when the warriors come back. I know where the red and white clay is. There is only one location on Boigu where you can get the clay. That is the most sacred part. It is secret. The story of how the clay got there is one of the stories that I learnt as a kid. The story is a secret, including the reason why the clay is red, but I can say that it is about women. It is recorded in the story about Dhamak and Dharam. That area where the clay is gets flooded. But the red and white still stays in the clay.

Constellations and the seasonal calendar

25. My grandfather taught me how to read the constellations and how to foretell the weather, and what signs you're looking for to tell how the seasons change through the year. My grandfather was a Zugubau Mabaig, which means he was a star man who could read the constellations.
26. My people use the positions of the stars to predict when the seasons change. This is also linked to the behaviour of the plants and animals. Most food or medicine plants are seasonal, so it is really important to know how the plants, animals, weather and stars connect. Otherwise, you don't know when to do things.
27. On Boigu, there are two very important constellations; *Tagai* and *Baidam*.



28. *Tagai* was a great warrior and a fisherman. *Tagai* the constellation is a warrior standing in the southern sky, in a canoe (which is the Milky Way). His left hand holds a spear, which is also known as the Southern Cross. In his right hand he holds a fruit, which is another set of stars.
29. *Tagai* is important for a lot of things, including navigation. His spear, which is in his left hand, points in the direction of south. *Tagai* is also used to tell the seasonal calendar. It tells you the time to harvest, plant and seasons changing. *Tagai* tells us when the monsoon season arrives, when the winds change and many other things. *Tagai* is an important constellation for all people in the Torres Strait Islands.
30. Boigu also uses the shark constellation *Baidam* to tell the seasonal calendar. For example, when *Baidam's* mouth is pointing down over the Papua New Guinea mainland in September, that is the time to burn the grass, dig ash into the ground and plant yam seeds, before the rains fall. August and September are the times to plant.
31. *Tagai* and *Badaim* tell us when the monsoon season is starting. As soon as the *Tagai* spearhead touches the horizon, and *Baidam* is touching the Papua New Guinea river, that's when the first thunder and lightning of the monsoon season starts. This is in November. Then, *Baidam* lies down along the Papua New Guinea coastline facing east. And then, when it dips down below the horizon, that is when the monsoon rains start.
32. When the *Tagai* spearhead touches the horizon, and *Baidam* is touching the Papua New Guinea river, in November, this is also the sign for the end of the turtle mating season. The winds change and the male turtles go underwater. This is when we start collecting turtle eggs, and the fishing is good. Wild yams, mangoes and almonds are ready to pick.
33. There is a constellation called the *kaygas*, which looks like a shovel-nosed shark. Its English name is the Milky Way. When the head of *kaygas* looks to the east, the current runs west. If the head is in the south and the tail is in the north, the current runs east.
34. [REDACTED] In the last 10 years it has changed. Our forefathers tell us that it has been a very rapid change.
35. We used to be able to tell you exactly what would happen. Now, for example, the monsoon season comes at different times. The monsoon used to fall in January or

the end of December. But that is no more, the monsoon could be early, or pushed back.

36. Our weather pattern has been damaged. This has a very big impact on the Torres Strait Island people. We can no longer observe, we can only guess. We believe in the seasonal calendar, when to harvest, when to get things out of the sea, and when to find the fruit and the berries. But it doesn't work anymore. It's all changed.
37. All our land now has washed away as well. A lot of people left because there was not enough land.
38. Where are we going to do our gardening? How will we plant our vegetables? That was our survival kit. Our forefathers ate directly from the ground. They lived for many years and were very strong. It's hard work working the gardens. They were active all the time. Now, we have to rely on the boat bringing vegetables. It's very expensive. And that's where the health issues come in. [REDACTED] We used to only eat natural food. Now we eat unnatural food from the shop. [REDACTED] [REDACTED] A lot of people have diabetes.

Hunting

39. The hunters use the current and the tide to hunt dugong. Dugongs eat sea grass. But the erosion from the land is covering the seagrass and covering the feeding grounds. So, the dugongs are moving from one feeding ground to another, because the feeding grounds are covered by the sand.
40. We observe the beaches to know when it is a good time to go hunting. The waves leave a mark on the beach. Then we can tell where to go hunting. But the beach out the front of the village is gone, so we can't observe the beach anymore. Because of this, we cannot monitor the dugong feeding grounds anymore, when the beach is gone.
41. The stars tell us when is a good time to go hunting. The phases of the moon are also part of traditional hunting. The moon tells us where to go and the good time to catch the crabs and to get crays. One or two days before the new quarter moon is a really good time to go fishing.
42. If the tide is low and the moon is right above that is a good time to go hunting, when the crabs are dry in the mangroves. That is also a good time to spear crayfish. These are the skills you need to learn to be a hunter. It takes ages to learn this.
43. In September when it is hot and dry, people used to fish for barramundi and prawns in the swamps. The fish used to get trapped in the swamps. But now, in September,

it's still wet and the water flows backwards from the rivers. This means that we can't catch barramundi and prawns in the swamps anymore because the barramundi and the prawns can escape.

44. The seasonal calendar doesn't match anymore.

Cemetery and sacred trees

45. Before any kind of decisions are made on Boigu, we hold a cultural ceremony at the cemetery. The reason we do this is to tell the ancestors what we are doing, and to ask them for permission for whatever we are asking the community to do. These are very important ceremonies.
46. To do the ceremony, you stand in the cemetery and you talk to the ancestors, and tell them what you need to do. I can also go and talk to my ancestors at any time. This is a spiritual connection to our ancestors.
47. There is an attachment between the sky and mother earth. When people die, the ground must be fed at all times. Our bodies feed the Earth on Boigu.
48. This is why the cemetery is so important to us.
49. The cemetery is located where our ancestors did important initiation and burial ceremonies. It's men's business that I can't talk about.
50. There are two very important trees on Boigu called the tree of spies and the tree of skulls. The tree of spies is where a special Boigu warrior would climb to spy for warriors. The tree of skulls is where warriors used to bury the skulls of enemies that they killed.
51. If the cemetery or the sacred trees were gone, that would bring disaster to Boigu. Our people will die every day. It would be a bad omen.

Sea water, inundation and erosion

52. When I was a child, about 13 years old, things started to change. When the weather patterns changed, the moons would bring in very high water and the island started to flood. This was in the late 60s and early 70s.
53. When I was young, my grandfather told me to plant sweet coconuts close to where the seawall is now. That was a marker for the boundary of my land, and the marker of the burial site for my great grandfather. Over the years, the erosion washed away my great grandfather's headstone, out onto the beach. It was so sad for me to see that.

54. When I was young, I used to follow my grandmother. We would chop down the big white mangrove trees for firewood. We also used the mangrove trees to build houses. When the monsoon season came along, we would drag the firewood close to the community. In the monsoon, the water came from behind the rivers, into the swamps. We used to float the firewood to the village on the floodwater, because it was too heavy to carry the firewood. But the water also damaged the gardens behind the village. These gardens used to be where the airstrip is now.
55. Before they built the airstrip on Boigu, we had very high ground of gardens that blocked water from the back. When the airstrip was built, it made it easier for the water to come in from the back.
56. Behind the airstrip there are two rivers and one creek. That's where a lot of sea water comes in during flooding. There is no bund wall behind the airstrip. The water comes in from both sides, the east and the west. It doesn't flow over the airstrip because the airstrip is higher, but it comes around both sides. [REDACTED]
[REDACTED]
[REDACTED]
57. We have lost a lot of land to the flooding. The beach was taken out, which is very important to us. Now, there is nowhere for the children to play.
58. As I have said, we used to measure and observe the tide from the sand, but we don't have the sand anymore. There used to be beautiful coloured shells on the beach. Our sand was always black, because the sand gets washed from the Papua New Guinea coastline. The black sand is special sand.
59. The sand gets eroded from Boigu. It washes out into the sea, and goes over the sea grass. This then kills the seagrass, and the turtles and dugongs can't live there anymore, because they feed on the seagrass.
60. The sand that gets eroded also washes over the riverbeds, and covers where the crabs live. This makes the crabs move away.

Connection to Boigu

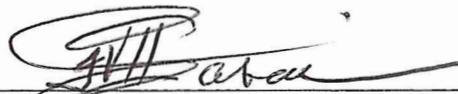
61. As a custodian of this island, the traditional knowledge of Boigu is handed down to me. This is my island. My responsibility is to teach cultural knowledge. A culture needs to be adapting, it is a living culture. I will always teach Boigu cultural knowledge. But I am worried that climate change is damaging tradition, culture and customs, our way of life, because the seasonal calendar is changing.



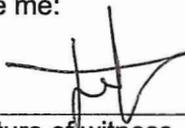
62. All Torres Strait Islanders, and Aboriginal communities on Cape York, believe that when we die, our spirits go to the red sand bank on the western side of Boigu Island. They may be buried on other islands, or on the mainland of Australia, but their spirit travels to the red sand on Boigu. Our forefathers also believed this, according to our stories. The red sand bank is a sacred place. We can visit the sand bank, but we don't do any ceremony there because we don't want to disturb it. No fishing, no driving, just visiting. When I die, my spirit will go to the red sand bank. It is very important to us.
63. The red sand bank is being eroded by high tides during the monsoon. But the red sand can't be removed, it's been there for 100,000 years. It is part of the supernatural. Even if that place is underwater, the spirits will still be there.

Sworn by the deponent
at Boigu Island
in Queensland
on 13 December 2022

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Signature of deponent

Before me:


Signature of witness

Grahame Best

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria).