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PABAI PABAI & ANOR v COMMONWEALTH OF AUSTRALIA

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Sia Lagos

Registrar

Important Information

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Form 59 Rule 29.02(1)

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:

Laurie Nona

Address:

ui 633.

Occupation:

Art Centre Manager, Artist, Councillor

Date:

14 February 2023

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Art Centre Manager,

Artist, and Councillor, swear:

 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 that information and my belief that that information is true.

Personal Background

My full name is Laurie Tony Desmond Nona.

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants
Prepared by	Brett Spiegel, Phi Finney McDonald
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- 3. I am a traditional owner and native title holder from the *Badulgal* Nation in *Zenadth Kes* (the Torres Strait). My paternal grandfather is Athe Tipoti, who was the first man to come from Samoa to the Torres Strait.
- 4. I am 48 years old. I am married to Stevie Nona and have 9 kids, aged 6 to 27.
- 5. My wind is *naygay* (north westerly). My totem is the Papuan black tiger snake. If you piss it off, it will chase you until it gets you. That is one of the traits of the Nona family we don't give up.
- 6. I am an Artist and also the Manager at the Badu Art Centre. I am a Councillor on the Torres Strait Island Regional Council (TSIRC). I previously held the role of Chair on the Badu Island Prescribed Body Corporate (PBC). I am also a qualified relationship counsellor in my community.
- 7. I live in Badu on a raised property that my father built. It is situated on a higher area at the back of the township. People call it *Padhaw Mudh* (house on the hill). My mother told me that they used to live low in the town near the creek that comes in from the ocean called *Matan Ubaraw Sarka*. She said that in around the 1950s my grandfather Athe Tipoti advised my father to move to hillside on higher ground because he foresaw the village growing and the potential of the water rising in times to come.
- 8. My family also occupies land including a beach area on the south west side of the island. It is *koedal* (crocodile). This is where I take my family camping on the weekends. I have marked the township and my family's beach on the map at 9 below.

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Cultural knowledge

10. Culture, or *Ailan Kastom*, means to me identity, existence and life. In any society, language will give you identity, so culture gives you roots and a way of life that makes you different from another culture's practice. Then you exist that way. Those things together, that's your lifestyle. In the Torres Strait, my culture and my existence together this gives me my lifestyle.

Art

- 11. My art is a diary of my life and my existence. People have different expressions of what art means to them. My art is a diary of my life and how I express my life through that form or medium. In documenting stories from my family, people I meet, my upbringing, my culture. It's a way I tell my life story. It encompasses everything to do with my life experience, beliefs, good, bad experiences, worries and challenges. That's what art means to me.
- 12. Someone cannot just ask me to do an artwork for them. I can't just do that, I need them to tell me their story so that I feel something similar, an idea, and relate it to them, and then



I bring my own life and creative experience to then form the artwork. There is always something the same between people that I can relate to.

Death and burials

- 13. In the Torres Strait we have traditions involving a weaved mat (wak). We are told that you are born on the wak, and you are raised on the wak. The wak is also a sail on a canoe, and in life your wak is your sail when you journey. When you pass away, you are laid to rest on the mat.
- 14. The birthmat ritual was our tradition until it was replaced by the hospital. But we come home from the hospital to the mat and we still sit on it, and it still has a place.
- 15. Our connection to the dead is continuous. It doesn't stop. If someone dies, the community goes into autopilot. *Marigethaw zageth kuykay mi* means 'the job of the spiritual hands starts', which is the role of the in-laws to support the grieving family from the time of death and at the tombstone opening a few years later. At the tombstone opening, the in-laws are thanked by the family for their hand at the funeral (*Tharabaw Ay*). Everyone has a role to play, these protocols are the essence of our existence.
- 16. The bible has ten commandments, but we only have one: mariw danaka to the eyes of the spiritual ancestors. That means I have to be honest to the spiritual eye. My ancestors, my grandfathers, grandmothers and family members are sitting around me right now, so if I tell you a lie, I will get my punishment like karma. That's why we relate so much to religion, because spirits are our ancestors, like God is a spirit. We were spiritual people before the coming of the missionaries to our islands.
- 17. We talk to our ancestors all the time. It is called *Yathayan* throwing talk or speaking out loud. It's like throwing words to the other side. If you feel uncomfortable on another island and get chills, it means the spirits there are wondering who you are. Then you start to speak to them, and they either accept you and you feel better, or they reject you and you leave.
- 18. It is important for us to be able to speak to our powerful ancestors, because they guide us. To me, they have very similar traits to a *kabar*, the Queenfish. This animal is like a warrior on a hunt, a 'go and get it' fish. They go and get it done with agility, which is what my ancestors did, and why I rely on them.



19. But if I were to leave my ancestors, or if they would be removed from the grave, it would be like ripping a bible from a Christian. We wouldn't be able to throw words anymore.

Seasons

- 20. In my culture, Uncles are the equivalent of school principals and university professors. We are taught from our Uncles about flora and fauna, sea creatures in the water and above the water, that are all interconnected with the seasons, it's all connecting together.
- 21. My sea teachings come from my Uncle. My gardening teachings come from my Mums and Aunties.
- 22. The *Urkar* (beach hibiscus leaf) represents the Aunties and Uncles who teach important things in our culture.
- 23. We have this frequency in connecting to all these sorts of happenings on island and sea country that others don't. I'll just have a certain feeling, like a déjà vu, and I know other islanders do too. Then I might be out and about and I see a flower blossoming, a fruit falling, or certain smells, and then I realise that is why I got the feeling. It is a start of a season or something is happening out at sea.

Impacts of climate change

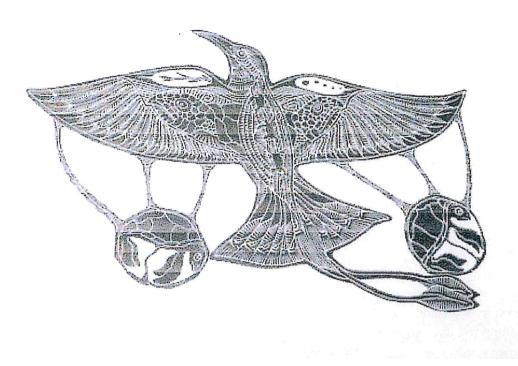
Hunting

Turtle

birra birra

- 24. I remember as a child at a certain time of year, suddenly you'd see a big school of birur flying (rainbow bee-eater bird). They whistle, and you could hear them. Then we'd know it's turtle mating season (solallaw thornar).
- When the birurbirum migrates, it indicates turtle mating season. I demonstrated this in an artwork called 'Biru Birun Danthyayk (Rainbow Bee eater shows us)'. Below at 26 is a copy of this artwork. It shows the turtle eggs and hatchlings within the biru birun because they are interconnected through nature as we see it.





birru birru

- 27. We don't see the bitte migrating in the same way anymore. I've seen them in small numbers now, mostly resting, but still migrating. It's nowhere near the same as when I was a young boy.
- 28. We have many other indicators of turtle mating season, including flowering of the eucalypt, and the pelican constellation reaching our western sky.
- 29. Another indicator of turtle mating season should be when the *woeyba* fruit starts to flower around August it then produces a fruit that looks like a *woeybadh* (turtle embryo/egg). There is a connection.
- 30. When the *woeyba* ripens it turns yellow, the same colour as the *woeybadh*. As soon as the *woeyba* falls to the ground, this tells us that the turtles are ready to mate and the *woeybadh* is formed in the mother and ready to fertilise. When the *woeyba* rots, that is when we know the season is over. It's all to do with the reading of the signs in the air, on the land and out at sea.
- 31. The *woeyba* should take 4-5 weeks from flower to ripening. But now it grows for two months or more, which is confusing.



- 32. It's important to understand this, because when we see these signs, we would teach our children to prepare for the turtle mating season and make plans to collect the eggs for special meals. But when the trees and other signs are confused, we can't teach and pass on our culture in the way that these steps are read and should happen. It should happen in a few weeks, now it's all over the place and taking longer.
- 33. Below at 34 is a photo of some fallen *woeyba* taken in October 2022. Only some are rotting, when all of them should be rotting at this time.

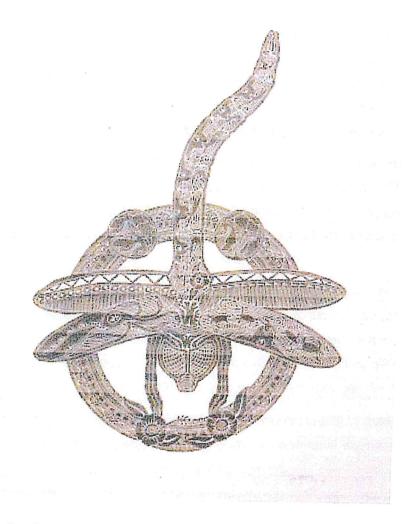


- 35. There's a special way you cook the turtle eggs, so we gather those too.
- 36. In 2022, we never really had a season of turtle mating. In around September, normally they'd be mating in the ocean, floating along, hundreds of them.
- 37. The birth migration, the eucalyptus flower, and the woeyba fruit in cohesion used to be a perfect happening to indicate the turtle mating. It was in abundance, and now it's not.

Squid

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- 38. There is also a correlation between when the dragonfly comes after the monsoon season and then squid appear and the island environment blossoms. When the rain comes, the creeks get washed out, so all the mosquitoes and larvae and all the baby fish get washed out too. The dragonflies feed on the newly born mosquitos, and the squid spawn near the mouth of the river where the baby fish get washed out. This is also a good time to collect turtle eggs.
- 39. Below at 40 is a copy of an artwork I created to represent this pattern, called Kuyup.



41. Over the last decade or so, I've noticed now there are less dragonflies and more mosquitos. There aren't as many squid as before. We used to catch 80 to 100+ in one go, but now it's more like 20.

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What this means is that our kids don't make the same connections anymore. They only see rain = squid. But we always knew rain = washed out mosquitos = dragonflies = squid. The kids won't know the detail, because there's no correlation anymore.

Dugong

- 43. Dugong and turtle are so integral in our cultural practice. They have everything to do with initiation, totemism and the way of life. You remove dugongs and turtles, and you remove 60% of what Torres Strait Islanders are about.
- 44. Early in 2022, we had a whole herd of dugong out on the reef close to the island. It was unusual because we don't have seagrass on top of reefs. It was easy pickings. And they were always there. Even the hunters and older people were saying, 'I've never had this experience'. It was like a suicide mission for the dugongs. They must be saying, 'I don't have no choice now'. For them to abandon the areas out on the reefs further out to come in, swimming around on sandbanks where they can be caught, it's confusing because there's no food for them. It tells me the dugongs are confused and that something is wrong.
- We teach our kids certain ways to hunt dugong and turtles. But the hunting practices have changed. Now we can't teach young people all the details of the right way to hunt, including how to butcher a dugong and naming every part, because hunting is too easy for them. It's a sad thing for us, because it's like we are taking advantage of climate change rather than trying to fight it.
- 46. If hunting is too easy, then I don't need to learn from my Uncle anymore. Not being able to teach the microscopic detail of our traditions breaks the fabric of responsibilities within culture. It stuffs up the role of the Uncles it breaks the very fragment of why our culture exists, of how we are. We don't have titles like lawyer, this is our education. It removes our cultural education when you remove the responsibility of the educator.
- 47. Practices and beliefs makes a cultural people. If our practices are disappearing, our beliefs become fake we as a people, what kind of culture would we have? It's like the effect of deleting culture. The young people lose respect for the teacher because they think 'why do I need that information? I can just go get the dugongs'. If we don't have culture anymore, how can we call ourselves First Nations people? It's scary. (Culture is our identity.)

Mud crab



- In the full moon on my family's campsite the mud crabs come out of the depths and mate.I would take the female out and grab the males.
- 49. In around May 2022, I went crab hunting on a full moon but the crabs weren't in the seaweed, they were on the sandbanks. It was like 'you are exposing yourself!' It was too easy for me to catch them. This hadn't ever happened before.
- 50. I can't show my son the skills in finding mud crabs when they are hiding in their natural environment when they are out in the open. It's like, 'here look, this mud crab here, just poke it and catch it'. It was too easy for me to show my son how to collect them. It was like picking mango off the ground. So I thought, 'something's wrong here'. Knowing climate change, it has to be doing something. The crabs are sensing things that we are yet to sense.
- 51. So I did an artwork from mud and sand and crushed ant hill. I wanted to show that what is happening in the sea affects the land and vice versa. It exposed the fact that sea creatures can tell if something is wrong. Below at 52 is an image of this artwork.



53. All the artists on Badu are talking about climate change. I yarn with them about it. It's concerning for all of us.

Gardening

- 54. Everyone grows up slightly different with different teachings. I grew up mostly with my Mum, so gardening is key to me. Different families have a different way of collecting learnings. My lifestyle is still very much gardening, so seasons are very important to me.
- 55. When we get dew sitting on the grass that means there is moisture under the soil, which means the perfect time to plant cassava before the rains come in November and December.
- 56. But like the changes to hunting, gardening is a totally different teaching now. Now it's raining all over the place, not in season. It's confusing, there isn't a clear indication of when to plant. If you don't know the seasons, then you don't know when to plant.

Flooding, heat, drought and erosion

Heat

57. In around 2019 it was so hot that I bought an air conditioner for one room in our house. On really hot nights all 7 of my kids who still live at home sleep in the same room with my wife and I. We only use it when we really need it, because it is so expensive. I do feel like I need it in the rest of the house but it's too expensive. While lots of people on Badu have air conditioning, I don't know how they afford it.

Drought

- 58. The town water system on Badu is creek and bore. Initially we didn't need the bore water, only the creeks. But we are relying on the bores more. Some of the areas I grew up near are now sometimes dry that have never been dry before.
- 59. The road to my family's camp on the south western side of the island runs through low lying bush and swampland.
- 60. In October 2021 the swamps were dust. I freaked out because they've never been dry before. The dryness increases build-up of dry leaves and stuff on the ground, and this increases fire risk. So, we have to burn off.
- 61. Below at 62 is a photo of me and some of the swampland I am speaking about in the background.





Erosion

- 63. My family's campsite and the beaches further south are suffering from erosion too.
- 64. The beaches just south of my camping spot are occupied by my father's brother. This place is called *Garaz*. My father's brother planted a series of coconut trees there at least 20 years before I was born, over 70 years ago.
- 65. Below at 66 is a photo of me standing on one of these beaches. I am standing at the place where the soil used to end and the sandy beach begun. Now it is where the sandy beach ends and the water begins. Just out of view to the left of the photo is where my father's brother's coconut trees are starting to erode. You can see one behind me starting to fall without the support of the land.

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- 67. It really hurts my heart, knowing my father's brother planted all these coconuts, sometimes I just sit here and sulk, I think, who can I blame? We're going to be lost as a people. It's to do with colonialism as well, because we've been oppressed for so long, we think about climate change and worry, well, who's going to help us?
- 68. Below at 69 is a photo of my family's campsite.





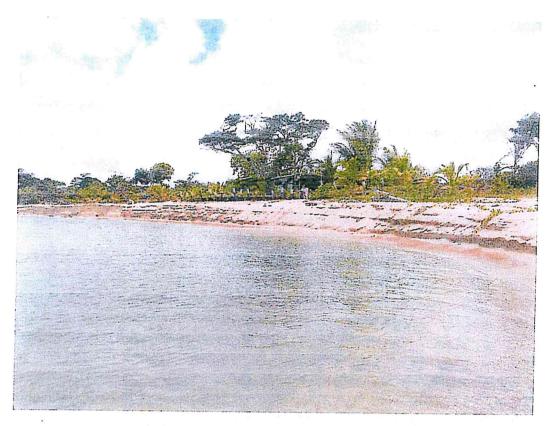
70. Below at 71 is the same view but from where the water is closest to the campsite. The point where I am standing is where the beach used to be over 30 years ago. I am pointing to how high the sand was above me. The shore used to run in a straight line. I grew up on that beach, it's completely moved.

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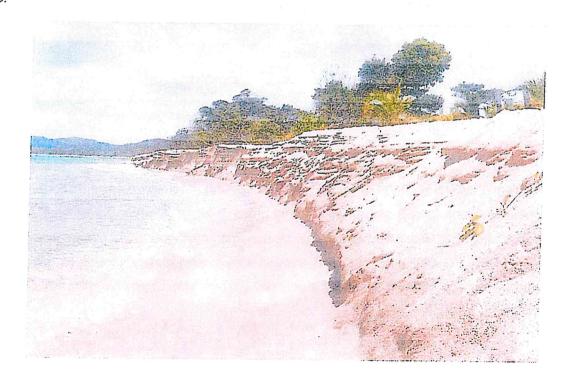


72. Below at 73 is a photo of the campsite from where the water used to begin (where I am standing in the photo at 71 above).





74. Below at 75 is a closer photo of the same area.





- 76. This place is so beautiful, but it has a hidden sickness because of the erosion.
- 77. Below at 78 is a photo of a series of coconut trees along the edge of my campsite that I planted about 5 years ago. I planted the coconuts at least a metre down into the earth so the roots wouldn't be washed away. I don't want to wait for the erosion to take my camp so I am trying to do what I can. I hope the coconut roots will strengthen together to create a barrier between the waves and my camp.



Flooding and high tides

79. The swampland area between the town and my family's camp (referred to above at 59 to 62) experiences floods as well as drought. It used to flood just near where the swamps are, but since around 2010 it floods all the way through the grasslands. When there's too much rain, and the tide is high, the water has nowhere to run. Now at least once a year in the wet season it floods so much that I can hardly drive to my camp using one of the two routes. It's getting worse and worse.



- 80. In the late 1980s or 1990s, the community built a small seawall along the shoreline of town on the airport (northeastern) side. This indicates to me that even then, our people knew the seas would rise.
- 81. I don't remember exactly when, but about 7 years ago TSIRC engaged experts in tide levels to do data projections so we would know where we could build the town and develop. I don't remember the experts' names or qualifications. I was at a Council meeting where this information was presented to us. I remember that the experts said we can't build beyond Ahmat Street, the road behind the Badu Art Centre two blocks in from the town beach, because in around 40 years the water will be there during high tide. In the projections, the Church becomes an island because it is on higher ground.
- 82. The cemetery, which sits on the southern end of the township by the beach, is also becoming threatened. If this erodes away, our first elders, the founders of Badu, they will be lost. And it will be devastating. When we throw talk, we first talk to the oldest ancestors, and then the ones who have passed away more recently. The older ancestors are the most important for guiding us.
- 83. On the map of Badu township at 84 below I have marked the Church in red, the cemetery in orange, the airport in blue and Ahmat street in yellow.

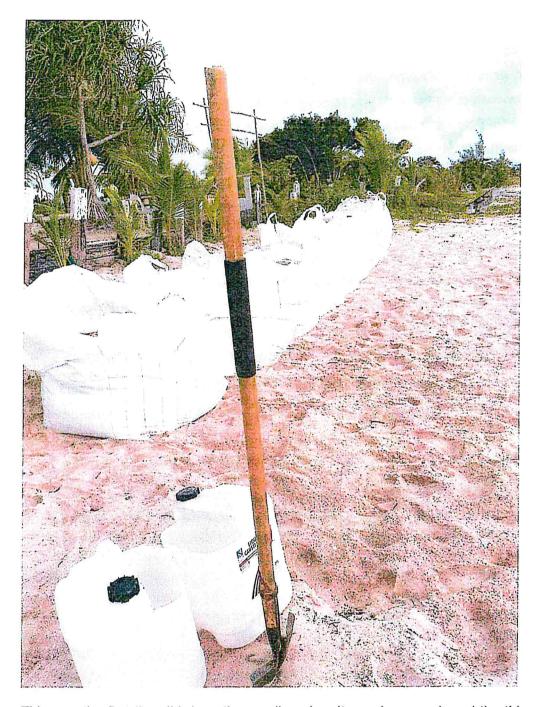


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- 85. Every monsoon season, it floods parts of the township area. The high watermark is getting further and further inland, but not always consistently it depends on the presence of rain and wind as well, that's when the damage is really done. Every second or third year it comes two meters further in. If you remove the hills and only focus on the Badu village, we're just like Boigu and Saibai too, with our village built on the foreshore, in the low-lying area of Badu. We did not build our village in the hills, we are islanders we live on the beach.
- 86. The high tide in the wet season of 2021/2022 came further than ever before the water went right up to Mairu Street (the street adjacent to the beach, between the beach and Ahmat Street). The tide was 3.8 meters high. It was met with the cyclone or low pressure system in the Gulf creating wind at the same time, and lots was destroyed. My campsite was flooded, and the retaining wall made of old train sleepers (pictured at 78 above) was smashed by the tide and came apart. The waves took the sand from behind the sleepers, so I had to backfill it again afterward, and reconstruct the wall.
- 87. In late December 2022 and early January 2023, the king tide came on Badu. I spent over two weeks days sandbagging the edge of my campsite where I planted the coconut trees referred to at 77 and 78.
- Below at 89 is a photo taken on or around 26 December 2022 of the sandbags lined up against the coconut trees. This was when I had filled 9 sandbags. I spent my Christmas Day sandbagging, because I had no choice. If I didn't start then, I wouldn't have made it in time for the king tides and the waves.

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90. This was the first time I'd done the sandbagging. It was because I read the tides were projected to be about 3.9 meters high, and I was frightened it would combine with the cyclones and rain and smash my camp. I chose to use nature against nature and fill the sandbags. I got the bags from my nephew who works at the quarry. I don't know anyone else who had done this before. I have since had a lot of people from around the Torres Strait asking me about the sandbags, they seem interested in doing the same thing.

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- 91. Fortunately, the cyclones and rain didn't combine with the tide, so it was a lucky year. I'm going to keep the bags there for the next 5 years until the coconut trees grow strong and hopefully some provide protection for my camp. I'd like the Court to come and see what I've done.
- 92. On or around 1 January 2023 the king tide came right up to the sandbags, which seemed to stop the water going further into my campsite and eroding the sand around the coconut trees. Below at 95 is a link to a video I took on or around 1 January 2023 of the high tide reaching the sandbags at my camp.
- 93. https://www.imanageshare-au.com/pd/1tW5T6axSt4
- 94. Below at 95 is a video I took on or around 1 January 2023. The water was so high that it would have completely covered someone standing where I am in the photo at 71.
- 95. https://www.imanageshare-au.com/pd/3YWUMVLvZxp

Climate change in the future

- We live on an island that is changing. It's not our fault that the climate is changing. We are the least polluting people in the world. Everybody else is polluting the planet, like mainland Australia, and we're getting the effects. It's really not fair. We've been struggling all our lives. These things on top. What do we do?
- 97. We can't preserve our culture if our seasons are out of whack how do you teach it? You cannot say, 'at this time this is supposed to happen'. How do you teach a 'supposed to'? You cannot teach a 'maybe'. The kids think, 'well I'm not going to learn anything, it's a maybe, whether the season comes when it should.' It means we lose the importance of an Uncle status.
- 98. When this cultural education system has been undermined and threatened by climate change, we lose our power as teachers. I can see that in the future, when kids think about culture it will be just like an echo, not important. They will think 'Oh yeah, culture' but they won't really know culture. There are details to culture, it's not just a word, it's a way of life, it's our identity.
- 99. I want to make sure our culture is continued here. We're doing this so my kids and those who haven't been born yet will be born into something that has been going for a long time, and continued long after I'm gone.
- 100. If I was you and you were me, knowing what you know now, what would you do?



Sworn by the deponent at Cairns in Queensland on 14 February 2023

Signature of deponent

Before me:

Signature of witness

Cassandra Evans

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