

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	17/02/2023 11:15:41 AM AEDT
Date Accepted for Filing:	17/02/2023 11:15:46 AM AEDT
File Number:	VID622/2021
File Title:	PABAI PABAI & ANOR v COMMONWEALTH OF AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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: **Peo Ahmat**
Address: [REDACTED]
Occupation: Commercial fishing business owner
Date: 23 January 2023

I, **Peo Ahmat** of [REDACTED], commercial fishing business owner, swear:

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 Peo Ahmat.
3. I was born on [REDACTED] 1967, and I am currently 56 years old. I was born on Thursday Island. I have lived on Badu Island my whole life.
4. I am a traditional owner of Badu and I hold native title.

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants
Prepared by	Brett Spiegel, Phi Finney McDonald
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PA
UB

5. I have 18 brothers and sisters, and four of my siblings still live here on Badu. Both of my parents are from Badu. My family on my father's side is from Mabuiag and Saudi Arabia. My family on my mother's side is from Badu, Saibai, Samoa and Erub.
6. My totem is *Tupmul* (stingray). My clan is Badu. There are three clans on Badu: Badu, *Argan*, *Wakaid*
7. I am married to Lavinia Ahmat. Together we have two biological children and two adopted children. My son, Solomon, lives on Badu.
8. I went to primary school on Badu and high school in Brisbane. I finished school in 1980. After that, I went straight into fishing. I fished from 1980 until 2000. Then, I became a police officer. Apart from a year of training in Brisbane and temporary work elsewhere, I was stationed in Badu. I worked as a police officer from 2000 until 2019. I kept fishing casually during this time.
9. I own a commercial fishing business on Badu, which I restarted after I resigned from the police force. I fish for crays. I run my business with my son and my wife. We have one mother boat and four dorys. I own a crayfish factory on the southeast end of Badu next to the boat ramp. I fish around the whole Torres Strait but spend a lot of my time on the reefs near Mabuiag and Badu and near Sabai and Boigu.
10. I have previously held the Chair position on the Badu Island PBC (Prescribed Body Corporate) for 9 years. I was Chair from 2005 to 2014. I am currently a Director, having held this position since 2019. I am proud to be a leader in my community.

Badu Island

11. Badu is the third largest island in the Torres Strait. It is part of the Western cluster of islands, with Moa and Mabuaig. Badu is made up of volcanic and granite mountains, as well as sandy beaches and mangroves. I have marked Badu in red on the map of the Torres Strait below in paragraph 12.
- 12.

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13. I live in the village, which is located on the south-eastern side of the island. My house in the village is on my traditional land.
14. My family also has traditional land on a beach on the western side of the island, where we spend weekends. I built a house there for us to stay, and to host our family and community for barbeques and gatherings. The house is approximately 100 metres from the beach.
15. I have marked the village and my family's beach on the map below in paragraph 16.
- 16.

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17. Below in paragraph 18 is a photo of my family's beach.

18.



19. My grandfather from Badu was a gardener. He planted gardens all over Badu. He planted cassava, yams, pineapples, coconuts and sweet potatoes. He was also a fisherman and a pearl diver. He was working for a family that sold his fish, pearls and trochus. Before World War II he lived on a block of land to the northeast of our beach, at a place called *Argan*, but it got too crowded, so he moved to our beach and planted coconut trees along the beach. He planted these trees for food and to make the area beautiful. He had to go

PK
LB

to Injinoo on Cape York after being accused of black magic. He returned when my grandmother passed away in the 1960s. I have continued to plant coconut trees on our land too. I also do some gardening, including planting watermelons, cassava, bananas, coconuts and pawpaws. In the last five years, the heat has gotten worse. It has been hotter than normal. This makes it harder to garden because the heat kills the plants and there is less water to garden with.

Impacts of climate change

Erosion

20. I have seen a lot of changes to Badu, especially within the last five to ten years.
21. In the last three to five years, I have seen erosion of about 20 metres from where the land originally was on my beach. The erosion happens during the monsoon when there are big tides and heavy rains. In the next ten years, I worry the erosion will probably reach my house by the beach. I have thought about moving my house but, because of the hill and creek behind my house, I can't go further back.
22. Just south of my family's beach is an old shed structure that is affected by the erosion. The photo below at paragraph 23 shows the shed structure at the edge of the beach. When the shed was built, there was more than 20 metres of land in front of it. Now, the erosion is right at the edge of the structure.
- 23.



24. The below photo at paragraph 25 shows the same shed structure in the background, and a nearby abandoned generator platform in the foreground, which used to sit on soil, not sand. You can also see the exposed roots of the coconut trees. These are the coconut trees my grandfather planted. Some of the trees that were closer to the water have already fallen down and died. There were also some beach trees here that have fallen over. We call them *dell* trees.

25.



26. There is more erosion all around the island. Below at paragraphs 29 and 30 are some photos of this erosion. I have marked in red the approximate location of this erosion on the map below at paragraph 27.
- 27.



28. Below at paragraph 29 is a photo of steep erosion revealing rocks on the beach, and approaching a shed that used to be inland before the beach came closer. Until the last five years, the rocks weren't visible, it was just sand. We are worried that our beaches will just become water and rocks. I sail past this beach when I go fishing. It changes every time I sail past. This beach is eroded not only during the monsoon but also with the *sager* (south easterly wind). The *sager* blows during the cooler months from April to October. The wind is getting stronger every year. This means the beach is being eroded most of the year. Because of the way the wind blows, there is always some erosion occurring on Badu. When the erosion stops on the western side of the island, then it starts on the eastern side.
- 29.



30. Below are photos of erosion uprooting coconut trees on the beaches.





31. I last visited the island of Warul Kawa three years ago to hunt dugong, which took me a bit over two hours by boat. Warul Kawa is a spiritual island north-east of Badu and a place of real significance where our dead go. There has been lots of erosion on Warul Kawa since many years ago. The big almond and *wongai* trees on the beach are falling over there. I visited Warul Kawa in 1985 and the beach was really big and the trees were a long way back from the water. When I visited recently, I could see the beach had eroded by about 50 metres. The island is shrinking. If Warul Kawa disappears, the spirits will be wandering souls with no place to go. The community talks about this a little bit. We are concerned about where our spirits will go.

Seasons

32. We get a big downpour in November, then some showers throughout December. But January and February are when the monsoons happen. Cyclone Yazi in 2011 was the last big cyclone.
33. In 2022, the high tides came right up to the road that sits about halfway between my beach house and the beach. I'd never seen that before. Below at paragraph 34 is a photo facing inland toward that dirt road, taken nearly from where the beach begins. The water went right up to the road that runs across the middle of the photo. The house on the right of the photo is my neighbour's house. My house is to the left of that house, further in the back of the photo.
- 34.



35. The monsoon is not that different from before, but the rains are. We get sudden rains that we can't predict. In October, it should be dry, but we are getting showers.
36. During the monsoon the rivers and creeks flood, and the saltwater comes into some of the creeks near the ocean. The floods are getting higher every year. There is a creek that runs behind my beach house. The start of the creek is around 50 metres from the house. When the creek floods during the monsoon, the water runs from the creek into my house. It is getting higher every year. Last year, the water in my house was 10 centimetres high. This only happens when the tide is high and there is heavy rainfall. The floods are mostly freshwater but there is some saltwater too. It lasts for about an hour. When the tide goes out, the floods start to recede.
37. We have a lot of mangroves on the island as well, where I go crabbing a lot. Usually, I can walk on the mangroves rather than getting bogged down. But now a lot of mud in the rivers and mangroves is disappearing. Now it is all sand brought in from the high tides.
38. For thousands of years our people have used the stars to guide us through the seasons. For example, when *baidam* (the shark constellation) is pointing upwards, there are usually big winds. When *baidam* points downwards, the winds are supposed to calm. But the

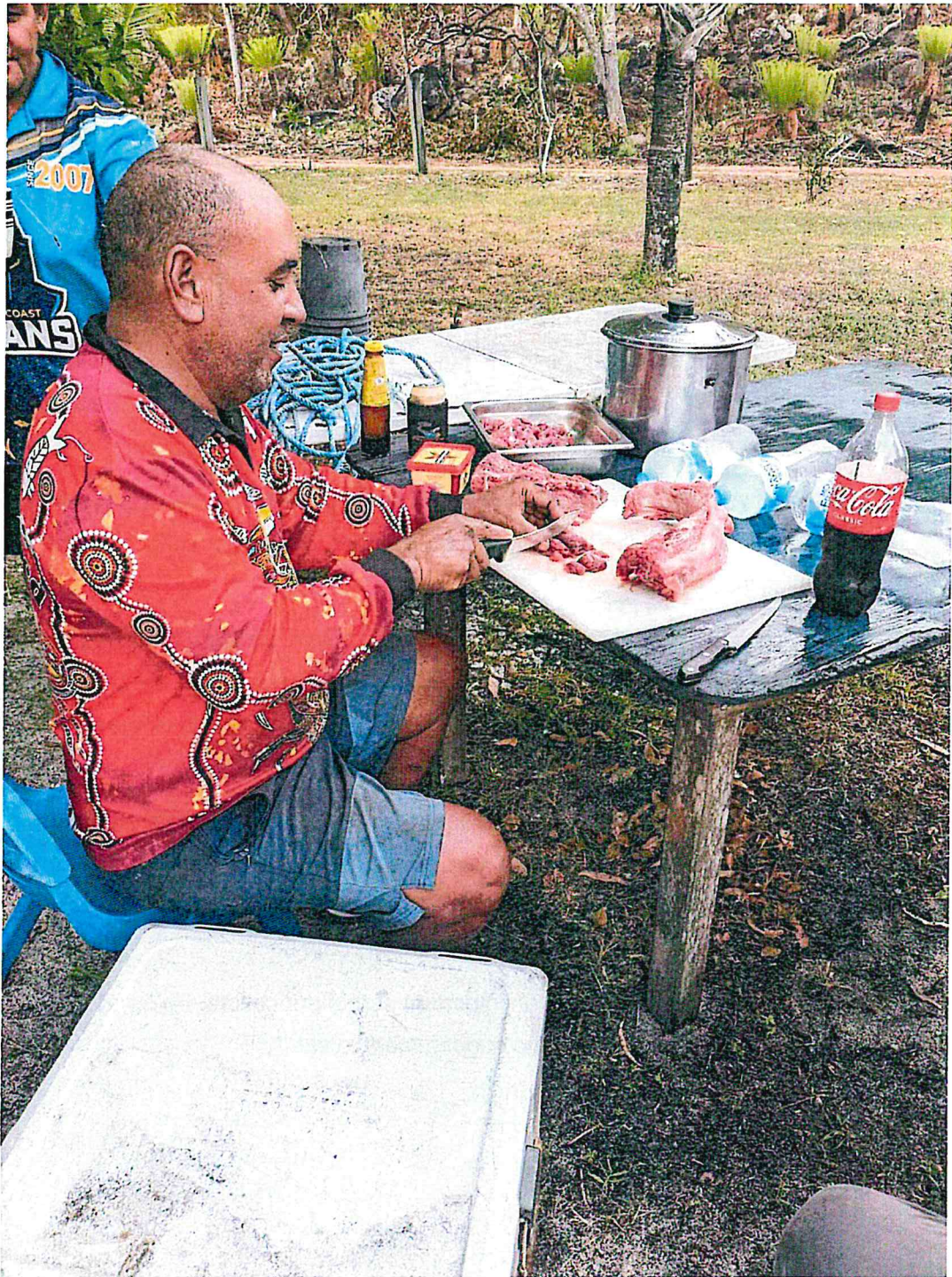
constellations do not make sense anymore. More recently, *sager* has kept coming right up to December, but the shark constellation has already tipped downward. The weather patterns are still changing at this time of year, and we cannot predict it anymore – the shark faces downwards, but the winds still blow. I try to teach this knowledge to my grandkids but it is harder now because the weather doesn't make sense.

39. The birds that migrate with the seasons have been affected too. There are no more whistling ducks and there are fewer magpie geese. The *birrurru* (rainbow bee-eater) migrate from Papua New Guinea when the winds are calm in September to October, during the turtle mating season. There used to be huge flocks of them. Now, we only see one or two. The numbers have been decreasing in the last five years. I saw nothing last year.
40. Some pelicans have recently come back which I have not seen in a while. The pelicans used to lay their eggs on an island called *Awai Kawa* (Pelican Island), which is part of the Warul Kawa island group, though there's not much there anymore. There used to be another sandbar on the northwest side of Warul Kawa where plenty of seabirds were and we would collect the eggs. But the sandbar is not there anymore.
41. During turtle mating season, there used to be plenty of turtles floating on the top of the water. Last year, I did not see any turtles during mating season. When I went out diving every week, I did not see a single turtle mating.

Sea country

42. I have been diving since the late 1970s and fished all around the Torres Strait, so I have seen a lot of changes since then.
43. People can free dive to catch crayfish, at maximum three to four metres deep. Hooker divers go deeper, reaching 15 to 20 metres. But cray fishing is declining on Badu because the sand has gone through the reefs and is killing the seagrass, which is food for the marine life. Crayfish eat shellfish and other shells that live in the seagrass. So when the seagrass dies, the crayfish lose their food. The sand also covers the crayfish holes in the reef so they have to go deeper to find somewhere to hide. They have to go and find a different reef. The sand is affecting the whole Torres Strait, killing the sea environment. The sand is affecting the Torres Strait more than ever before. We have to go further and deeper to find crays.

44. I can see this change when I go fishing on my boat. In around September and October 2022, the seagrass has half disappeared around Badu, but has grown back where I operate my fishing factory in the village. At certain times of the year, you get lots of fish when you start to see the seagrass.
45. I have also been measuring the water temperature between December to May, which goes right up to 37 degrees Celsius. That level of water temperature is no good for crayfish, and means we have to dive deeper in the water where it is cooler. In 2022, I lost 1.5 tonnes of crayfish within one month. This is because I keep the crayfish in tanks in my factory and I pump seawater into the tanks. The seawater was too hot so it cooked most of the crayfish. We have lowered the intake pipe to 3 metres into the ocean to get cooler water. It is a very risky business.
46. In the last two or three years, I have noticed that there is a lot of sand in the reefs between Saibai and Badu. That hasn't always been there. The sand suffocated the coral, and everything was dead.
47. This has also impacted our ability to travel. In some places there used to be a small passage of deeper water where we could use bigger boats, but we can only use dorys now. When we use our bigger crayfishing boats, we have to find different, longer routes. This is more expensive due to fuel costs and takes more time.
48. We have songs for all our reefs. The songs are about diving and fishing on the reef. The songs are changing now. We can't use the reef like we used to and it is harder to write songs. Around 2014, there was also coral bleaching here where everything was white. The coral is only just starting to regenerate and come back.
49. Hunting dugongs and turtles is an important part of our culture. Below at paragraph 50 is a photograph of me carving some dugong meat to eat.
- 50.



51. ~~Dugongs are becoming easier to hunt because they are coming toward the land to find food and somewhere to feed. In the last two to three years, there have been plenty of~~

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was one time when
for a few months

GB

18 The dugongs became easier to hunt because they were coming toward the land to find food and somewhere to feed.

came

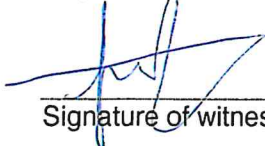
dugongs around Badu looking for algae in the reefs. They ~~have had~~ ^{had} to migrate to the reefs because the feeding areas are dying. Dugongs normally eat seagrass.

52. There are also more turtles coming up to try and find food, they never used to come near the community. Like dugongs, there are fewer feeding grounds so they are coming to areas where we never used to see them.
53. The environment is a big part of my people. Being hunters and gatherers, we need the environment to survive in this world. The changes to the environment mean a lot to me. The sea is our staple diet. Once this is gone, we have to resort to eating the food from the shop. All our practices revolve around nature and the environment. What we teach our young, it depends on the weather. If the weather is changing, we can't teach.

Sworn by the deponent
at Cairns
in Queensland
on 23 January 2023

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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).