

NOTICE OF FILING

Details of Filing

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Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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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: **Gerald Bowie**

Address: [REDACTED]

Occupation: Ranger Supervisor

Date: 22 January 2023

I, **GERALD BOWIE** of [REDACTED] Ranger Supervisor, 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 Gerald Edward Bowie. I am a traditional owner of Badu Island. My family owns traditional land on and around the area where I live on Badu. My family has always lived there.
3. I was born on Thursday Island on [REDACTED] 1976 but have lived here on Badu most of my life. I am currently 46 years old.

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants
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Wakaid

4. My totem is *Argan* (stingray). My tribe is *Argan* and ~~Wakaid~~ (dog).
5. My mum is from Badu, Saibai and Moa. My dad is from Badu and Mabuiag. I have three brothers and two sisters; one lives in Cairns and one lives in Townsville, but the others are in Badu.
6. I have five children aged 16 to 25. They've moved away for school and jobs. Badu has limited jobs. But they come back to visit often, and I have a close bond with them. We have video calls once a week as well.
7. For the last nine years I have worked for the Torres Strait Regional Authority (**TSRA**) as a Ranger Supervisor looking after Badu and Mabuiag Island, which is located approximately 10km north of Badu. Until about three years ago, I also looked after Moa Island, which is located approximately 1km southeast of Badu.
8. I travel to Mabuiag for one week every fortnight. As a Ranger Supervisor, I prepare six-week plans and create projects about land and sea. On land we do awareness and education through schools and community, control exotic weeds, visit and maintain cultural sites, and record tide levels. We also monitor turtle and dugong catching on the beach, and once a fortnight we go out to the reefs to monitor these animals.
9. Every three months we monitor and report about seagrass levels around Mabuiag to determine whether it's healthy or not healthy. Some of it is dying, there are a lot of sand bars moving around at the moment.

Impacts of climate change on environment

10. When I talk with my community about climate change, people say they are worried about the future. They are worried about erosion and flooding and our food cycle being damaged. For example, if the sea grass is destroyed then no dugongs come to Badu for us to hunt and eat. Our people have been fighting for years to get the government to prevent the damages we're seeing.
11. I have noticed many changes to the environment on Badu in recent years, both in my role as a Ranger and as a member of the community. Rangers like myself provide feedback on changes to the environment to the island Prescribed Body Corporate (**PBC**).

Seasons

12. It is getting hotter, and the seasons are less predictable. It is raining when it should be dry and dry when it should be raining. We have either a late or early *kuki* (northerly wind).

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Normally, the monsoon would start in late November. Recently, it has been starting late, in December and sometimes January.

13. Over the last five years, I've noticed much more lightning and thunder, especially during the monsoon season. The thunder is more noisy and the storms are getting bigger. The lightning strikes start fires on the island. I have never seen that before. I am afraid I will be hit by lightning in the future. The monsoon tide is getting bigger.
14. Until three years ago, when there was bad weather coming in November and December, the birds, such as pelicans, spoonbills and Torres Strait pigeons, would pass from north to south. We don't see that anymore. We used to eat spoonbills but we do not see them anymore. Our cultural knowledge teaches us how the bird patterns and seasons interact. Now it is all changing. We used to see night curlew in the community and in the bush, but I also don't see them anymore. I haven't seen any of the birds migrate for at least three years.
15. The wave patterns have also changed. Normally, the wave patterns are northerly and southerly with only occasional easterly and westerly wave patterns. Now the winds blow in all directions and the waves go in all directions. I have not seen waves this big before. This makes it much harder to travel and fish.
16. I was taught this cultural knowledge - the seasons, the winds, the tides and the stars - by my dad, my granddad, my uncles and at school. Now, this teaching is hard to pass on because things are changing. The story I was taught does not match what is happening.

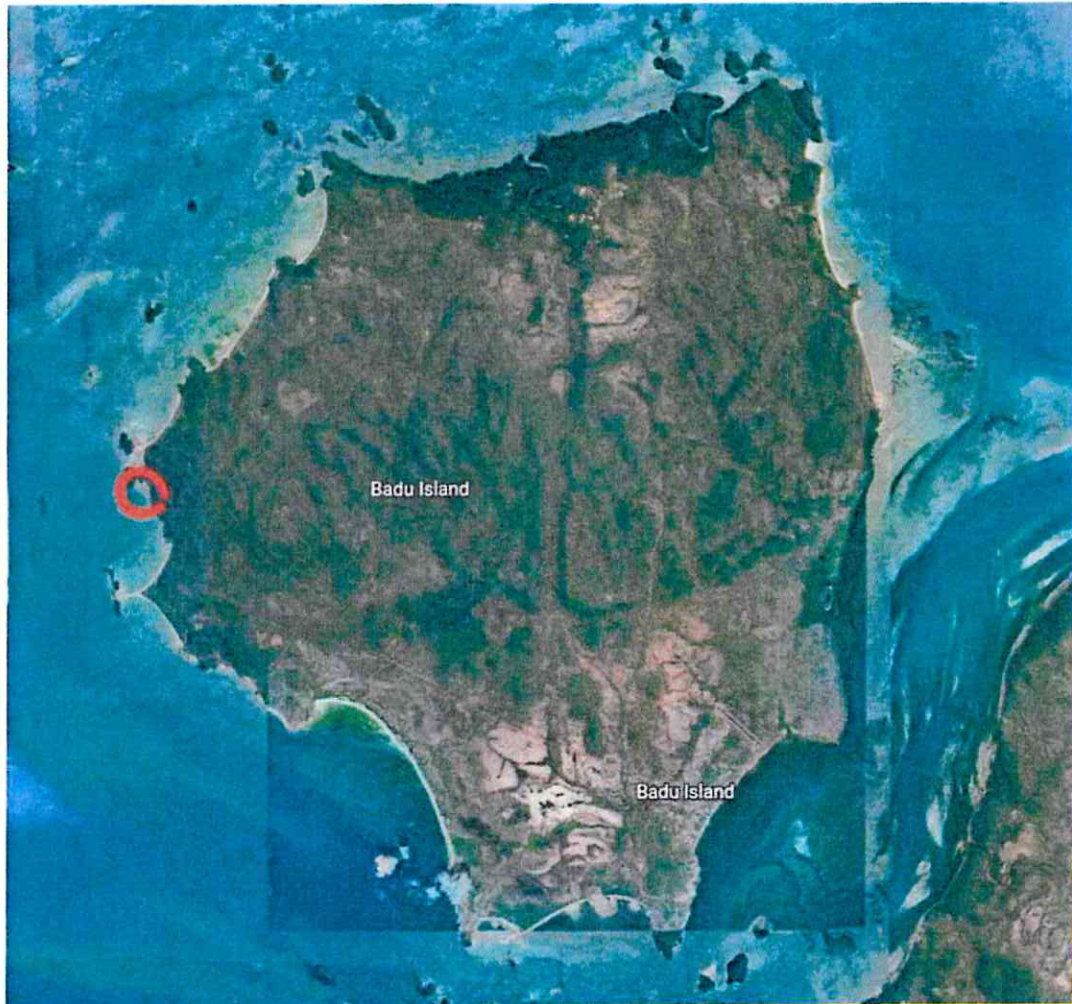
Tides and erosion

17. I work on the land and in the sea. Since I started by job in 2014, I have definitely seen the tide rising each year. It's very noticeable.
18. I am hoping to build a house for my family and some villas for tourist accommodation on my traditional land on the west side of the island, where I go camping with my family. I've had to change my plans on where to build, because the water is coming up so fast. I had an engineer assess the area who told me that a house around 50-100m inland would last around 50 years before the water would reach it. If the sea levels weren't rising, I would build my house and the villas closer to the water because it is a better location and I feel more connected to the sea.

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19. Below at paragraph 20 is a map of Badu. I have marked my campsite where I am hoping to build my house and the villas in red.

20.

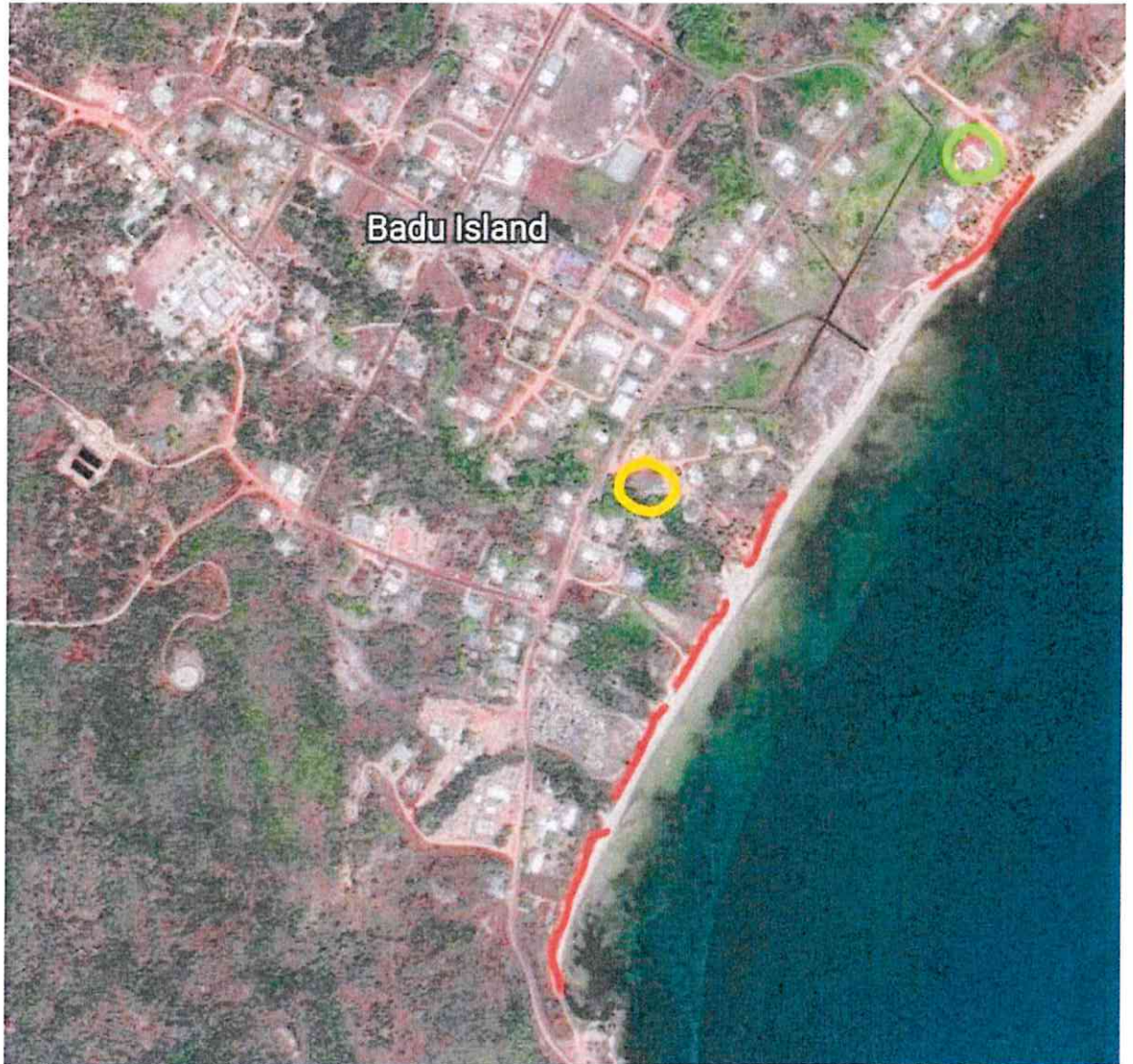


21. When I was younger, we would grow fruits and vegetables like wild yam and potato. Now there's a lot of bacteria in the soil and it is too risky to grow and eat these things. I'm not sure why there is more bacteria. Some people still try to grow their own food, but many get sick doing so.
22. At the beach along the front of the Badu township there is a small seawall, which starts at the southern end of the town, then runs along the beachfront, breaking for two small river mouths. It then stops near my house, and starts up again in front of the church. This seawall was built by the Torres Strait Island Regional Council in the 1990s. It was not

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engineered properly. Below at paragraph 23 is a map of the Badu village with the seawall marked in red, my house marked in yellow and the church marked in green.

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24. Below at paragraph 25 is a zoomed in map showing the seawall location in front of my house that I discuss below.

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26. Below at paragraphs 27 and 28 are photos of the seawall in front of my house, facing north and west respectively.

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29. Below at paragraph 30 is a photo taken from on top of the seawall near my house, facing south toward the river mouth. People from the community have put chunks of cement and rock at the edge of the seawall to stop the erosion deepening by the river mouth. People pick the rocks up from around Badu and throw them on the edge of the seawall. It is all done voluntarily. Also, if there is some construction work that is not done properly, the community gathers the unused cement and stones and throws them on the pile. We take the cement and stones in our cars from the worksite to the seawall.

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31. A few people and I have also started to dig holes along the beach and place snakes into the holes. In our culture, we believe that this will make the sandbar grow in the direction that the snake's head is pointing. The sandbar will help to stop the waves coming in.
32. Our community has been crying out for a seawall as big as the walls on Saibai and Boigu.
33. On 19 January 2023, there was a king tide on Badu which flooded parts of the village. Below are some photographs of the flooding that a Badu community member posted on Facebook.
34. Below at paragraph 35 is a photograph taken in front of the church. The church is marked on the map at paragraph 23 above. The sea wall is completely submerged by the water on the left side of the photograph.
- 35.



36. Below at paragraph 37 is a photograph of the same area looking out towards the ocean. The rotunda is visible in the background of the photograph at paragraph 35 above.

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38. Below at paragraph 39 is a photograph of the seawall in front of the village that has been completely submerged. You can see the seawall on the left side of the photo where the small piece of stone is sticking out of the water.

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40. Below at paragraph 41 is a photograph of the boat ramp in the southern part of town. It is completely submerged. The building is the crayfish factory owned by Uncle Peo Ahmet.

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Fishing and marine life

42. I am concerned that fishing habits will change due to the scarcity of seagrass, and sand movement over seagrass and coral. Mabuiag is supposed to have the largest seagrass bed in the world, but seagrass is becoming rarer. As part of my role as a Ranger Supervisor with the TSRA, we monitor seagrass ^{two} ~~three~~ times a year ~~along~~ with inner tidal and outer tidal. I have seen the seagrass reduce every year since I started my job in 2014. It is dying because the sand is covering it which prevents it from breathing. There is too much sand in the water because of erosion, stronger tides and increased movement in the water. The sand is always moving around. I have only started seeing this in the last ten years.
43. I've seen many recent changes in the health and behaviour of marine life in my role as a Ranger and as a hunter:
- a) When I was a kid, dugongs were healthy. Now, they are sick and have noticeably less fat. We count and observe dugongs in my job and recently there has been a lot of abnormal movement where they seem to be searching for cooler temperatures. Some dugongs have been seen eating coral, sand and shells (which is not usual). Dugongs

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eat only seagrass. I have seen areas where dugongs live and eat that once had a lot of seagrass. Now, the seagrass is covered in sand. When I am drifting for dugongs in these places, I might see one or two. Before, I used to see heaps. In the last two years, I have seen dugongs feeding on top of reefs and closer to shore. This is not a normal routine for them. They rarely used to do that. It is more dangerous for dugongs to eat on the top of the reefs and closer to the shore because they can be hunted. They are putting themselves in danger to look for food. In the last two years, I haven't seen many mothers, babies and pregnant mothers in the dugong herds. Five years ago, I used to see heaps of mothers, babies and pregnant mothers in these dugong herds. Dugongs are one of our main foods. Families rely on them to survive. One dugong can feed more than twenty families. We eat dugongs at ceremonies, tombstone unveilings, birthday parties, weddings, funerals, shaving ceremonies, initiations and other cultural events like Mabo Day and the Coming of the Light. We also use dugong oil as a traditional medicine. We use it for colds, skin treatment, asthma and cancer. We rub it on our chests when we have colds. The oil is made from the dugong tail. When I was younger, I had a touch of Rheumatic Fever which caused muscle pains. My grandmother used to rub dugong oil on me to reduce the pain.

- b) Turtles used to be healthy, but they too are now sick and have less fat. In the last two to four years, I have seen turtles sick on the beach – they have no strength, and we have no way of rehabilitating them. As part of my job as a Ranger Supervisor, we monitor turtles at Bramble Cay and Raine Island. In my time as a Ranger, both islands have eroded so turtles have less space on the beach to lay eggs. They are laying eggs on top of each other. I have seen less turtles in some places. But I have also seen a lot more turtles floating on top of the water. It is not normal to see this many on top of the water at the same time. I have seen white water bubbles in turtle fat that I never used to see when I was younger. I also see black material stuck in their stomachs. These changes have got worse in the last two to four years. This makes it harder for hunters to find healthy turtles. Same as dugongs, turtles are one of our main meats and are eaten at the same ceremonies. A lot of our community are on Centrelink payments and rely on their families to provide turtle meat for them to survive. One turtle can feed twenty families. Food from the shop is really expensive. People also eat unhealthy food when they rely on the shop. It is affecting our lifestyles. For example, if we don't catch a turtle, people might buy a Hamper tin of corned beef meat, which is less healthy and costs \$11.

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- c) Stingrays have been greatly affected. The stingray would normally be seen in February, but I have not seen them at this time in recent years.
 - d) The crayfish shells are softer than they used to be. When I was young, I would eat crayfish and damper with my grandpa, but now we don't eat as many because we don't know what is in them and whether it is healthy for us. There are less crays than when I was young. It has gotten worse in the last couple of years.
44. Dugong and turtle are important animals in my culture. We rely on the sea to feed ourselves, so we need to help protect them pretty quick. Otherwise, we're going to lose everything, the ocean. Dugongs are a highly respected mammal. They are a totem. Our clans and totems are our identities. When we introduce ourselves, we state our totems as part of our identity. If you don't state your totem, you can't build trust. If all the dugongs disappear, how can we identify as dugong totem? The totem will be gone. We also use dugong tusks for art. We make carvings out of the tusks.
45. In the last ten years, the saltwater has become contaminated. We used to use it as an antibacterial for wounds but now that does not work. If someone has a wound, the local knowledge says don't swim in the ocean. I don't know why it is contaminated. It could be the heat and coral bleaching. When coral dies, it produces poison. Using the sea to heal wounds is traditional knowledge. When you are out on a boat, and you get injured, there are no first aid resources. If you get a wound, your uncle, the skipper, or your dad would tell you to soak your wound in seawater. Now, they say don't touch it.
46. I have seen lots of coral bleaching. The coral sometimes recovers, only to get bleached all over again.

Impacts of climate change on culture and tradition

47. There are many cultural sites near the beach that could be affected by rising tides and erosion. The gravesites on Badu have already been greatly impacted by these changes. *The area in front of the cemetery* This is at the main cemetery in town. ~~It~~ gets flooded in high tides. This has happened in the last five to ten years. I have seen my family's graves flooded. This impacts kinship and family life. In our culture, family deaths are very meaningful. Even though someone is dead, we respect them. Their spirits are still running around. I don't know what it means for them if their graves are damaged. It is very sensitive. It is difficult to see my ancestors' graves damaged or washed away. I have seen bones of our ancestors coming out of the ground due to erosion. In Mabuiag they are everywhere.

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48. I remember around 5-10 years ago, I was told in conversation with the community leaders from Badu that the TSRA told the community leaders on Masig, Poruma, Saibai and Boigu that they should move to the mainland because of rising tides. Badu is affected already but isn't as affected as these other islands, so far.
49. *Ailan Kastom* is our way of living. For example, one of the most unique things in our culture is that we share. We share food, water, drink etc. in our social gatherings. In mainstream culture, it's all individual.
50. We also have free movement up here in the Torres Strait, we can go hunt whatever we want. In the south it would be complicated to fish because it is Aboriginal sea country and has different regulations.
51. Many people I know who have moved to Cairns don't have a close connection to their families.
52. Everything we know about the environment is our cultural expertise. This knowledge has been handed down to me from my grandads and uncles too. It is passed on when we are young and go hunting for cray and dugong and turtles.
53. My children have all kept their connection, it depends on how you teach them. I have made a point of strongly educating them so that when they come back, they know who they are. I have passed on to them cultural kinship, cultural protocols, traditional hunting etc. They understand language and speak most of it.
54. For me, the thought of relocating away from Badu would mean I would have to leave my ancestors, my dad's grave and my grandmother's. I grew up here, so all my cultural values would just go to sleep. It wouldn't be the same living anywhere else. I would lose my identity if I had to go into mainstream culture. Generation to generation we would just wash out.

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Sworn by the deponent
at Cairns
in Queensland
on 22 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).