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4 September 2020

Dear Mr Vora,

Breach of native title rights regarding an area of Moray Down pastoral lease

We act for Mr Adrian Burragubba. We are instructed to write to you about certain conduct of members of the Queensland Police Service (QPS) directed at preventing our undertaking “traditional activities” together with his tribal family group.

Our client further instructs that:

Between 22 and 28 August 2020, Mr Burragubba and others were in peaceful occupation, for cultural purposes, of a camp site on their traditional lands currently part of the Moray Downs pastoral lease in Central Queensland (the pastoral lease). That camping was undertaken relying on their native title rights and interests, presently the subject of litigation in the Federal Court as proceeding QUD25/2019.

He wrote to Katarina Carroll APM, Qld Police Commissioner and Doug Smith, Qld Police Deputy Commissioner, on Friday 28 August 2020 requesting their urgent intervention to ensure that the QPS officers who had engaged him and his family members were fully cognisant of his family’s rights; and to not act on the instruction or assertions of Adani Mining Pty Ltd (**Adani**), to remove them as so-called “trespassers”.

On the afternoon of 28 August, Bowen Police Senior Sergeant Craig Shepherd and Airlie Beach Senior Sergeant *Nathan Blaine* informed him that Adani regarded the group as trespassing on the area of the pastoral lease where they had set up a cultural camp.

Mr Burragubba was informed that the pastoral leaseholder, Adani, would give directions to leave and if his group did not, the police would then “get involved to keep the peace”. Mr Burragubba and his family members withdrew voluntarily at that time.

I am instructed that Mr Burragubba has subsequently spoken to Deputy Commissioner Smith and has lodged a complaint with the Queensland Human Rights Commission.

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The Commissioner of Police, the Premier, the Police Minister, the Minister for Aboriginal & Torres Strait Islander Partnerships, and the DATSIP Director General have all been sent further correspondence on this matter.

Mr Burragubba has instructed me to advise you that he and members of his tribal family group intend to return to the camp site this weekend to continue their cultural activities.

We have advised Mr Burragubba he has a statutory right to be on the pastoral lease. Further that he does not require the permission of the pastoral lease holder for such purposes. He was wrongfully prompted to move on by police.

As members of the native title claim group for the Clermont-Belyando Area Native Title Claim (the proceeding QUD25/2019 mentioned above), Mr Burragubba and his family members are properly regarded as "Traditional Owners" for the area. Under their laws and customs, each of them has particular cultural responsibilities in the area of the pastoral lease.

Subsection 44B(1) of the *Native Title Act 1993* (Cth) provides:

Conferral of rights

At all times while this Subdivision applies, the person included in the native title claim group has a right:

- (a) to have access, in the same way and to the same extent as the access mentioned in subsection 44A(3), to the traditional access area for the purpose of carrying on the one or more traditional activities in that area in the same way and to the same extent as they were carried on pursuant to the access mentioned in that subsection; and
- (b) to carry on those activities in that area in that way and to that extent.

Adani has previously asserted a right to exclude Aboriginal persons who are members of the native title claim group for the Federal Court proceeding QUD25/2019 on the basis that they (Adani) hold a pastoral lease. This assertion is wrong in law for a pastoral lease subject to a native title claim, such as the Moray Downs pastoral holding. In the parlance of the *Native Title Act 1993* (Cth), Moray Downs (being lot 662 on SP308960) is a "non-exclusive pastoral lease" that does not confer a right to exclude aboriginal persons conducting traditional activities.

As a result, Adani is unable to prevent the members of the native title claim group in proceeding QUD25/2019 from accessing Moray Downs for the purpose of carrying out traditional activities (including the performance of ceremonies).

Mr Burragubba will not accept a further breach of his rights by your company. He instructs that we inform you that he and his tribal family group intend to return to their camp site and will refuse to leave while ever they are peacefully and lawfully exercising their Native Title rights.

We would appreciate it if you would reply in writing to confirm that you will not interfere with his right to camp and conduct ceremony and spiritual activities at this time, and to otherwise observe their laws and customs on their traditional land.

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Should you seek to forcibly remove our client, or instruct police to do so, we are instructed that Mr Burragubba will take further action against your company.

Yours faithfully



Colin Hardie
Principal
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