

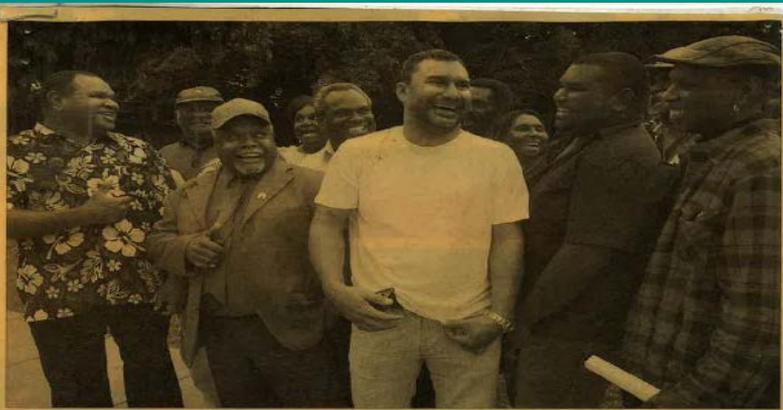
Malu Lamar (Torres Strait Islander) Corporation



High Court of Australia



Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia [2013] [HCA](#) 33 (“Part A”)



Victory: Torres Strait leaders celebrate the native title decision in Cairns yesterday.

Picture: CHRIS HYDE

Islanders savour native title win

Evan Schwarten and Aifa Pashey
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TORRES Strait Islanders have reacted with jubilation after winning a nine-year court battle to secure native title rights over a vast tract of ocean to the north of Cape York.

In a landmark ruling yesterday, the Federal Court granted traditional owners native title rights over more than 40,000 sq km of ocean between Cape York and Papua New Guinea.

Barrister Robert Howes, representing the Torres Strait Regional Authority, said the ruling was historic because it was the first native title declaration to cover a vast expanse of ocean.

“There are some native title claims over sea areas but they mostly cover areas just offshore and in and around islands whereas this is a

DECISION RIVALS MABO VERDICT

THE applause which emanated from court room one in Cairns yesterday told of the landmark victory.

Maida Thaiday, originally from Murray Island, had travelled from her Townsville home to witness the decision.

“We feel very much relieved – the pressure is gone and claiming rights to our traditional waters is the greatest privilege,” she said. “We will forever honour this

large expanse of sea,” he said. However, he said the ruling was a reflection of the Islanders’ unique maritime culture and was not likely to lead to other large-scale sea claims.

He said the decision recognised Islanders’ traditional ties to the sea and guaranteed them access to its resources but did not exclude others, notably commercial fisher-

men, from accessing the area.

Queensland Seafood Industry Association president Michael Gardner said the ruling was a best case scenario for all involved. “Access is essentially unchanged and the region remains open to both indigenous and non-indigenous commercial fisherman who are properly endorsed,” he said.

“There is absolutely no exclusion rights granted here and, in fact, none were ever claimed,” he said.

“This will give political and legal capacity to further Torres Strait Islanders (now there is recognition) but things will have to be dealt with in a case by case basis.”

Islanders packed into the

Cairns court room yesterday to hear Justice Paul Finn hand down his judgment and burst into jubilant bouts of singing after the decision was read out.

Chair of the Torres Strait Regional Authority Toshie Kris and Ned David, a representative for the traditional owners said the decision would aid economic opportunities in the region.

“This is a victory for our elders who started the cause and are no longer with us and our kids,” Mr David said.

“Some of the details are still a little blurry but we are euphoric.”

Justice Finn gave the Islanders’ legal team and other parties until July 23 to reach a draft agreement on the wording of the native title determination.

He will formally make the determination in Brisbane on July 30.

High Court affirms fishing rights for Torres Strait Islanders



Australian
Human Rights
Commission

Wednesday 7 August 2013
Social Justice Commissioner Mick Gooda

Today’s High Court ruling on the rights of Torres Strait Islanders over a large part of the Torres Strait is cause for celebration, said Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda.

Commissioner Gooda said the decision came 21 years after the historic High Court decision in Mabo, which found that native title existed on Murray Island, and almost 12 years after the Torres Strait Regional Sea Claim was first filed in the Federal Court.

On 26 June 2014 the Court appoints Malu Lamar to be the PBC for the sea determination area (“Part A”)

Order Entered

No: QUD6040/2001

Federal Court of Australia
District Registry: Queensland
Division: General

LEO AKIBA ON BEHALF OF THE TORRES STRAIT REGIONAL SEAS CLAIM
Applicant

STATE OF QUEENSLAND & ORS
Respondent

ORDER

JUDGE:	Justice Greenwood
DATE OF ORDER:	26 June 2014
WHERE MADE:	Brisbane

THE COURT ORDERS THAT:

1. The native title recognised by Orders made on 23 August 2010 is to be held in trust.
2. The Malu Lamar (Torres Strait Islander) Corporation (ICN 8051), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*, is to:
 - (a) be the prescribed body corporate for the purpose of ss56(2)(b) and 56(3) of the *Native Title Act 1993 (Cth)*; and
 - (b) perform the functions mentioned in s57(1) of the *Native Title Act 1993 (Cth)* after becoming a registered native title body corporate.

Date that entry is stamped: 26 June 2014

Deputy Registrar

On 30 June 2014 Malu Lamar becomes the RNTBC



Extract from the National Native Title Register

Determination Information:

Determination Reference:	Federal Court Number(s): QUD6040/2001 NNTT Number: QCD2010/003
Determination Name:	Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group v State of Queensland
Date(s) of Effect:	23/08/2010
Determination Outcome:	Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date:	23/08/2010
Determining Body:	Federal Court of Australia

ADDITIONAL INFORMATION:

On 23 September 2008, Justice Finn split the original Torres Strait Regional Sea Claim application into Part A and Part B. On 2 July 2010, the existence of native title was recognised in relation to part of the Part A determination area and the parties were directed to file an agreed draft determination: Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group v Queensland (No 2) [2010] FCA 643. On 23 August 2010, Finn J made orders in terms of the agreed draft determination: Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group v Queensland QUD6040/2001. On 14 March 2012, the Full Court of the Federal Court made allowed an appeal and varied the determination made on 23 August 2010 to add after clause 5(b): 'This right does not, however, extend to taking fish and other aquatic life for sale or trade': Commonwealth v Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group [2012] FCAFC 25. However, on 7 August 2013, the High Court allowed an appeal setting aside that judgment. The effect of the High Court's judgment was to amend clause 5(b) to delete the phrase 'This right does not, however, extend to taking fish and other aquatic life for sale or trade'.

On 26 June 2014 the Federal Court ordered that the native title recognised by Orders made on 23 August 2010 is to be held in trust and that the Malu Lamar (Torres Strait Islander) Corporation (ICN 8051), incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), is to be the prescribed body corporate for the purpose of ss56(2)(b) and 58(3) of the Native Title Act 1993 (Cth) and perform the functions mentioned in s57(1) of the Native Title Act 1993 (Cth) after becoming a registered native title body corporate and the National Native Title Register has been updated to reflect those orders.

Part B is to be determined at a later date.

- Malu Lamar's board is comprised of the Chairs of all of the Torres Strait Islander RNTBCs for each Island.
- As an RNTBC, Malu Lamar must be afforded "procedural rights" under the *Native Title Act 1993 (Cth)* for all activities done after 20 June 2014 which affect native title.
- Can pursue native title compensation rights on behalf of the common law native title holders.
- Has responsibilities under the *Torres Strait Islander Cultural Heritage Act 2003 (Qld)*.
- Negotiations for Part B of the sea claim are continuing with the hope that a determination can be obtained late in 2015.

Post-Determination Economic Opportunities

Economic development opportunities arising from the sea determination are affected by two features of the determination:-

- Native title must by law co-exist with other existing rights in the same area, such as non-Traditional Owner fishing licences (“TVH licence holders”).
- Native title is still subject to other legislation, such as the *Torres Strait Fisheries Act 1984* (Cth).
- The *Torres Strait Fisheries Act 1984* established the Torres Strait Protected Zone, over the Torres Strait. It also established the Protected Zone Joint Authority (“PZJA”), which is responsible for the management of commercial and traditional fishing in the zone.
- Malu Lamar is seeking comprehensive Torres Strait fisheries reform.

Marine Environment in the Torres Strait

The Torres Strait has some of the richest and most diverse fisheries in Australia.

This includes vast, unspoilt coral reefs; deep waters where fast flowing currents offer pristine ocean flows between the Coral Sea and the Arafura Sea.

These diverse marine ecosystems sustain the following fisheries in the region:-

- Tropical rock lobsters.
- Multiple species of prawns.
- Finfish (including premium species such as coral trout, Spanish mackerel and barramundi).
- “Hand collectable” fishery including trochus and Beche-de-Mer (sea cucumbers).
- Mud crabs.
- Pearl shell.

Challenges facing Malu Lamar

Current challenges Malu Lamar faces are as follows:-

- Malu Lamar has no management, administration or office facilities of its own. Its board members perform their role voluntarily. Malu Lamar receives support on legal issues from the Native Title Office of the TSRA (the rep body), but is otherwise devoid of resourcing.
- Malu Lamar has received over 100 s24HA Future Act notices since the PBC was registered. The directors on a voluntary basis respond to these notices which at times can require specialist advice and can be costly and time consuming.
- Development of the fisheries reform proposal requires further more detailed study of the New Zealand experience. It also requires high-level independent fisheries expertise to help develop detailed and sophisticated reform proposals. All of that requires resourcing – of which Malu Lamar has none.
- In 2014 Malu Lamar applied to the Australian Government for a grant under its “Indigenous Advancement Strategy”. On 4 March 2015, Malu Lamar received advice from the IAS that funding for only a fraction of the cost (less than 5%) of developing the proposal has been approved.

Where to from here?

Post-Determination Economic Development Aspirations

- Malu Lamar is seeking comprehensive Torres Strait fisheries reform. Work is now needed to develop a detailed fisheries reform proposal to turn this resolve into reality.
- Malu Lamar has made contact with Maori officials in New Zealand and has mapped out a model for fisheries reform based on the Maori experience.
- There has been some early success. After lobbying by Malu Lamar in 2014, the PZJA resolved to support the aspiration of “100% ownership” of all Torres Strait fisheries by the Torres Strait’s Indigenous people.