



Backgrounder

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PR 10-09

Torres Strait Regional Sea Claim

Federal Court Judgment

Today, Justice Paul Finn of the Federal Court of Australia handed down his decision on the Torres Strait Regional Sea Claim. Final orders will be made on Friday 30 July.

He recognised the group's non-exclusive native title rights over approximately 37,800sq km of sea in the Torres Strait, between Cape York Peninsula and Papua New Guinea.

These include the rights to:

- access, remain in and use their own marine territories or territories shared with other communities; and
- access and take resources for any purpose, including for trading or commercial purposes.

As the recognised native title rights are “non-exclusive”, the rights of other groups with interests in the area, such as commercial fishermen, are protected, and can continue to be exercised alongside the native title rights.

The claim

The Torres Strait Regional Sea Claim group lodged the application with the Federal Court on 23 November 2001. This group, including representatives from 13 of the community islands, made the claim on behalf of all Torres Strait Islanders. The Torres Strait Regional Authority (TSRA) is representing the claimants. The claim was registered on 5 July 2002.

Area covered by the claim

The Torres Strait Regional Sea Claim is currently the largest native title claim over the sea. It covers 44, 000sq km within the Torres Strait between Cape York Peninsula and Papua New Guinea, excluding any areas landward of the High Water Mark. The claim extends out to, and in some parts beyond, the 12 nautical mile limit.

It is overlapped by two other claims:

- Gudang Yadhaykenu People (QUD269/08); and
- Kaurareg People #1 (QUD266/08).

Today the Federal Court considered the Torres Strait Regional Sea Claim, excluding the overlapping areas. The overlapping areas will be considered at a later date, along with the other claims.

Parties to the claim

Respondent parties are people, institutions, organisations and companies whose interests may be affected by a claim and have been joined by the Court as parties to the claim.

The parties to the Torres Strait Regional Sea Claim include:

- Queensland Government
- Australian Government
- Torres Strait Regional Authority
- Australian Maritime Safety Authority
- seven Papua New Guinea respondent parties, being individuals, families, villages or organisations from along the coastal mainland of PNG adjoining the Torres Strait (as a result of today's judgment, five will cease to continue to be parties)
- two Aboriginal Traditional Groups with native title claims in the southern part of the Torres Strait Regional Sea Claim
- various individuals and companies with commercial fishing interests in the area.

Negotiations between the parties, with mediation assistance from the Tribunal, took place between 2006 and 2008. However parties were unable to reach agreement about the issues associated with the claim. The Federal Court established a detailed program of hearings until the end of July 2009 for the parties to present and examine relevant evidence.

Torres Strait Treaty

The Torres Strait Regional Sea Claim is the only native title claim in Australia to include international parties. The treaty between Australia and Papua New Guinea, "The Torres Strait Treaty", came into effect on 15 February 1985. The Treaty recognises the continuing customary rights of access across the sea border between the two countries.

The Native Title Act only recognises native title in land and waters held by Aboriginal peoples and Torres Strait Islanders as defined in the Act. Under Australian law, people from other countries do not have legally recognised native title rights to land and waters in Australian territory. They may, however, in appropriate circumstances have traditional rights and interests that if recognised by the common law of Australia, could limit the nature of the native title rights and interests determined to be held by Torres Strait Islanders.

Native title over the sea

To date, the Australian courts have only recognised non-exclusive native title rights over the sea. Native title was first recognised over Australian seas in October 2001 when, after more than five years of litigation, the High Court ruled that members of the Croker Island community in the Northern Territory held non-exclusive native title rights over their

traditional seas within the claim area. This case charted the way for further sea claims. The Torres Strait Regional Sea Claim was lodged just one month after this decision.

In March 2004 the Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples won recognition of their non-exclusive native title rights to the sea around the Wellesley, South Wellesley, Forsyth and Bountiful Island groups in Queensland's Gulf of Carpentaria through a litigated case in the courts. On 25 June 2009, the Kuuku Ya'u People of Cape York became the first in Queensland to have their native title rights recognised over their traditional sea country through a negotiated agreement.

Recognition of non-exclusive rights means that other valid rights such as to fish in and travel across the sea are not affected in the determination areas.

The Torres Strait Regional Sea Claim involves some important and complex legal questions because of the international "Treaty" providing some PNG people with continuing traditional access. Other complex interests in the Torres Strait include international shipping routes and cross border considerations generally between Australia and PNG.

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