



Submission to The Senate Committee on
Community Affairs Legislation Inquiry into the
*Aboriginal and Torres Strait Islander Amended
(A Stronger Land Account) Bill 2014.*

5 September 2014

Honourable Senators,

I provide this submission for your consideration on behalf of the Torres Strait Regional Authority and the Torres Strait Islander and Aboriginal people of the Torres Strait.

Mr Joseph Elu, AO
Chairperson

Executive Summary

The Torres Strait Regional Authority (TSRA) supports the objectives of the *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014* submitted to Parliament by Senator Siewert. However, with recent court decisions recognising that sea is as important to land for Torres Strait Islanders, the TSRA requests that the legislation specifically recognises sea in the same regards as land.

This would assist applications from Torres Strait Islander and Aboriginal people of the Torres Strait to the Land Account for the acquisition of sea associated assets such as commercial fishing licences in the same manner as land in order to re-claim the use of very important natural resources that hold social and cultural significance and potential for economic development for Torres Strait Islanders and Aboriginal people.

Torres Strait Regional Authority

The Torres Strait region covers an area of approximately 42,000 square kilometers, the majority of which is sea. There are over 200 islands throughout the Torres Strait with 17 inhabited islands.

The TSRA is a Statutory Authority established in 1994 under the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ATSI Act) and is the peak Commonwealth representative body for Torres Strait Islander and Aboriginal people living in the Torres Strait including the Northern Peninsula Area. In March 2005 the ATSI Act was replaced with the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act).

The TSRA's planned outcome, as published in the Prime Minister and Cabinet Portfolio Budget Statements is:

Progress towards closing the gap for Torres Strait Islander and Aboriginal people living in the Torres Strait Region through development, planning, coordination, sustainable resource management, and preservation and promotion of Torres Strait Islander and Aboriginal culture.

In fulfilling this outcome the TSRA undertakes delivery across eight programs, three of which are Fisheries; Economic Development and Native Title.

Native Title

The TSRA since 1996 has undertaken the role and functions as the Native Title Representative Body (NTRB) under the *Native Title Act 1993* (Cth). The Native Title Program aims to facilitate the securing of legal recognition of Native Title to land **and waters** in the Torres Strait.

Economic Development

The Economic Development program has a number of outcomes including:

- Increased number of commercially viable businesses owned and/or operated by Torres Strait Islander and Aboriginal people in the region.
- Improved wealth of Torres Strait Islanders and Aboriginal people in the region.

Fisheries

The Fisheries Program includes within its outcomes:

- A commercially viable fishing industry which is 100 percent owned by Torres Strait Islander and Aboriginal people.

The Importance of Sea to Torres Strait Islanders and Aboriginal people of the Torres Strait Region

In November 2001 a sea claim covering the Torres Strait region of some 42,000 square kilometres was lodged on behalf of Torres Strait Islanders encompassing 14 communities (this became Part A and a subsequent Part B was filed by Gudang and Kaurareg).

In 2010 Part A judgement was provided and the determination recognised the strong link of the sea to Torres Strait Islanders:

“The sea in turn is the integral presence in the lives and livelihoods of the Islander communities. It has rightly been said that their occupation of the region has had ‘an essentially maritime character’”¹

“There is no room for doubt that the Islanders have, since sovereignty, continued to acknowledge and observe a body of traditional laws and customs. The short question is whether those laws and customs and the acknowledgement and observance thereof, connect them to their marine estates and have done so since the date of annexation. I am satisfied that they do.”²

From this judgement Native Title rights were granted over an area of approximately 37,800 square kilometres. This judgement included non-exclusive commercial fishing rights.

In 2013 the High Court unanimously upheld commercial fishing rights in the Torres Strait³ Lauren Butterly in writing for the Indigenous Law Bulletin stated “The recognition of Native Title rights to commercial fishing is historic.”⁴

Upon the announcement of the decision Social Justice Commissioner Mick Gooda stated: ‘Commercial fishing rights are essential to the Indigenous people of Australia, not only because they are traditional rights but because they are integral to the economic development of Indigenous communities’⁵

The points outlined above acknowledge and emphasise the importance of sea to Torres Strait Islanders within their culture and the potential for economic development.

¹ Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v State of Queensland (No 2) [2010] FCA 643 2 July 2010 Summary paragraph 5

² IBID 648

³ Akiba v Commonwealth of Australia [2013] HCA 33 (7 August 2013)

⁴ ‘Unfinished Business in the Straits’; Lauren Butterly, Indigenous Law Bulletin Sept/Oct 2013

⁵ Australian Human Rights Commission media release 7 August 2013

Suggested Changes to Bill

Senator Seiwert at the second reading of the bill on 24 June 2014 emphasised the purpose of the ILC and the Land Account, “The ILC was set up with the Land Account for one purpose: ‘to enable Indigenous people to acquire land and maintain it in a sustainable way to provide economic, social and cultural benefits for themselves and for future generations of their people’”.⁶

The TSRA strongly supports this purpose and the strengthening of the rights of Torres Strait Islander and Aboriginal people within this Bill. The TSRA believes that with the Federal and High Court decisions on the Sea Claim that explicit inclusion of ‘sea’ in the same context of ‘land’ should be considered within the Bill. The TSRA believes that this extension would further strengthen the Bill and its intentions.

The TSRA acknowledges and supports that fact that, “The Bill introduces new measures to protect the Land Account and to ensure it continues to be available to strengthen Aboriginal and Torres Strait Islander peoples ‘links to their land’.”⁷ For Torres Strait Islanders, as has been outlined and acknowledged previously within this submission, there are strong links to the sea.

It is further noted that, “The Bill includes a clearer explanation of the purposes of the Land Account, being:

- acknowledgment of the special relationship Aboriginal people and Torres Strait Islanders have with their lands including the economic, social, cultural and environmental value land has for Aboriginal people and Torres Strait Islanders;”⁸

For Torres Strait Islanders the special relationship with land extends to the sea and the economic, social, cultural and environmental values that the sea brings to their lives. The sea within the Torres Strait holds significant resources which provide sources of food for livelihood and potential economic development.

Commercial Fishing Example

Commercial fishing has been occurring within the Torres Strait for many years. As stated previously, one of the stated outcomes of the TSRA’s Fisheries program is “A commercially viable fishing industry which is 100 percent owned by Torres Strait Islander and Aboriginal people”.

There are a number of commercial fishing licences valid for the Torres Strait, which **are not** owned by Torres Strait Islanders or Aboriginal people of the Torres Strait:

- **Torres Strait Tropical Rock Lobster Fishery:** Transferable Vessel Holder (TVH): 13 licences;
- **Torres Strait Prawn Fishery:** 61 licences

⁶ The Senate Proof Bills Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 Second Reading Speech 24 June 2014

⁷ *Aboriginal And Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014* Explanatory memo p2

⁸ IBID p2

- **Torres Strait Beche-de-mer Fishery:** one licence (non-Torres Strait Islander and Aboriginal)

These licenses permit organisations and individuals to fish the waters of the Torres Strait for commercial purposes. No additional commercial licences will be granted to non-Torres Strait Islander or Aboriginal people. Nonetheless, existing licences do permit commercial fishing to be carried out by people and businesses from outside the Torres Strait and have the potential to restrict the ability of Torres Strait Communities to fully realise the economic development opportunities provide by commercial fisheries the region.

On 9 April 2014, the Torres Strait Protected Zone Joint Authority acknowledged and supported the aspirations of 100 per cent ownership of Torres Strait fisheries by Torres Strait Islander and Aboriginal Traditional Owners and also acknowledged and recognised the rights of existing non-traditional fishers in the Torres Strait⁹. It also agreed to request the Commonwealth Minister for Indigenous Affairs to support access to Indigenous Business Australia funds and the Indigenous Land Fund to support the pursuit of these aspirations¹⁰. The only way Torres Strait Islander and Aboriginal people can progress towards 100 percent ownership of existing commercial fishing permits and fully realise the economic development opportunities provided by commercial fisheries, particularly for the high value tropical rock lobster, is for the current commercial rights to be acquired. Fishing licences are likely to be valued in the millions of dollars putting them out of reach of most Torres Strait Islander and Aboriginal people. The real value of the Tropical Rock Lobster catch in 2011-12 was estimated at \$16.1m (which includes catches by Torres Strait Islander and Aboriginal people).

Concluding Remarks

It is acknowledged that the resources in the sea are not exclusively owned as property by any one group; however, the utilisation of resources from the sea does provide potential for economic development. In the Torres Strait, resources from the sea provide the primary, and in some cases the only, opportunities for economic development in Torres Strait Communities. Over time, if as an example, commercial licences are 100 percent owned by Torres Strait Islanders and Aboriginal people of the Torres Strait, this will provide opportunity for Torres Strait Islander and Aboriginal people in the Torres Strait to attain greater economic independence and to play an integral role in the sustainable management of these resources. Amending this Bill to explicitly include 'sea' in the same context of 'land' will remove any ambiguity in relation to 'land vs sea' and strengthen the rights of Torres Strait and Aboriginal people. This would ensure that Torres Strait Islander and Aboriginal people would be able to apply to the Land Account for funds to acquire sea related property assets to protect sea resources for cultural and environmental reasons develop economic opportunities. This would be particularly beneficial for Torres Strait Islanders who have limited opportunities to acquire interests in land as required by the current provisions of the ATSI Act. We seek your consideration of our submission to provide economic, social and cultural benefits and opportunities for future generations of Torres Strait Islanders and Aboriginal people in the Torres Strait.

⁹ Torres Strait Protected Zone Joint Authority meeting 23 Decision record 10.1

¹⁰ IBID 10.4