

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY OF THE REGISTRY
ON APPEAL FROM THE FULL COURT
OF THE FEDERAL COURT OF AUSTRALIA

No. B58 of 2012

Between:

**LEO AKIBA ON BEHALF OF THE
TORRES STRAIT REGIONAL SEAS
CLAIM GROUP**

Appellant

and

COMMONWEALTH OF AUSTRALIA

First Respondent

STATE OF QUEENSLAND

Second Respondent

NEIL WADE

Third Respondent

**MARKIM HOLDINGS T/A BARRIER REEF
LIVE CRAY**

Fourth Respondent

ROBERT JOHN STEFAN STANDEN

Fifth Respondent

BARRY WILSON

Sixth Respondent

MARK WILLIS

Seventh Respondent

TASMANIAN SEAFOODS PTY LTD

Eighth Respondent

KAREN SKUDDER

Ninth Respondent

BRUCE ROSE

Tenth Respondent

**QUEENSLAND ROCK LOBSTER
ASSOCIATION**

Eleventh Respondent

THEOPHANIS PETROU

Twelfth Respondent

ELFREDA PETROU

Thirteenth Respondent

PETER J PAHLKE

Fourteenth Respondent

ALISON NEWBOLD

Fifteenth Respondent

RAYMOND MOORE

Sixteenth Respondent

MABEL MOORE

Seventeenth Respondent



APPELLANT'S CHRONOLOGY

Filed on behalf of the Applicant by
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MARK MILLWARD Eighteenth Respondent
KENNETH JAMES MCKENZIE Nineteenth Respondent
JOHN STEWART MCKENZIE Twentieth Respondent
STEVEN MACDONALD Twenty First Respondent
M G KAILIS PTY LTD Twenty Second Respondent
ROBERT BRUCE LOWDEN Twenty Third Respondent
NOEL LOLLBACK Twenty Fourth Respondent
BOB LAMACCHIA Twenty Fifth Respondent
RICHARD LAURENCE JONES Twenty Sixth Respondent
PHILLIP JOHN HUGHES Twenty Seventh Respondent
ROBERT GEORGE GIDDINS Twenty Eighth Respondent
LARRY HUDSON Twenty Ninth Respondent
PAMELA HUDSON Thirtieth Respondent
DIANNE MAREE HUGHES Thirty First Respondent
AUSTRALIAN MARITIME SAFETY AUTHORITY Thirty Second Respondent
BARRY EHRKE Thirty Third Respondent
DENNIS FRITZ Thirty Fourth Respondent
JENNY TITASEY Thirty Fifth Respondent
AUGUSTINUS TITASEY Thirty Sixth Respondent
GEOFFREY DONALD MCKENZIE Thirty Seventh Respondent
ZIPPORAH GEAGEA Thirty Eighth Respondent
PETER GEAGEA Thirty Ninth Respondent
ROBERT GARNER Fortieth Respondent
TROPICAL SEAFOOD OPERATION PTY LTD Forty First Respondent

DIAKEN PTY LTD	Forty Second Respondent
CARL DAGUIAR	Forty Third Respondent
JIMMY ALISON	Forty Fourth Respondent
DANNY BROWNLOW	Forty Fifth Respondent
BEVERLEY JOAN BRUCE	Forty Sixth Respondent
GUY STEWART BRUCE	Forty Seventh Respondent
KIWAT LUI	Forty Eighth Respondent
TORRES STRAIT REGIONAL AUTHORITY	Forty Ninth Respondent

APPELLANT'S CHRONOLOGY

Contents

1.	Chronology of principal administrative acts and legislation.....	3
2.	Chronology of the principal events of the first instance proceeding, the appeal to the Full Court of the Federal Court of Australia and the proceedings in the High Court.....	7

1. Chronology of principal administrative acts and legislation

Date	Event
30.05.1872	Imperial Crown had acquired sovereignty over the internal waters of, and a three nautical mile territorial sea (including the underlying sea, seabed and subsoil) around, each island lying within 60 nautical miles of the coasts of Queensland, including most of the islands in the Torres Strait
05.11.1877	<i>The Queensland Fisheries Act of 1877 assented to</i>
18.07.1879	Imperial Crown additionally acquired sovereignty over the remaining islands in the Torres Strait and over the internal waters of, and a three nautical mile territorial sea (including the underlying sea, seabed and subsoil) around each of the additional islands ¹

¹ After Federation the sovereignty passed from the Imperial Crown to the Commonwealth.

Date	Event
01.01.1882	<i>Pearl-shell and Beche-de-mer Fishery Act 1881 (Qld)</i> commenced
10.11.1886	<i>Oyster Act 1886 (Qld)</i> commenced
26.10.1887	<i>The Queensland Fisheries Act of 1887 (Qld)</i> commenced
19.07.1888	<i>The Queensland Pearl Shell and Beche-de-mer Fisheries (Extra-territorial) Act of 1888</i> commenced
13.11.1891	<i>Pearl-shell and Beche-de-mer Fishery Amendment Act 1891 (Qld)</i> commenced
01.01.1915	<i>The Fish and Oyster Act of 1914 (Qld)</i> commenced
12.10.1939	<i>Torres Strait Islanders Act 1939 (Qld)</i> commenced
12.10.1953	<i>Pearl Fisheries Act 1952 (Cth)</i> commenced
12.10.1953	<i>Pearl Fisheries Act (No.2) 1953 (Cth)</i> commenced
09.12.1954	Proclamation declaring "proclaimed waters" published under section 7 of the <i>Fisheries Act 1952 (Cth)</i> , which encompassed the claim area
01.01.1955	<i>Fisheries Act 1952 (Cth)</i> commenced
01.01.1955	<i>Fisheries Regulations, Statutory Rules 1954 (Cth), No. 116</i> came into operation (under which the forms of licences granted under the <i>Fisheries Act 1952 (Cth)</i> were prescribed)
30.11.1955	<i>Fish and Oyster Acts Amendment Act 1955 (Qld)</i> commenced
16.02.1956	Proclamation declaring "proclaimed waters" published under section 7 of the <i>Fisheries Act 1952 (Cth)</i> , which encompassed the claim area
01.01.1958	<i>Fisheries Act 1957 (Qld)</i> commenced
30.01.1968	<i>Fisheries Act 1967 (Cth)</i> commenced
22.08.1968	Proclamation declaring "proclaimed waters" published under section 7 of the <i>Fisheries Act 1952 (Cth)</i> , which encompassed the claim area
09.12.1968	<i>Fisheries Act 1968 (Cth)</i> commenced (generally)
15.04.1970	<i>Continental Shelf (Living Natural Resources) Act 1968 (Cth)</i> commenced (repealed the <i>Pearl Fisheries Act 1952 Cth</i>)
04.12.1973	<i>Seas and Submerged Lands Act 1973 (Cth)</i> commenced
20.12.1973	<i>Fisheries Act 1973 (Cth)</i> commenced
10.12.1977	Order in Council dated 8 December 1977 was published in the Queensland Government Gazette No.68 to extend the area of the application of the <i>Fisheries Act 1957 (Qld)</i> to include all waters extending for a distance of 3nm to the seaward side of the baseline of the territorial sea bordering the coast of Queensland

Date	Event
01.01.1978	<i>Fisheries Act 1976 (Qld)</i> commenced
24.08.1978	<i>Fisheries Amendment Act 1978 (Cth)</i> commenced ²
26.09.1979	Proclamation declaring "proclaimed waters" published under section 7 of the <i>Fisheries Act 1952 (Cth)</i> , which encompassed the claim area
29.05.1980	<i>Fisheries Amendment Act 1980 (Cth)</i> commenced
14.02.1981	<i>Fisheries Act Amendment Act 1981 (Qld)</i> commenced
14.02.1983	Commonwealth declared that it has sovereignty over sea, seabed and subsoil in the claim area of the first instance proceedings that does not fall within the 1872 and 1879 acquisitions (referred to above), but does fall within the territorial sea whose baselines and (for certain places in the claim area) outer limits are described in proclamations relating to straight baselines made by the Governor-General of the Commonwealth of Australia on 4 February 1983 (but effective from 14 February 1983) and published in the Commonwealth of Australia Gazette S29 of 9 February 1983
18.06.1983	<i>Fishing Industry Organisation and Marketing Act 1982 (Qld)</i> commenced ³
15.02.1984	<i>Torres Strait Fisheries Act 1984 (Cth)</i> commenced
15.06.1984	<i>Fishing Legislation Amendment Act 1984 (Cth)</i> commenced
07.02.1985	Proclamation made relating to the Torres Strait Protected Zone under section 15(1) the <i>Torres Strait Fisheries Act 1984 (Cth)</i>
15.02.1985	<i>Treaty between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area know as the Torres Strait, and Relation matters</i> entered into force
31.08.1985	<i>Fishing Legislation Amendment Act 1985 (Cth)</i> commenced
24.01.1988	<i>Fishing Legislation Amendment Act 1987 (Cth)</i> commenced
20.11.1990	The Commonwealth extended the outer boundary of the territorial sea (and declared sovereignty over sea, seabed and subsoil) from 3 natural miles to 12 nautical miles, except in respect of the territorial seas around certain islands in the Torres Strait, whose outer boundaries were fixed by the proclamation published on 9 February 1983 (referred to above)

² Sections 1 and 25 commenced on 24 August 1978.

³ Sections 3, 6, 8-19, 25-27, 133 and First Schedule commenced on 30 October 1982; sections 4, 7, 20-24 and 28-30 commenced 18 December 1982; section 133 commenced on 9 July 1983. The remainder of the Act, including section 36 commenced on 18 June 1983.

Date	Event
20.12.1990	Proclamation declaring "proclaimed waters" published under section 7 of the <i>Fisheries Act 1952</i> (Cth), which encompassed the claim area
03.02.1992	<i>Fisheries Management Act 1991</i> (Cth) commenced (generally) ⁴ (replaced the <i>Fisheries Act 1952</i> (Cth) and the <i>Continental Shelf (Living Natural Resources) Act 1968</i> (Cth))
03.02.1992	<i>Fisheries Legislation (Consequential Provisions) Act 1991</i> (Cth) commenced
29.07.1994	Proclamation declaring the outer limits of Australia's Exclusive Economic Zone to be 200 nautical miles from the baseline from which the territorial sea is measured published under section 10B of the <i>Seas and Submerged Lands Act 1973</i> (Cth)
27.01.1995	<i>Fisheries Act 1994</i> (Qld) commenced (generally) ⁵
17.03.1999	Proclamation made relating to the Torres Strait Protected Zone under section 15(1) the <i>Torres Strait Fisheries Act 1984</i> (Cth)
19.03.1999	Current Part V arrangement made under section 31 of the <i>Torres Strait Fisheries Act 1984</i> (Cth)
14.04.2006	Revocation of the proclamation published on 9 February 1983 (referred to above) and making of a new proclamation fixing the straight baselines from which Australia's territorial sea is measured from (where applicable) low tide elevations. This had the effect of expanding the territorial sea in the area west of Mabuig Island in the Torres Strait

⁴ Sections 1 and 2 commenced on 10 November 1991. The remainder of the Act commenced on 3 February 1992.

⁵ Sections 1 and 2 of the Act commenced on 8 September 1994. The remainder of the Act commenced on 27 January 1995.

2. **Chronology of the principal events of the first instance proceeding, the appeal to the Full Court of the Federal Court of Australia and the proceedings in the High Court**

Date	Event
In the Federal Court of Australia at first instance	
23.11.2001	Torres Strait Regional Seas Claim application for a determination of native title filed (QUD6040/2001)
18.07.2007	Joinder of certain Papua New Guinea nationals to the first instance proceedings permitted (<i>Gamogab v Akiba</i> (2007) 159 FCR 578)
26.09.2007 - 10.10.2007	Applicant's early evidence taken at various locations in the Torres Strait
07.12.2007	Joinder of certain Papua New Guinea nations in the first instance proceedings refused (<i>Akiba on behalf of the Torres Strait Regional Seas Claim People v Queensland (No 3)</i> [2007] FCA 1940)
23.09.2008	Orders made pursuant to Order 78 rule 6(5) of the Federal Court Rules splitting the first instance proceedings into two parts, "Sea Claim Part A" and "Sea Claim Part B" (<i>Akiba v Queensland (No 4)</i> [2008] FCA 1446)
29.09.2008 - 01.10.2008	Opening statements in Brisbane
13.10.2008 - 17.10.2008	Applicant early evidence taken on Poruma Island
27.10.2008 - 06.11.2008	Applicant evidence taken in Cairns
16.02.2009 - 03.03.2009	Oral submissions in Brisbane, including evidence taken from Papua New Guinea Respondent parties, Applicant and Respondent expert evidence and Respondent non-expert evidence
20.07.2009 - 24.07.2009	Final oral submissions in Brisbane
02.07.2010	Reasons for judgment of Finn J handed down (<i>Akiba and Another v Queensland and others (No 3)</i> (2010) 204 FCR 1)
23.08.2010	Orders of Finn J made
In the Full Court of the Federal Court of Australia on Appeal	
13.09.2010	Notice of Appeal filed
04.10.2010	Notice of cross-appeal filed
22.12.2010	Notice of supplementary cross-appeal filed
16.05.2012 - 18.05.2012	Oral submissions in Brisbane
14.03.2012	Reasons for judgment of the Full Court handed down (<i>Commonwealth v Akiba and another</i> (2012) 204 FCR 260)

Date	Event
In the High Court of Australia	
Proceeding No B19 of 2012	
11.04.2012	Application for special leave filed
08.06.2012	Further Amended Application for Special Leave to Appeal
08.06.2012	Draft Notice of Appeal filed
08.06.2012	Applicant's Summary of Argument filed
04.07.2012	Second Respondent's Summary of Argument filed
05.07.2012	First Respondent's Summary of Argument
06.07.2012	Third to Thirty First, Thirty Third, Forty Third, Forty Fifth, Forty Sixth and Forty Seventh Respondent Summary of Argument filed
12.07.2012	Applicant's Reply to First Respondent's Summary of Argument filed
12.07.2012	Applicant's Reply to Second Respondent's Summary of Argument filed
24.04.2012	Submitting Appearance for the Thirty Fourth Respondent
02.05.2012	Submitting Appearance for the Thirty Second Respondent
05.10.2012	Oral submissions on special leave application
05.10.2012	Order made that special leave be granted on limited grounds
Proceeding B58 of 2012	
19.10.2012	Notice of appeal filed
09.11.2012	Appellant's submission and chronology filed

Dated : 9 November 2012



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