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HIGH COURT DECISION OPENS NEW OPPORTUNITIES FOR NATIVE TITLE HOLDERS

A recent High Court decision which unanimously recognised native title rights to commercial fishing in the Torres Strait has been described as historic; and an opportunity to further examine commercial development in the Strait and other parts of Australia.

Lauren Butterly, from the University of Western Australia's ('UWA') Law Faculty, discusses the outcome of *Akiba v Commonwealth of Australia [2013] HCA 33* in the latest edition of the *Indigenous Law Bulletin* ('ILB') which focuses on how current legal and business practices are impacting Aboriginal and Torres Strait Islander Australians.

"While some may argue that the immediate practical implications are limited, the outcome of the case signals an exciting opportunity to promote discussions about integrating sea rights, Indigenous governance and commercial development," Butterly said. "The decision should signal a reconsideration of the approach that Australia has taken to recognising Indigenous marine governance."

While the recent judgement does not require either the Commonwealth or Queensland to reallocate or grant a certain number of commercial fishing licences to the Torres Strait Regional Sea Claim Group ('Seas Claim Group'), Butterly says the broader claim made to fishing still encompasses that use.

"Interestingly, the Seas Claim Group did not explicitly claim a right to fish for commercial purposes," she said. "The successful claim included commercial fishing rights, however, the recent judgment does not require either the Commonwealth or Queensland to reallocate or grant a certain number of commercial fishing licences to the Torres Strait Regional Sea Claim Group. Practically, the only immediate impact is that rights in relation to commercial fishing will now be subject to the limited future act processes in the *Native Title Act 1993 (Cth)*—but such issues should be negotiated, rather than viewed in the narrow legal framework of native title."

Butterly also praised the Seas Claim group who had been trying to assert their fishing rights on approximately 40 000 square kilometres of sea around the islands of the Torres Strait since 2001.

"The recognition of native title rights to commercial fishing is testament to the determination of the Seas Claim Group for persevering through three 'rounds' of litigation since the claim was lodged in 2001."

Lauren Butterly is a Lecturer in the Law Faculty at the University of Western Australia (UWA). Lauren is also PhD Candidate in the Law Faculty at the University of New South Wales ('UNSW'), Centre Associate of the Indigenous Law Centre, UNSW and Member, the UWA Oceans Institute.

To access a copy of Lauren Butterly's article please click [here](#).

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