

**Submission by the Department of Foreign Affairs and Trade
Into the Inquiry into Matters Relating to the Torres Strait Region**

Senate Foreign Affairs, Defence and Trade References Committee

Introduction

The Department of Foreign Affairs and Trade (DFAT) has overall policy responsibility for the Torres Strait Treaty at the bureaucratic level within the Australian Government. To assist in meeting this responsibility, DFAT operates the Treaty Liaison Office on Thursday Island. DFAT also co-chairs the Torres Strait Joint Advisory Council (JAC) set up under the Treaty and chairs the Treaty interdepartmental committee process. In addition, it coordinates the overall bilateral relationship with Papua New Guinea. These responsibilities provide the focus for this submission by DFAT to the Committee.

Torres Strait Treaty - Definition

The ‘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 known as Torres Strait, and related matters’ is commonly known as the Torres Strait Treaty, or simply ‘the Treaty’.

History/Background

The question of a negotiated border between the two countries was raised as consideration was being given to the proposal to grant Papua New Guinea independence from Australia. With Papua New Guinea attaining independence in 1975, it became necessary to address outstanding questions of sovereignty and jurisdiction over the Torres Strait. After extensive negotiations the Treaty was signed on 18 December 1978. The Treaty was ratified and entered into force on 15 February 1985.

The Treaty established two basic boundaries between Australia and Papua New Guinea – the Seabed Jurisdiction Line and the Fisheries Jurisdiction Line. The Seabed Jurisdiction Line is the boundary as regards sovereignty, with the exception of fifteen islands north of that line (including the inhabited islands of Boigu, Saibai and Dauan) over which Papua New Guinea recognises Australian Sovereignty. Similar to other Treaties which define borders, the Torres Strait Treaty enabled freedom of navigation and over-flight in the Torres Strait, and provided a consultative framework to enable cooperation between both countries in the management of the border.

While essentially a border delimitation agreement, the Treaty fulfilled a number of other complex requirements. The traditional inhabitants of the border region had historically accessed the broader Torres Strait cross-border area for trading, fishing, social and religious purposes. The Treaty explicitly acknowledges, and aims to preserve, that traditional way of life and livelihood of traditional inhabitants of the region. In establishing the maritime boundaries between Australia and Papua New Guinea, the Treaty also provided for the distribution of fisheries and seabed resources

between the two countries. The Treaty established the Protected Zone for the purpose of delimiting the area of shared use for traditional purposes and for the exploitation of commercial marine resources for commercial use.

The Treaty described a broad area within which resident traditional inhabitants have rights to the provisions of the Treaty (9 degrees to 10 degrees 28 minutes South). After the Treaty entered into force, traditional inhabitants from Australia and Papua New Guinea, in consultation with governments, agreed a narrower definition of PNG traditional inhabitants was required. In this regard, in 2000, the governments of Australia and Papua New Guinea exchanged notes to allow the inhabitants of thirteen villages from coastal areas in Papua New Guinea to benefit from the free movement provisions of the Treaty. Governments also agreed that the identification of the villages from Papua New Guinea should not exclude the application of free movement provisions to traditional inhabitants of additional villages, if at some point in the future their inclusion were deemed appropriate by the traditional inhabitants of Australia and Papua New Guinea.

Key provisions of the Treaty

The Protected Zone (Article 10)

The Treaty establishes a Protected Zone for the principal purpose of protecting the traditional way of life and livelihood of the traditional inhabitants, as well as to protect and preserve the marine environment and indigenous fauna and flora.

Free Movement and Traditional Activities (Article 11)

The Torres Strait Treaty recognises the importance of protecting the traditional way of life and livelihood of the traditional inhabitants of the region in a cross-border context. The free movement provisions permit traditional inhabitants to travel for traditional purposes in, and in the vicinity of, the Protected Zone without the visa and passport controls which normally apply to international travel.

“Traditional activities” refers to:

- activities on land and water including gardening, food collection, hunting and fishing;
- religious and secular ceremonies or gatherings for social purposes, such as marriage celebrations and settlement of disputes; and,
- barter and market trade. (Note that there is no scope for commercial activity for traditional inhabitants under the Treaty.)

A range of federal, state and local government agencies are involved in the management of the free movement provisions of the Treaty, but much of the day to day management rests with community leaders who have established a comprehensive set of guidelines for traditional inhabitants, consistent with the provisions of the Treaty. These leaders work with the Australian and Papua New Guinea Treaty liaison officers, based respectively at Thursday Island and Daru, who consult regularly on the implementation of the Treaty at the local level.

Marine and Terrestrial Environmental Protection (Articles 13, 14, 15)

The Treaty has a major environmental protection dimension, which recognises the importance of the environment for the well-being of the traditional inhabitants; aims to preserve the traditional and commercial fisheries and fauna resources; and protects the fragile Torres Strait environment for its own sake. The Treaty commits Australia and Papua New Guinea to identifying and protecting species of indigenous fauna and flora that are or may be threatened with extinction. Both countries have also agreed to take parallel and complementary measures to prevent and control pollution or other damage to the marine environment within the Treaty area. To coordinate bilateral efforts, an Environmental Management Committee was established.

The Treaty prohibited mining and drilling of the seabed for a period of ten years from the date of its entry into force. Governments have agreed to extend this prohibition each time it expired. In 2008 Australia and Papua New Guinea agreed to an indefinite moratorium on mining and drilling in the Protected Zone.

Consultation and Liaison (Articles 17, 18, 19)

The Treaty emphasises consultation at all levels. In particular, the Treaty provides for the designation of treaty liaison officers by Australia and Papua New Guinea who consult on a day to day basis with each other, and with officials and traditional inhabitants in the region. Australia's Treaty Liaison Officer (TLO) is based on Thursday Island; Papua New Guinea's Border Liaison Officer (BLO) on Daru, the capital of Western Province.

The Treaty also established the Joint Advisory Council (JAC), co-chaired by senior officials from the PNG and Australian Departments of Foreign Affairs and Trade, to review implementation of the Treaty. The JAC is an advisory and consultative body, comprising members of national, state and provincial governments, and traditional representatives, which is required to submit its report and recommendations to the Foreign Ministers of Australia and Papua New Guinea. There are a range of consultative committees which inform the JAC (see Figure 1 below):

- . Traditional Inhabitants Meeting (TIM)
 - co-chaired by traditional leaders from Papua New Guinea and Australia
 - meets once yearly alternately in Papua New Guinea (Daru) and Australia (Thursday Island)
- . Health Issues Committee (HIC)
 - chaired by Australia's Department of Health and Ageing
 - meets twice yearly in Australia (Cairns)
- . Environment Management Committee (EMC)
 - co-chaired by Papua New Guinea and Australian national departments of environment
 - meets yearly immediately preceding, and at the same venue, as the JAC
 - bilateral Environmental Working Groups meet on an ad hoc basis to progress particular issues and report to the EMC
- . Bilateral Fisheries Management Meeting

- while this is not technically a Treaty meeting, the shared fisheries resource lies wholly within the Protected Zone
- meets once yearly alternately in PNG and Australia
- catch sharing arrangements for the shared fisheries are discussed at the bilateral fisheries meeting
- under Article 23 of the Treaty, these arrangements need to be confirmed by the fisheries Ministers from both countries for the coming year
- the outcomes of this meeting are also reported to the JAC
- Interdepartmental Committee Meetings
 - relevant Australian government agencies meet at least twice yearly to discuss Treaty implementation issues and coordinate the whole-of-government approach
 - chaired by Assistant Secretary, Papua New Guinea and Fiji Branch, Department of Foreign Affairs and Trade

The high level of ongoing consultation between government and traditional inhabitants both within and across the border has led to the development and maintenance of a major network of Treaty-related contacts. This has resulted in a cooperative environment where issues can be managed quickly and efficiently - from the local (such as preparedness for large groups of traditional visitors for major social/religious occasions) to the regional/national (H1N1 Influenza outbreak; people smuggling). The Treaty area's complex and comprehensive network of formal and informal consultation has contributed to our capacity to manage the border effectively and uphold the rights of the traditional inhabitants.

Commercial Fisheries (Articles 20-28)

The Treaty contains detailed and complex provisions relating to commercial fisheries in the Protected Zone. Their purpose is to ensure that commercial fisheries are not administered in a way that might adversely affect the ability of traditional inhabitants to continue their traditional fishing. They also give effect to balanced and equitable catch sharing arrangements and provide for cooperation between the two countries in the issue of fishing licences and in inspection and enforcement.

Domestic arrangements for management of the Torres Strait commercial fisheries are made at regular consultative meetings, and decisions affecting Papua New Guinea's right to a percentage of the protected Zone catch are put to Papua New Guinea for consideration at annual bilateral fisheries management meetings.

Review of the Torres Strait Treaty

There are no review mechanisms built into the Treaty. Implementation of traditional visit provisions in accordance with changed circumstances, especially at the local level, are largely left to community leaders in consultation with DFAT and other relevant Commonwealth agencies. For this purpose, a comprehensive set of "Traditional Visit Guidelines" has been developed over time with full agreement from community leaders from Australia and Papua New Guinea. The Guidelines are updated as required at Traditional Inhabitants Meetings.

The Treaty in contemporary circumstances

The Treaty has worked well over the period since its entry into force in 1985. During that time, the Australian and Papua New Guinea Governments have demonstrated a shared commitment to the proper and sensitive management of the Torres Strait border region through effective implementation of the Treaty.

However, the Treaty's important dual role of defining the border between Australia and Papua New Guinea and protecting the way of life of traditional inhabitants on both sides of the border, has sometimes led to confusion and poor understanding on the part of the stakeholders and the general public.

More recently, changing economic and social circumstances on both sides of the border, together with the emergence of global phenomena, including transnational crime and health pandemics such as avian influenza, have placed the Treaty under pressure. It is noteworthy in this regard that the Joint Statement issued from the 19th Australia-Papua New Guinea Ministerial Forum held in Brisbane on 10 June 2009 stated as follows: 'The Forum noted the progress made to date in developing the joint Papua New Guinea – Australia Package of Measures to Address Cross Border Health Concerns, including the initiative for cross-border movement.....The Forum expressed its support for the further development and implementation of the Package of Measures. It was noted that the implementation of some elements of the Package had already commenced and will continue through 2009-10.'

In more general terms, while such challenges require constant attention and vigilance, they are not a direct consequence of the Treaty itself. As well as being very remote, the Papua New Guinea coast is, in parts, only a few kilometres from Australian island communities, and sparsely populated. Most of the almost 300 kilometres of Papua New Guinea Treaty area coast is inaccessible except by helicopter or small boat. Given this remoteness, close proximity of territories, and thinly-spread law enforcement, the Treaty, at the very least, encourages habits of consultation on border management.

Importantly, the movement provisions ensure that those villagers closest to Australian territory have an interest in ensuring the Treaty works and is not abused. In this regard, DFAT's view is that the Treaty continues to resolve more problems than it creates. This is because the Treaty, as a 'living, breathing' document, provides a pragmatic framework for the management and resolution, at local level, of issues in an environment which is socially, culturally and geographically unique.

The Treaty's inherent strength and effectiveness has always come from its high level of support from traditional inhabitants. But the ongoing support of the traditional inhabitants is, at the same time, arguably the Treaty's most fragile dimension. As long as traditional inhabitants consider that the Treaty continues to uphold and protect their rights and privileges, the Treaty will remain effective. Without their ongoing support, however, the Treaty will become increasingly difficult to sustain. Abuses of the Treaty's free movement provisions could lead to tensions between traditional visitors from Papua New Guinea and Torres Strait Islander communities, and exacerbate pressure on local infrastructure and resources, thereby eroding support for the Treaty among traditional inhabitants.

A future challenge, will be to balance the needs and aspirations of Torres Strait Islanders with the demands and sensitivities of the bilateral relationship with Papua New Guinea. Responsive and effective action by the Australian and Papua New Guinea governments to make the Treaty work at all levels, including through addressing the concerns of traditional inhabitants and countering any misunderstandings about the treaty's provisions, will be critical to maintaining support for the Treaty and ensuring its long term sustainability.

Responses to specific Inquiry terms of reference

The extent of cooperation with, and between, Australia's northern neighbours, Papua New Guinea and Indonesia, in relation to the health, welfare and security of the Torres Strait region and communities in and around this region

There are a number of forums where the Australian Government is able to discuss issues, in relation to the health, welfare and security of the Torres Strait region and communities in and around this region, with Papua New Guinea and/or Indonesia, if considered appropriate and necessary.

The annual Australia-Papua New Guinea Ministerial Forum is the primary Ministerial-level forum for engagement with Papua New Guinea. Torres Strait issues have been an agenda item and discussed at this Forum, including the most recent one held in Brisbane on 10 June 2009, as indicated in the Joint Statement issued at the close of the meeting (and available on the DFAT website).

A number of relevant forums at the bureaucratic level involving cooperation between Australia and Papua New Guinea are dealt with under 'Consultation and Liaison (Articles 17, 18, 19)' above, as well as elsewhere in this Submission.

The annual Australia-Indonesia Ministerial Forum, the primary Ministerial-level forum for engagement with Indonesia, provides a forum to discuss a range of issues regarding the Torres Strait, if deemed necessary. These include maritime security, people-smuggling, defence, fisheries and other transnational issues.

The contribution of international trade and commerce to regional economic sustainability

The Department of Foreign Affairs and Trade (DFAT) understands that there is, in general, no publically available trade and economic data or analysis on the contribution of international trade and commerce to the sustainability of the Torres Strait region. Australian Bureau of Statistics and United Nations World Trade Atlas data is not disaggregated to this level.

There is a modest but, locally at least, economically significant fisheries resource in the Torres Strait. PNG exports Torres Strait fin fish to Australia from Daru, and Australia's catch from the tropical rock lobster, fin fish, and prawn fisheries is sold outside the region, with a proportion possibly exported. We understand that DAFF can provide more information on this and will be making a submission on fisheries.

In general terms, while Torres Strait Islanders have evidently benefitted from economic development consistent with rising standards of living elsewhere in Australia, the same cannot be said for the development of communities in Western Province of Papua New Guinea, which borders the Torres Strait. By and large, coastal villages in Western Province have not benefitted from Papua New Guinea's increased wealth as a result of the resources boom, or from international trade and commerce. Villagers still live primarily by subsistence agriculture and fishing and are, to this extent, largely off the 'economic radar'. Thus, international trade and commerce has contributed only minimally to economic sustainability in Western Province.

PACER Plus

One important development for trade between Australia and Papua New Guinea, and in the wider region, will be the negotiation of a new trade and economic integration agreement for the Pacific – known as PACER Plus. Pacific Islands Forum Leaders agreed at their fortieth meeting in August 2009 to commence negotiations on PACER Plus. Australia and Papua New Guinea are involved in these negotiations from the outset. For Australia, Pacific regional trade and economic integration are essential components of what the Prime Minister, in his Port Moresby Declaration of 2008, called 'a new era of cooperation with the island nations of the Pacific'.

Australia's motivation in supporting PACER Plus is to help the Forum Island Countries promote their own sustainable economic development. The negotiation of a new regional trade and economic agreement provides the opportunity to create jobs, enhance private sector growth, raise standards of living, and boost long-term economic growth in Forum Island Countries, including Papua New Guinea. The first PACER Plus negotiating session was held in Brisbane on 23-24 October 2009. It made substantial progress, including agreement on the framework for the negotiations and the appointment of a Chief Trade Advisor. The agreed priority areas for the next 12 months of negotiations include rules of origin, regional labour mobility, development assistance and trade facilitation.

The economic progress facilitated by PACER Plus in due course can be expected over time to help moderate development inequalities between Australian territory in the Torres Strait region and the Western Province of Papua New Guinea.

Cooperation between federal, state and local levels of Government

Close cooperation and support is required for the whole-of-government approach to managing the Torres Strait and the Treaty. A large range of Commonwealth, Queensland State and local government agencies are involved in the implementation of the Treaty including:

- . Department of Foreign Affairs and Trade (DFAT)
- . AusAID
- . Department of Agriculture, Fisheries and Forestry (DAFF)
- . Department of Defence/Royal Australian Navy and Australian Army

- . Department of the Environment, Water, Heritage and the Arts (DEWHA)
- . Department of Health and Ageing (DoHA)
- . Department of Immigration and Citizenship (DIAC)
- . Australian Customs and Border Protection Service (ACBPS)
- . Australian Fisheries Management Authority (AFMA)
- . Australian Federal Police (AFP)
- . Australian Marine Safety Authority (AMSA)
- . Australian Quarantine and Inspection Service (AQIS)
- . Torres Strait Regional Authority (TSRA)
- . Queensland Department of Premier and Cabinet (DPC)
- . Queensland Health
- . Queensland Police Service (QPS)
- . Queensland Department of Primary Industries and Fisheries (DPI&F)
- . Torres Strait Island Regional Council (TSIRC)

Treaty Awareness Visit Program

An important task for agencies in managing the Torres Strait is the Treaty Awareness Visit Program (TAVP). A bilateral, multi-agency delegation led by DFAT aims annually to visit all Treaty communities to promote awareness of the Treaty provisions, receive enquiries on technical Treaty matters, and resolve issues arising from the Treaty.

The Treaty Liaison Officer (TLO, DFAT Australia) and Border Liaison Officer (BLO, PNG) conduct three Treaty Awareness Visits (TAVs) a year to PNG:

1. Daru and Eastern Villages (Kadawa, Katatai and Parama)
2. Central Villages (Ture Ture, Old Mawatta, Mabadauan and Sigabadaru)
3. Western Villages (Tais, Buzi/Ber, Bula, Jarai and Mari).

The TAVs to Daru, and the Eastern and Central Treaty Villages are aboard the Royal Australian Navy (RAN) vessel, Malu Baizam. Each TAV takes about one week, with the multi-agency delegation living aboard the vessel. The RAN provides onboard accommodation, meals, small craft transport to the villages, and prepares the various diplomatic and exit-entry clearances. The RAN also plots the schedule for the TAV, to take into account the unsurveyed and sometimes perilous waters of the PNG coast. Accompanying the TLO and BLO, and subject to availability, are representatives from relevant agencies DIAC, AQIS, TSRA, AFP, QPS, AFMA, DoHA, DEWHA, DAFF, Queensland Health, Australian Army, and their Papua New Guinea

counterparts. In addition to numerous ad hoc visits, the TLO also leads one TAV each year one to the Australian communities in the Protected Zone aboard the Malu Baizam.

The TAV to Western Treaty Villages is more problematic for access by marine craft due to the dangerous seas and remoteness. Travel has on occasions been provided with the support of Border Protection Command (BPC) helicopter. BPC provides planning support, and prepares the various diplomatic and exit-entry clearances. AQIS and Customs facilitate exit-entry processing for the delegations for all TAVs.

Treaty Awareness Visits are a vital element of Torres Strait border management. Australia's whole-of-government efforts have relied on the logistical support provided by RAN, BPC, and other Commonwealth agencies, and the high-level of participation by agencies across and from all levels of government.

Community Liaison Visits

Border Protection Command (BPC) maintains a weekly schedule of Community Liaison Visits (CLVs) by Coastwatch-labelled helicopter from Thursday Island to the Australian Treaty islands (although this can be subject to change or cancellation in some circumstances). This service is available to all agencies and is well utilised. In addition to the obvious advantage of being able to visit remote Treaty islands to discuss Treaty issues, it demonstrates to those communities a clear whole-of-government commitment to the management of the Torres Strait border. Several agencies usually avail themselves of this service on any given day, and take the opportunity to call on community leaders as a single Commonwealth Government delegation, reinforcing the whole-of-government approach to the border, increasing inter-agency communication on Treaty matters, and streamlining and building consistency in Government messaging on the Treaty. Much of the face-to-face routine work of Commonwealth agencies with Treaty communities is possible due to the existence of this service.

Border Protection Command Air and Sea Transport Provision

Border Protection Command (BPC) also make helicopters and Australian Customs Vessels (ACVs) available, where possible, for discreet ad hoc tasking by Commonwealth agencies. Hence agencies may have transport platforms available for visits that fall outside of the normal CLV schedule.

Traditional Inhabitants Meeting

The Australian and Papua New Guinea Departments of Foreign Affairs and Trade are the Secretariat for the Traditional Inhabitants Meeting (TIM) and work closely with Torres Strait Regional Authority (TSRA) in organising the meeting. TSRA has an elected board, the chair for which is the head of the Australian delegation to, and co-chair, of the TIM. The Mayor of TSIRC has an open invitation as an observer to the TIM (as well as the JAC). Australian agencies are invited in an advisory capacity to attend the TIM, and DIAC, Customs, AQIS and AFMA are regular participants.

TSRA is central to the coordination of traditional inhabitant views and issues, and provides communication support for agencies contact with Treaty communities' leadership. TSRA is often at the forefront of innovation in tackling serious policy issues; for instance, on climate change and turtle/dugong management.

People Smuggling and Other Transnational Crime

Law enforcement agencies work closely with DFAT, DIAC, counterpart agencies in PNG, and traditional inhabitants to monitor and report on cross-border criminal activity. Communication between agencies is timely and comprehensive, enabling effective inter-agency coordination in Canberra.

Multi-agency cross-border patrols undertaken by ACBPS, AFP, QPS, the Royal Papua New Guinea Constabulary and Papua New Guinea Customs are another element of cross-border protection.

Fisheries

The Protected Zone Joint Authority manages fishing in the Torres Strait in accordance with the Torres Strait Treaty between Australia and Papua New Guinea. DFAT understands that DAFF will be making a submission on fisheries management issues. AFMA and Customs provide regular updates to DFAT on illegal fishing activity and other fisheries issues in the Torres Strait. DFAT provide support for bilateral coordination outside PNG fisheries agencies as required.

Cross-border Health Issues

DoHA, Queensland Health, DFAT, AusAID, DIAC, Customs, AQIS and DPC collaborate to manage cross-border health issues. Together with Papua New Guinea national and provincial health authorities, and the BLO, these agencies also participate in the biannual Health Issues Committee, which DoHA co-chairs.

Environmental Issues

DEWHA, DFAT, TSRA and AFMA collaborate to manage cross-border environment issues in the Treaty context. DEWHA co-chairs the Environmental Management Committee with the Papua New Guinea Department of Environment and Conservation.

Figure 1: Torres Strait Treaty Consultative Process

