

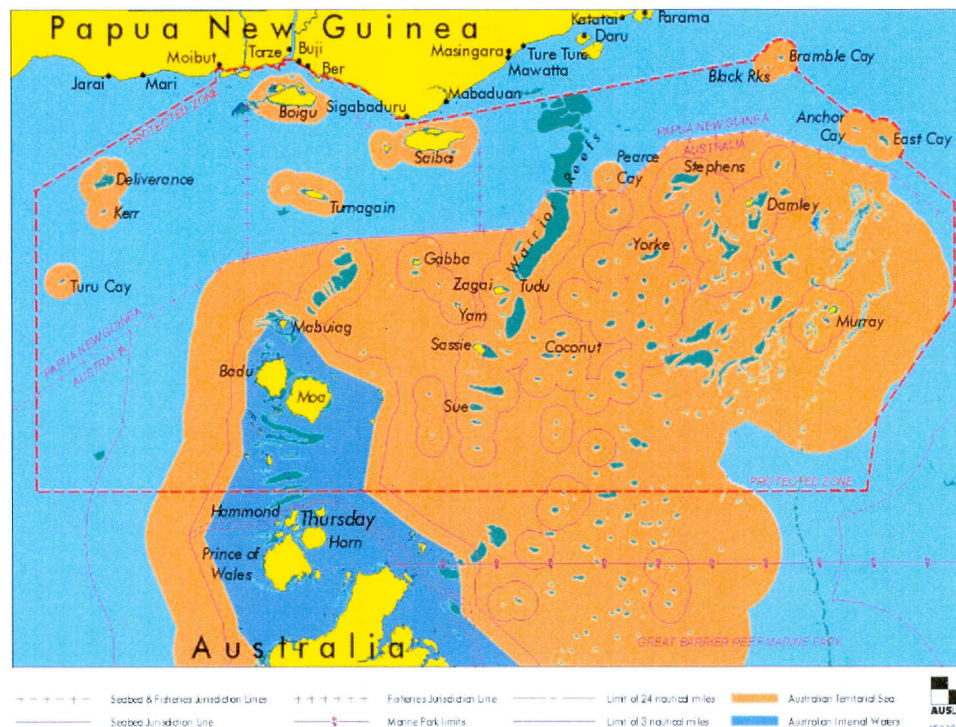
Australian Customs and Border Protection Service submission to Senate Foreign Affairs, Defence and Trade Committee Inquiry into matters relating to the Torres Strait region

1. Introduction

On 14 September 2009 the Senate referred the following matters to the Senate Foreign Affairs, Defence and Trade Committee for inquiry and report.

The administration and management of matters relating to Australia's northern air, sea and land approaches in the region of the Torres Strait, including:

- (a) the provisions of the Torres Strait Treaty;
- (b) the role of the Torres Strait Regional Authority in respect of treaty and border issues, including how the authority interacts with the governments and people of Papua New Guinea (PNG);
- (c) the extent of cooperation with, and between, Australia's northern neighbours, PNG and Indonesia, in relation to the health, welfare and security of the Torres Strait region and communities in and around this region; and
- (d) the challenges facing this region in relation to:
 - (i) the management of fisheries,
 - (ii) the contribution of international trade and commerce to regional economic sustainability,
 - (iii) the maintenance of strong border security across the Torres Strait region, including but not limited to, issues related to Australia's defence, bio-security, public health, immigration and customs,
 - (iv) cooperation between federal, state and local levels of government, and
 - (v) air, sea and land transport linkages.



Representation of jurisdictional zones in the Torres Strait

2. Background

The Torres Strait is often referred to as the closest thing Australia has to a land border crossing. This means that Customs and Border Protection, in cooperation with partner agencies is required to manage the movement of people and goods across this particular part of the Australian border differently than at all other air and sea ports.

The significant differences relate to the Torres Strait Treaty, the proximity to other countries, the remoteness of the Torres Strait and associated lack of infrastructure. A significant positive in this environment is the close cooperation between Australian Government agencies both within the region and at the national level.

Under the Torres Strait Treaty, there are presently over 59,000 known / reported “traditional movements” of people between Papua New Guinea (PNG) and the northern Islands of the Torres Strait each year (Boigu, Saibai and Dauan Islands in particular).

The free movement provisions of the Torres Strait treaty mean that traditional visitors are not subject to the usual requirements for possession of a valid travel document and visa for travel and entry to Australia. These provisions, and the geographical proximity to PNG, have led to the adoption of entry arrangements for traditional visitors that are tailored to the unique circumstances of the Treaty zone and recognise the important role that local Island Councils play.

The remoteness of the Torres Strait and lack of infrastructure, present challenges for law enforcement agencies and for Torres Strait communities, particularly in relation to the logistics of organising operational responses.

3. Customs and Border Protection Operations in the Torres Strait

3.1 Our Responsibilities:

- Customs clearance of air and sea movements through Horn Island and Thursday Island
- Customs clearance of cargo through Horn Island and Thursday Island
- Interdiction of people, goods and substances illegally entering or departing Australia via the Torres Strait
- Represent Customs and Border Protection throughout Torres Strait communities
- Respond to active intelligence
- Intelligence collection and sharing, domestically and with PNG partner agencies
- Manage the custody, control and welfare of apprehended foreign fishers and potential irregular immigrants brought into Horn Island

3.2 We do this by:

- Conducting operational activity on all islands in response to known risks and other active intelligence
- Regular visits to all island communities (including extended visits at Saibai Island utilising the new office / accommodation facility, which is also available to other agencies to use)

- Regular patrols of remote islands utilising the locally engaged Torres Strait Customs and Border Protection Liaison Officers and the response vessels
- Through Border Protection Command, conduct daily aerial surveillance of the Torres Strait Protected Zone and maintain a twenty four hour, seven days a week capability to respond to border incursions
- Attending to all international aircraft movements at Horn Island (currently in excess of 550 aircraft per year) including the clearance of crew, passengers and cargo – that takes place on the tarmac due to lack of appropriate facilities.



- Attending to all commercial and small craft movements at Thursday Island
- Actively supporting the Combined Intelligence Group comprising Australian Federal Police (AFP), Queensland Police Service (QPS) and Customs and Border Protection
- Planning and execution of three cross border patrols with PNG each year
- Liaison with Commonwealth and State agencies on Thursday Island
- Maintaining contact with PNG Customs Service in Daru and Port Moresby
- Maintenance of the Horn Island foreign fisher facility
- Participating in the annual PNG / Australia Transnational Crime Conference and implementing agreed actions.

3.3 Using these resources:

- 24 staff (including two dedicated Border Protection Command and four locally recruited Torres Strait Islanders based on Mabuiag, Coconut, Darnley and Saibai islands)
- The work of three intelligence analysts based in Cairns who have extensive experience with the Torres Strait. Their specialist knowledge is used in the development of analytical material that informs ongoing operational activity.
- Customs and Border Protection has one 12-metre and five 6-metre vessels. Four of the smaller vessels are deployed strategically on islands within the Torres Strait and are maintained by Torres Strait Customs and Border Protection Liaison Officers. These officers also support operations, information gathering and community participation programs.



12 metre Customs Response Vessel (CRV) 6 metre Rapid Response Vessel (RRV)

- Customs and Border Protection maintains a UHF radio network that provides for full coverage of the Strait. This is used also by other agencies including the AFP and Department of Immigration and Citizenship (DIAC) who have a dedicated channel.



- Border Protection Command operates two surveillance helicopters specifically for the Torres Strait that are also used when available for operational responses.



- Border Protection Command Dash 8 or Reims F406 fixed wing surveillance aircraft make daily flights across the Torres Strait.

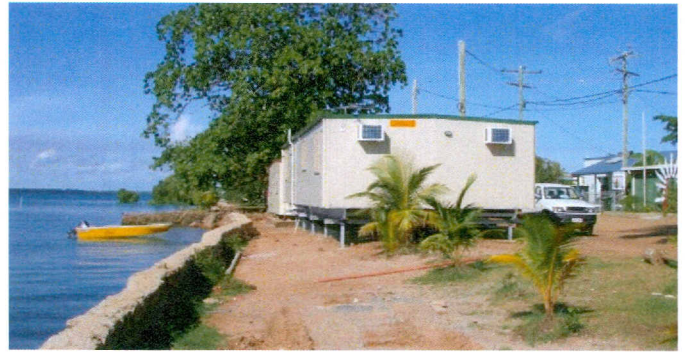


- Two Australian Customs and Border Protection Vessels maintain a persistent patrol and response capability in or near the Torres Strait.



3.4 Current Customs and Border Protection Torres Strait Initiatives

- An accommodation / office complex on Saibai Island is now fully operational and enables Customs and Border Protection to maintain a more regular presence on the island in support of its locally engaged resident officer and to allow for extended operational activity. The facility is available for use by other agencies and has been used by other agencies for extended periods. Community feedback has been extremely supportive with indications of a decreasing local crime rate and minor detections increasing since inception of the facility. A second facility is planned for Boigu Island within the next two to three years.
- Customs and Border Protection deploys officers to the outer islands that are more regularly used for traditional movements to assist in the earlier detection of the illegal movement of vessels, people and goods.



Saibai facility with the PNG coastline in the background



Officers searching a PNG banana boat at Saibai upon arrival from Mabaudian village in PNG

- Development of plans to replace the aging 6-metre vessels with the new Port Class vessels
- Cooperation with QPS in respect to their “Weed it Out” program, that has resulted in significant charges being laid for the importation of cannabis
- Customs and Border Protection has worked with the Department of Health and Aging (DoHA) and Department of Foreign Affairs (DFaT) to develop a means by which cross border movement for certain Commonwealth officials might be better facilitated, in order to assist DoHA in reducing the number of people crossing from the PNG side in search of medical treatment.

4. Inquiry Terms of Reference

4.1 Provisions of the Torres Strait Treaty

The Torres Strait Treaty (Miscellaneous Amendments) Act 1984 gave effect to the *Torres Strait Treaty* (the Treaty) in Australian domestic law. The Treaty sets out the agreed position by Australia and Papua New Guinea in relation to sovereignty and maritime boundaries in the Torres Strait.

The Treaty recognises that Australia is obliged to allow certain persons movement into and around the Torres Strait area. Specifically, Article 16 of the Treaty seeks to ensure that both signatories, in the administration of their respective immigration, customs, quarantine and health laws, do not “prevent or hinder free movement or performance of traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party”. It does not exempt traditional inhabitants crossing the border from complying with Customs and Border Protection requirements in respect to the movement of dutiable or prohibited, restricted or regulated goods.

Section 30A of the *Customs Act 1901* provides for exemption from certain Customs and Border Protection requirements for traditional movements under the Treaty.

4.2 The role of the Torres Strait Regional Authority in respect of treaty and border issues, including how the authority interacts with the governments and people of Papua New Guinea (PNG)

Customs and Border Protection staff from both Cairns and Thursday Island maintain a close relationship with the Torres Strait Regional Authority. This assists staff in understanding cultural and diversity issues and has enhanced our ability to develop effective relationships with Torres Strait communities.

4.3 The extent of cooperation with, and between, Australia’s northern neighbours, PNG and Indonesia, in relation to the health, welfare and security of the Torres Strait region and communities in and around this region

Customs and Border Protection is the lead agency in the joint cross border patrols conducted three times per year. These patrols also include representatives of the AFP, QPS and PNG Police and Customs. Patrols commence and finish with intelligence briefings involving all five agencies. These 8 to 10 day patrols are well received by communities on both sides of the border and have led to the interdiction of prohibited goods and detention of suspected persons – for example:



Cross border patrol arriving at a PNG village

- New intelligence related to cannabis crops and trade in the Western Province;
- Arrest by Royal PNG Constabulary of persons involved in cannabis trade;
- Over-stayers on traditional passes;
- Unlawful non-citizens;
- Unlawful movements under the guise of traditional travel.

Customs and Border Protection operates an extensive UHF radio network across the Torres Strait. The PNG Customs Service in Daru is connected to this network and communicates on a daily basis with the Customs and Border Protection office on Thursday Island. Information on the movement of people, vessels and aircraft are routinely exchanged.

The Customs and Border Protection office in Cairns also maintains an ongoing working relationship with the PNG Customs Service in Port Moresby. PNG officers

on occasions will travel to Daru or Thursday Island to participate in joint intelligence meetings involving all the law enforcement agencies.

Customs and Border Protection also participates in a range of more formal consultative fora with PNG:

- Traditional Inhabitants Meeting – locally run on either Thursday Island or Daru by the respective PNG and Australian resident Foreign Affairs liaison officers
- Interdepartmental Committee on the Torres Strait – chaired by the Department of Foreign Affairs and Trade which looks at a range of issues including law enforcement, fisheries and quarantine.
- Joint Advisory Council – a joint PNG / Australia meeting that is the link between the Interdepartmental Committee and the annual Ministerial Forum.
- Transnational Crime Conference – involves the agencies that participate in the joint patrols. This conference originally focused only on Torres Strait but has developed and looks more broadly at the PNG / Queensland border issues.

4.4 The challenges facing this region in relation to:

4.4.1 The management of fisheries:

The responsibility for management of fisheries within the Torres Strait rests with Australian Fisheries Management Australia (AFMA) and the relevant Queensland State Government agencies. Border Protection Command maintains daily surveillance of the Torres Strait and has deployed at any given time a minimum of two vessels, either Customs and Border Protection Bay Class Vessels or Royal Australian Navy Armidale Class Vessels. A primary role for these assets is the detection and interdiction of illegal fishing.

Customs and Border Protection maintains a facility on Horn Island to house locally detained foreign fishers prior to their transfer to Darwin for further investigation.



4.4.2 The contribution of international trade and commerce to regional economic sustainability

The lack of suitable infrastructure particularly at Horn Island airport is an impediment to Customs and Border Protection facilitation of international trade and commerce. Currently, incoming cargo from overseas is often examined on the airport tarmac by Customs and Border Protection officers.

4.4.3 Maintenance of strong border security across the Torres Strait region

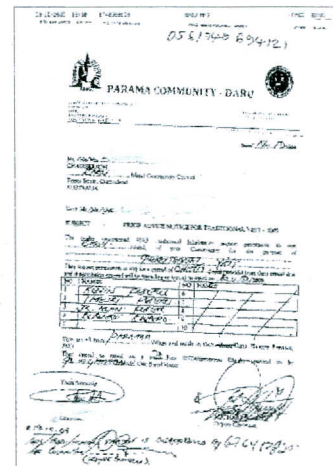
At a whole-of-government level, six broad risks have been identified in the border environment:

- terrorism
- unauthorised or irregular movement of people by sea or air,
- biosecurity

- movement of prohibited, restricted or regulated goods
- unlawful activity in the maritime zone, and
- revenue

Effective border management to address these risks is maintained through the cooperative efforts of all relevant agencies. There are a number of issues which impact on operational outcomes. These include:

- Mobility in and around the Torres Strait
 - All agencies have a need to be able to move to outer islands to conduct business or to respond to emergent issues;
 - Border Protection Command assets are primarily for surveillance and not transport of officials
 - Air charter operators are expensive and not always available at short notice
 - Existing Customs and Border Protection water-borne assets are nearing the end of their life and will need to be replaced
- Extensive uncharted and partially surveyed waters
 - Much of the waters within the Torres Strait remain either uncharted or only partially surveyed waters,
 - Australian Maritime Safety Authority (AMSA) requirements prevent water-borne assets entering into or pursuing other craft in these areas,
 - Generally vessels of interest to Customs and Border Protection will transit such waters
- The inability of law enforcement agencies to effectively determine who is a genuine traditional inhabitant
 - Use of a piece of paper with names but no other detail as the primary document for allowing cross border movement
 - Lack of a legal or administrative requirement for photographic identification documents



Definition of traditional activity

- The original intent was travel for traditional purposes, in accordance with the livelihood and way of life of the traditional inhabitants of the region, but now the rationale for these visits includes access to health care, shopping, attending football carnivals etc

4.4.4 Cooperation between federal, state and local levels of government,

Customs and Border Protection recognises that the ongoing cooperation of all agencies operating in the Torres Strait is essential for strong border security. Customs and Border Protection participates in a number of important and regular fora:

- Torres Strait Combined Intelligence Group (CIG) – an intelligence sharing and target development grouping of Customs and Border Protection, QPS and AFP.

CIG is entirely Thursday Island based but has management oversight from senior officers from the three agencies in Cairns.

- Cross Border Patrol review and planning – a recently introduced annual meeting of the agencies that participate in the patrols to review completed patrols and plan for the subsequent year.
- Health Issues Committee – which looks at ways of managing the impact that cross border movement for health reasons has on the Torres Strait.

Informal, regular and effective relationships are also maintained with all other Commonwealth and State agencies operating in the Torres Strait as well as community based organisations, Torres Strait Regional Authority and the Torres Strait Regional Council.

4.4.5 Air, sea and land transport linkages

The cost of moving staff into and around the Torres Strait is an additional factor which must be considered in the provision of services in this area.

5. Conclusion

The Torres Strait region poses unique demands on border protection activities. The challenges of the environment, geography and logistics, combined with the delicate balance of local community expectations and the Torres Strait Treaty, mean that cooperative relationships are required between federal, state and international government agencies to ensure the provision of effective border security.