



INQUIRY INTO THE MAIN ECONOMIC
AND SECURITY CHALLENGES FACING
PAPUA NEW GUINEA AND THE ISLANDS STATES
OF THE SOUTHWEST PACIFIC

SUBMISSION BY THE
ATTORNEY-GENERAL'S DEPARTMENT
AND
AUSTRALIAN CUSTOMS SERVICE

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The Attorney-General's Department (AGD) and its portfolio agencies undertake and contribute to a number of activities and programs which assist Papua New Guinea (PNG) and Pacific island countries to meet economic and security challenges. This submission covers the activities currently being undertaken by AGD and the Australian Customs Service (Customs). We understand that the Australian Federal Police (AFP) and the Australian Transaction Reports and Analysis Centre intend to provide their own submissions to the Inquiry.

AGD's activities in the Pacific region draw on the Department's unique expertise in areas such as anti-money laundering, law and justice policy development and legislative drafting to assist PNG and Pacific island countries to meet challenges to economic development and security. In addition to agency-led programs, AGD and Customs contribute to whole-of-government measures to strengthen law and justice in the region such as the *Strongim Gavman* Program in PNG.

Customs provides a range of programs in PNG and the Pacific island states to enhance the facilitation of people and trade and improve border security in the region.

Opportunities to further strengthen law and justice in the Pacific include improving international legal cooperation, reforming criminal laws and supporting the regional network of Pacific island law officers.

Economic and security challenges

Law and justice issues continue to challenge PNG and Pacific island countries. Development and security in the region are directly affected by improvements in governance, the rule of law, anti-corruption measures and access to justice. Ensuring the efficient and appropriate administration of justice also has the potential to assist countries to meet these challenges.

Dealing with the challenges posed by globalisation is increasingly challenging for many Pacific island countries. The complexities of issues like transnational crime can be exacerbated by capacity constraints—both in terms of financial and human resources—and other issues. For example, ensuring border security can be particularly challenging because of the geography of many Pacific island nations, their financial resources and population size. In addition, outdated legislation or the lack of appropriate legal frameworks can make the job of law enforcement and justice agencies even more difficult.

Key challenges—transnational crime

The development of effective arrangements to combat transnational crime generally, and in particular issues associated with money laundering, terrorism financing and illicit drugs, are serious challenges for the Pacific which have significant economic and security implications. The Australian Institute of Criminology stated in 2006 that

transnational crime activity in the Pacific Islands is rendered easier by the absence of government and law enforcement capacity... Economic weaknesses and their impact upon infrastructure, poverty and general instability may increase the attractiveness of the islands to transnational crime.¹

Money laundering and financing of terrorism

Money laundering is a known threat in the Pacific. In 2000, Nauru, Cook Islands, Republic of Marshall Islands and Niue were all placed on a list of non-cooperative countries and territories by the Financial Action Taskforce (FATF), due to the prevalence of offshore banks and financial centres operating under secrecy provisions.⁵ At the time, the press reported that billions of dollars in Russian Mafia funds had been laundered through off-shore banks in Nauru.⁶ By 2005 all four countries had been removed from the FATF ‘blacklist’ having addressed the FATF’s primary concerns. Nonetheless, the implementation of anti-money laundering and counter financing of terrorism (AML/CFT) systems remains an important and ongoing security challenge across the Pacific.

From a security standpoint, the establishment of AML/CFT systems has clear benefits. These systems involve the collection and analysis of suspicious financial activity for use in criminal investigations. They also enable the confiscation of criminal assets, and promote effective international crime cooperation arrangements. The financial intelligence generated by AML/CFT systems is extremely beneficial in the investigation of predicate offences, including transnational (and domestic) crime and terrorism. These systems also serve to prevent out-and-out money laundering by international crime syndicates.

AML/CFT systems also provide economic benefits, including the recovery of tax revenue and criminal assets. Of particular relevance in the Pacific is the role AML/CFT can play in reducing corruption, with downstream benefits for political stability and economic growth. For example, under the FATF recommendations, countries are required to closely monitor the financial transactions of all politically exposed persons. This prevents officials from having unfettered access to the proceeds of corruption, as suspicious transactions are reported.

Failure to implement AML/CFT arrangements can also have significant negative economic consequences, such as isolation from international financial markets.

¹ Rob McCusker, “Transnational crime in the Pacific Islands : real or apparent danger?”, Trends and issues in crime and criminal justice, no. 308, Australian Institute of Criminology, March 2006

⁵ FATF - http://www.fatf-gafi.org/document/54/0,3343,en_32250379_32236992_33919542_1_1_1_1,00.html

⁶ Reported in Australian press 2/6/00 <http://www.abc.net.au/worldtoday/stories/s134583.htm>

The benefits of AML/CFT have been recognised by Pacific island countries. The members of the Pacific Islands Forum (PIF) have committed to implement legislation in this area under the 1992 Honiara Declaration on Law Enforcement Cooperation and the 2002 Nasonini Declaration on Regional Security. However, while AML/CFT legislation has largely been enacted across the Pacific, there remain significant gaps in implementation. AGD is helping to address these gaps through work of its Anti-Money Laundering Assistance Team (AMLAT).

Illicit Drugs

The manufacture, trafficking and consumption of illicit drugs are significant security challenges for PNG and Pacific island countries. There is evidence that countries in the Pacific are being used as a transshipment point for the flow of various illicit drugs such as cocaine, heroin and amphetamine-type stimulants (ATS) between suppliers in Central and South America and South East Asia and distributors in Australia, New Zealand and North America.

In 2004, Fijian authorities raided the largest methamphetamine laboratory ever discovered in the Southern Hemisphere near Suva. The then Fijian Police Commissioner indicated that the lab was linked to an Asian crime syndicate that was using Fiji as a staging ground for its illegal activities.⁷ The laboratory had a large capacity to manufacture crystal methamphetamine aimed at supplying regional markets, including Australia.

Pacific and Australian law enforcement agencies have indicated that ATS is an emerging threat in the Pacific. As strengthened domestic controls in Australia make access to the chemicals used in ATS production more difficult, the lack of legislative, administrative and operational infrastructure in Pacific countries will make them increasingly attractive to crime groups as a location for the manufacture of ATS for importation into Australia and as a trafficking route for precursor chemicals. In addition to creating a likely source of ATS and precursor chemical importation into Australia, the increased presence of crime groups and the likely leakage of ATS into Pacific island communities would have significant social policy implications, including health, security and stability within the region. AGD is helping to focus attention on these issues through the South Pacific Precursor Control Forum.

Legislative reform

A key challenge for stability and security faced by many Pacific island countries is that legislation is based on outdated colonial models, no longer supporting the function it was designed to perform. Of particular concern is that police legislation and criminal procedures in many Pacific islands countries do not support modern law enforcement or judicial practices and legislation dealing with issues such as illicit drugs, international legal cooperation and sexual offences can be outdated or non-existent.

Legislative reform has been consistently identified by the Pacific Islands Law Officers' Network (PILON) as an area of primary concern. However, progress has been slow primarily as a result of a scarcity of staff resources in Pacific

⁷ Fiji press - <http://www.fjitime.com/story.aspx?id=69978>

Attorneys-General, Crown Law and Justice offices. Despite regional efforts to encourage Pacific island countries to implement their international obligations in criminal matters, advances have been incremental. AGD is helping to address these gaps by providing legal policy and legislative assistance through its Pacific Section.

Border and maritime security

Maritime security threats to Pacific island countries are multifaceted, pervasive and largely anonymous. They range from the movement of illicit goods (including narcotics and weapons) and other opportunistic criminal activities through to unauthorised people movements, bio-security threats, piracy and maritime terrorism. Understanding vessel movements and discovering non-compliance is critical to addressing maritime security threats and must be supported by improved security and governance arrangements in Pacific island nations. Customs is assisting Pacific nations to address these threats in a number of ways.

Implications of these challenges for Australia

Fragile law and justice systems and border security can impact on domestic and regional security and hinder economic development. Money laundering facilitates a range of transnational crime such as illegal logging, fishing, drug and people smuggling and terrorism. An increased supply of illicit drugs to Australia from Pacific island countries poses significant challenges. Supporting improved governance structures that require Pacific nations to actively police and enforce their own maritime boundaries, will reduce threats at their source. A lack of sustainable capacity in many Pacific island countries to address transnational crime and other significant issues means that Australia will need to contemplate providing long-term assistance in order to reduce the risk to our own national security.

Under the PIF Honiara Declaration, Pacific island countries have agreed to implement legislation to prevent money laundering and to deal with the proceeds of crime. The Nasonini Declaration expands this requirement to include counter-terrorism measures. However, legal and capacity issues limit effective regional implementation and law enforcement activity. At the 2005 PIF meeting leaders recognised that the countries in the region remain vulnerable to transnational crime.

Illicit drug production and the trafficking of precursor chemicals are a consistent threat to the Australian community. Australia has in place, and continues to develop, effective controls on precursor chemicals to prevent their diversion into illicit drug manufacture. However, illicit drug manufacturers, including organised crime groups, will inevitably seek to exploit countries and regions with less effective controls. Given the transnational nature of drug production and trafficking, the achievement of Australia's drug control outcomes is directly related to the quality of drug control policies in neighbouring countries.

The threat posed to Australia from regional illicit drug markets, including the diversion of precursor chemicals, is reduced if countries in the region have effective control measures in place to prevent, investigate and prosecute persons involved in the diversion of precursor chemicals for the manufacture of illicit drugs. Generally, the drug legislation of Pacific island countries does not contain provisions relevant to the regulation of precursor chemicals (including associated offences) and many

countries are not party to the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*.

More broadly, reform of police and criminal justice legislation will provide the necessary foundation for improvements in law and justice in the Pacific, with associated benefits for regional stability and economic growth.

Australia's border faces potential risks emanating from PNG given its close proximity and shared land border with Indonesia. In addition to the risks of illegal movement of people and goods across the border, Australia's north is also vulnerable to the spread of pandemic viruses and other health and quarantine risks.

Practical ways Australia can assist these countries to meet the challenges

The Attorney-General's Department and Customs are working to implement a number of key initiatives designed to assist PNG and Pacific island countries to face the challenges outlined above.

AML/CFT capacity building—Anti-Money Laundering Assistance Team (AMLAT)

AMLAT is a team of seven technical advisers based in AGD, which assists Pacific island countries to implement AML/CFT arrangements. Technical assistance is provided to financial intelligence units, police investigators, customs officials, prosecutors and judges. It is delivered in the form of regular workshops, intermittent mentoring and the development of tools and products (such as guidelines and legislative reviews).

Since 2006, AMLAT has provided a range of technical assistance in the Pacific, including:

- assisting with the establishment of financial intelligence units in PNG, Solomon Islands, Kiribati, Tuvalu, Federated States of Micronesia and Nauru through regular intermittent mentoring
- the introduction of border currency reporting in Fiji under a joint project with the Oceania Customs Organisation and the Pacific Anti-Money Laundering Project (PALP)
- providing all Pacific island financial intelligence units with access to the World Check database of suspicious individuals and entities
- mentoring police in the Cook Islands and Fiji on the investigation of financial crimes
- providing Pacific prosecutors with short-term placements with the Commonwealth Director of Public Prosecutions, and
- a range of regional workshops for officials from Pacific island countries, including:
 - judicial workshops on proceeds of crime
 - annual workshops for Pacific financial intelligence units
 - financial investigation training for Pacific police

- a workshop on the regulation of non-profit organisations, and
- international crime cooperation workshops for police and prosecutors, focussing on extradition, mutual assistance and proceeds of crime.

AMLAT projects are informed by a Strategic Priorities Reference Group comprising key Pacific and Australian stakeholders. Priorities are set with reference to Australian aid priorities, the work of other donors, and the risk of financial crime in recipient countries.

AMLAT's priorities in 2008-09 include:

- assisting the Solomon Islands to progress its AML/CFT implementation ahead of a mutual evaluation in 2009
- further development of systems in PNG (for example reporting of suspicious financial transactions by lawyers and accountants)
- further regional law enforcement and prosecutor training, and
- the introduction of border currency reporting in several Pacific island countries.

For more information on AMLAT see www.ag.gov.au/amlat.

Illicit Drugs

Australia is well placed to provide assistance and advice on legislative and policy issues to build the capacity of the legal and policy sector in the Pacific to respond to security challenges. The South Pacific Precursor Control Forum (SPPCF), established by AGD in 2007, can assist countries to meet this challenge. The SPPCF aims to prevent the manufacture of ATS and the diversion of precursor chemicals into illicit drug manufacture in the Pacific region. It is focused on building the capacity of member states to respond to the threat posed by ATS.

SPPCF comprises ten member countries. Representatives from the Oceanic Customs Organisation, the Pacific Island Chiefs of Police (PICP), the Pacific Island Forum, AFP, Australian Crime Commission, Customs, Office of Chemical Safety and the Plastics and Chemicals Industry Association also attend. SPPCF has met twice; in Sydney in February 2007 and in Auckland in August 2007. A key project for SPPCF is the development of a comprehensive Regional Strategic Plan to build legislative and administrative resilience in the Pacific to prevent the manufacture and trafficking of ATS and their precursor chemicals.

Countries have agreed four SPPCF priority areas for future work:

- awareness raising,
- information sharing,
- legislative reform, and
- provision of technical assistance.

Through the SPPCF, AGD hopes to build collaborative efforts and capacity in the region. For instance, AGD has recently assisted the PIF Secretariat in the development of its Model Illicit Drug Control Bill. AGD has also provided guidance

to the Samoan Attorney-General's Department on amendments to their narcotics legislation which addressed precursor chemicals. The project was initiated in Samoa after the SPPCF meetings raised awareness of the threat posed by precursor diversion and ATS manufacture.

The identification of technical assistance priorities and opportunities is a particular priority for the future. It is important that any assistance effectively complements other areas of in-country training and assistance provided by law enforcement agencies. Provision of assistance (legislative, administrative and operational) may ultimately pave the way for more Pacific Island states to become parties to the UN drug conventions.

Project PRISM—Law enforcement strategy

Project PRISM (Precursors Required In Synthetic Manufacture) is a global initiative run under the auspice of the United Nations International Narcotics Control Board (INCB). Launched in 2002, PRISM's mission is to prevent the diversion of key amphetamine-type stimulant (ATS) precursors into illicit drug manufacture.

Customs has three distinct leadership roles under Project PRISM. Specifically, Customs is:

- the Central National Authority for Australia, responsible for coordinating Australia's PRISM-related activities including information sharing and the conduct of operations
- the Regional Focal Point for the Oceania region, responsible for promoting PRISM's objectives and coordinating its activities across the region, and
- a Project PRISM Taskforce Member, responsible for guiding the strategic direction of PRISM at an international level and establishing related operational activity.

Customs is currently consolidating the participation of Oceania-based countries in PRISM initiatives, with a view to establish a regional network that will assist with PRISM-focused information sharing. As the Regional Focal Point in Oceania, Customs will continue to engage with PNG and South West Pacific island countries to raise awareness around precursor chemicals and help prevent their diversion.

Legislative reform

To address broader law and justice constraints associated with inadequate or outdated legislation, AGD recently established a team to assist Pacific island countries to review and reform police and criminal legislation. The Pacific Section, funded as part of the Pacific Police Development Program, will provide legislative and policy support to PIF member countries in partnership with AFP assistance to those countries.

AGD is already working with the Tuvalu Police Force to review and reform their Police Act and Prisons Act. This assistance is provided in conjunction with the Pacific Regional Policing Initiative (the predecessor to the Pacific Police Development Program).

Judicial Support

Other Attorney-General's portfolio agencies are involved in providing a range of support to judicial officers across the Pacific.

The Pacific Judicial Development Program commenced in 2007 and is jointly funded by AusAID and NZAID. The Program aims to improve governance, the rule of law and access to justice by increasing the professionalism of judicial and court officers and the systems and processes that they use. There are 15 participating Pacific Island countries that participate, including Papua New Guinea, the Federated States of Micronesia, the Fiji Islands, Kiribati, the Marshall Islands, Tonga and Vanuatu.

The Federal Court of Australia assists in the delivery of the Program and has been working with countries in the South West Pacific by providing workshops and training, assisting in the development of new policies and procedures and providing technical assistance.

Representatives of the High Court of Australia and the Federal Court of Australia are involved in the Secretariat of the Asia Pacific Judicial Reform Network, which is a network of superior courts and justice sector agencies from 49 countries across the Asia Pacific region, including the South West Pacific. The Network's forum is currently developing a Judicial Reform Handbook to assist the efficient and effective administration of justice, backlog reduction, web-based information sharing, improving access to justice and identifying and defining judicial independence.

Judicial officers from Papua New Guinea and Solomon Islands have also participated in judicial orientation programs run by the National Judicial College of Australia with funding provided by AusAID through the PNG Law and Justice Sector Program and the RAMSI Law and Justice Program.

Maritime Security—Sharing information

Australia is working closely with other Pacific partners, including New Zealand, Canada and the United States, to share maritime security information. Australia has implemented the North Atlantic Treaty Organisation-developed Maritime Safety and Security Information System which shares unclassified data from the International Maritime Organisation (IMO) Automatic Identification System on compliant merchant vessels over 300 tonnes. Australia has also been facilitating New Zealand's implementation of this capability.

Many vessels, including private yachts, approach Australia via the Pacific, which may pose a risk to both Australia as well as our Pacific neighbours. Systems to monitor vessels' compliance are very limited in the Pacific. As a consequence there is little control over what enters or leaves many of these countries, and may be bound for either Australia. By improving maritime governance arrangements across the Pacific the risk posed by transiting vessels can be reduced.

Information sharing is an important element in furthering Australia's relationships with regional countries, in particular establishing a means of sharing classified

information by electronic means. A Memorandum of Understanding has been agreed between Border Protection Command and the New Zealand Maritime Coordination Centre that describes how and what information can be shared relating to maritime security.

Australia is one of the first nations in the world to meet its obligations under the IMO's Long Range Identification and Tracking (LRIT) initiative, which is a means of electronically tracking large vessels while at sea. New Zealand and PNG have agreed in-principle to join the Australian service. Other Pacific nations, such as Tuvalu and Vanuatu, have also expressed an interest in joining the Australian LRIT service.

Other border security initiatives

Customs is actively engaged in a range of other relevant programs, including:

- implementing the PNG-Australian Customs Border Security Project (BSP)—in 2007, Customs received \$7.71m over four years to undertake this project. The BSP is a Customs-to-Customs partnership aimed at developing PNG Customs border management and enforcement capabilities and complements the SGP.
- coordinating the PNG and Australian Customs Twinning Scheme (PACTS)—PACTS is an AusAID funded program of reciprocal officer placements and operational level cooperation designed to enhance the skills and knowledge of PNG and Australian Customs officers.
- re-establishing the Australia-PNG Joint Cross Border Patrols—two patrols were completed in 2007-08 and resulted in positive outcomes on both sides.

In the Solomon Islands, Customs' contribution to the Regional Assistance Mission to Solomon Islands (RAMSI) involves:

- delivery of the Customs Modernisation Program, with two Australian Customs officers deployed as advisors within the Solomon Islands Customs and Excise Division
- implementation of Customs automated entry processing system, *PC Trade*, in April 2008. This system was developed over a 12 month period and is designed to reduce cargo processing times, and
- short-term deployments of Australian Customs officers to assist with the delivery of *PC Trade* and support Customs compliance functions.

Customs delivers the Customs International Executive Management Program (CIEMP). CIEMP aims to improve senior management capacity in Asia-Pacific administrations through a combination of tertiary-level coursework and Customs site visits. Customs also delivers the Pacific Customs Management Program. This initiative is tailored specifically for Pacific administrations and aims to develop the networks, knowledge and skills of participants to assist them in managing modern customs organisations which are operating in increasingly complex and demanding environments.

Customs works closely with the Oceania Customs Organisation to engage with other Customs administrations in the Pacific and coordinate other ad hoc capacity building initiatives throughout the region.

Assistance to PNG—the Strongim Gavman Program

Both Customs and AGD provide support to the Australian whole-of-government *Strongim Gavman* Program (SGP) with PNG. Customs has four senior officers deployed in long term advisory roles within PNG Customs. Customs' presence is focussed on improving organisational governance, border security, cargo management, intelligence and investigations elements.

AGD manages the law and justice (non-policing) component of the SGP. There are currently 9 officers placed in advisory and in-line positions in PNG. A Legal Policy Officer is based in the Department of Justice and Attorney-General (DJAG) and five prosecutors are based in the Office of the Public Prosecutor—one in Lae, one in Madang and three in Port Moresby. There is also a senior litigator based in the Solicitor-General's Office and two corrections officers based in Correctional Services—one in Port Moresby and one in Lae. We hope that two more officers—a Legal Policy Manager within DJAG and an advisor to the Solicitor-General—will be placed in PNG under the SGP in November 2008.

We understand that AusAID and the Department of Foreign Affairs and Trade will provide a more detailed submission on the SGP.

Other initiatives

AGD has also been involved in capacity building in the Pacific under smaller programs including the following:

- *Pacific Legal Knowledge Program (PLKP)*—In 2005 AGD established the PLKP to provide international crime cooperation and legislative drafting training. The international crime cooperation component involves an annual regional international crime cooperation workshop for Pacific legal officers, prosecutors and police officers. The objective of the workshop is for participants to develop their capacity on proceeds of crime, extradition and mutual assistance, by working through and responding to a hypothetical scenario.

AGD's Office of Legislative Drafting and Publishing (OLDP) runs the Pacific Island Legislative Drafting Pairing Program under the PLKP. The program pairs a Pacific drafter with an OLDP drafter for up to three months, twice a year. The program aims to improve the Pacific legislative drafter's knowledge and capacity in drafting through practical drafting experience, training and mentoring over a three month period in Canberra. OLDP also provides general support for capability-building initiatives, including helping to establish a South Pacific Drafting Network.

- *Library Twinning Program*—The Department coordinates the Australian Law Librarians' Association Pacific Law Library Twinning Program helping to strengthen the law and justice sectors across the Pacific. Under the program, AGD provides Tonga, Samoa and Nauru with legal materials, equipment and in-country training. The is funded by annual grants from AusAID as part of the Pacific Governance Support Programme.
- *Protective Security Coordination Centre (PSCC)*—AGD has provided assistance to Pacific island countries in the development of counter-terrorism coordination

planning through the various phases of the New Zealand led exercise *Ready Pasifika* held in 2005 and 2006.

Following the outcomes of a November 2005 discussion exercise which formed part of Ready Pasifika, PSSC developed a template based on Australia's National Counter-Terrorism Plan, which could be used by Pacific Island countries to set out their national security planning arrangements. The template was further developed during workshop discussion at the PIF Counter-Terrorism Working Group during phase three of Ready Pasifika in April 2006. While PIF countries have noted the deterrence value of having counter-terrorism plans in place, they have also indicated that they would require technical assistance to produce these. The PSSC is currently exploring opportunities for assisting in this process in the future in the context of possible training and exercise opportunities.