

Chapter 7

Addressing law and order challenges

7.1 The committee heard evidence that local people are concerned about the unregulated and unauthorised entry of some PNG visitors to their shores. Some remain in communities either without authority or beyond the time approved for their stay. A number travel over to the islands in the Torres Strait to carry out activities that are not recognised as traditional, such as shopping and visiting health clinics, while others engage in unacceptable or even criminal behaviour.

7.2 In this chapter, the committee considers the measures that Australian border enforcement agencies in the Torres Strait are taking to ensure that PNG visitors to the Torres Strait Islands observe the correct procedures for entering Australia. It also looks at the effectiveness of the current pass system and the methods used for identifying arrivals from the PNG Treaty villages.

Understanding local laws and community expectations

7.3 Although traditional visitors are not subject to the same immigration requirements as other people travelling to Australia, they are expected to abide by the law and to respect island custom. Local communities and governments at all levels have been engaged in educating and disseminating information to local inhabitants not only on the provisions governing the free movement of people but also about community expectations regarding standards of behaviour.

Guidelines for traditional visitors

7.4 The production of the *Guidelines for Traditional Visitors* is a recent initiative to help raise awareness of the protocols to be followed when visiting the Torres Strait. They are the result of an agreement reached by traditional inhabitants and represent their views on what is and is not acceptable behaviour.

7.5 The guidelines are intended to inform travellers about their eligibility to travel under the free movement provisions; the villages or islands that may be visited; the duration of visits; pass arrangements; and matters relating to their stay on the islands. They explain the procedures that traditional inhabitants are required to follow when moving across the border and how they should conduct themselves when visiting a community. For example, traditional inhabitants are advised not to travel 'until you receive approval (signed pass) back from the community you wish to visit'. The guidelines state:

- Do not bring non-Traditional Inhabitants into Australia or PNG;
- Do not bring drugs, guns, alcohol or pornographic material into Australia or PNG; and
- Do not steal.

7.6 They advise traditional visitors to observe national and local laws and customs providing the following guidance:

- Respect the traditional way of life—don't get drunk or rowdy;
- Keep our communities beautiful—do not litter;
- Do not chew or spit beetlenut (buai) in public places; and
- Respect the Treaty and your rights under the Treaty.

7.7 To assist MMOs when processing arrivals, the guidelines also contain illustrations of where visitors are to land. Mr Heath explained that on the larger islands, such as Erub and Darnley, it was particularly difficult for MMOs to check arrivals because of the distance involved in going to the back side of the island where there was a landing point. He said:

We have our staff positioned at the front wharf and we, from time to time, get notified of arrivals at the back. Those arrivals towards the back are obviously more suspicious. They present some concerns to us. Going forward we will look at refusing them clearance and arrange for their return as soon as possible.¹

7.8 Mr Heath stated further that steps have been taken to reduce the number of designated landing places and that the guidelines assist in conveying this information. He noted:

...prior to illustrating the designated points on each of the islands—especially on Saibai—that there have been generally two points of arrival. With the publication of the guidelines we are moving towards one designated entry. Together with the agreed and endorsed guidelines the publication shows that traditional visitors must arrive at those points.²

7.9 According to Mr Heath, MMOs would provide illustrations of the designated entry points to each visitor and, as part of a continuing information awareness program, distribute them during Treaty awareness visits.³

7.10 The guidelines also warn people of possible action that could be taken against them should they breach Treaty provisions or arrangements set up under those provisions. For example, they state that: 'If you commit a crime during a visit you will be dealt with under Australian law' and 'If you regularly overstay your visit, you might be banned from making future visits'. They also make clear that visitors will be turned away and prevented from entering Australia if they:

- travel for a non-traditional purpose (apart from emergency health treatment)
- bring non-Treaty people into the Torres Strait;

1 *Committee Hansard*, 18 June 2010, p. 16.

2 *Committee Hansard*, 18 June 2010, p. 16.

3 *Committee Hansard*, 18 June 2010, pp. 16–17.

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- travel with children without their parent or legal guardian on board; or
 - travel with a person banned from making traditional visits.

7.11 The Treaty awareness visits discussed in chapter 5 are a vital part of the continuing education program undertaken by various government agencies to ensure that PNG visitors are aware of the rules, regulations and expectations governing their trips to the Torres Strait.

7.12 Evidence before the committee suggests that education and awareness of arrangements under the Treaty may not be sufficient to deter some PNG nationals from breaching treaty provisions. In this context, the Treaty allows Australia or PNG to take action to restrict the movement of traditional visitors for reasons including non-compliance with Treaty arrangements.

Restricting free movement

7.13 Under Article 16 of the Treaty, when administering their immigration and customs laws and policies, both countries are required to act in a spirit of mutual friendship and good neighbourliness. In doing so, however, they are to take account of:

...the importance of discouraging the occurrence, under the guise of free movement or performance of traditional activities, of illegal entry, evasion of justice and practices prejudicial to effective immigration, customs, health and quarantine protection and control.

7.14 The article states that each party to the Treaty reserves the right 'to limit free movement to the extent necessary to control abuses involving illegal entry or evasion of justice'.

Closing the border

7.15 One option to deal with a problem associated directly with the conduct of traditional visitors is to close the border temporarily. The guidelines inform traditional inhabitants that Torres Strait Islands can ban or restrict visits for reasonable circumstances and cite 'disease outbreaks, resource limitations (for example water shortages) security or quarantine concerns'. They state that the island requiring a ban would notify Immigration, DFAT and the Border Liaison Officer in Daru of any such request for restrictions.

7.16 With regard to health issues, the committee discussed measures taken to disallow traditional inhabitants temporarily from visiting an island where the water supply was running low or there was an outbreak of an infectious disease. Local leaders, however, were concerned about the effective enforcement of these bans. Mr Rodney Scarce, TSIRC, noted that action may not necessarily follow a request to restrict border crossings:

There were times when we were barging water in to Mabuiag Island and we did not want extra people coming there. We had to close down all of our

construction program and everything on Mabuiag because we were bringing in water from the mainland or Thursday Island. We did not need those additional people to come in as well. Under the current treaty we cannot close the border. So it comes back to not being able to issue any prior advices, but when you get them flaunting that no prior advice is needed because there are no penalties at the end of the day if they do it, they still turn up and we still have the impacts on the residents of the particular islands. That can be the case for any of them—I just gave Mabuiag as an example as that was the last time we had to barge water in.⁴

7.17 Mayor Gela was also of the view that 'Strength needs to be given to the TSIRC and the community to close the border whenever we need to, for whatever reason'.⁵ But as noted in chapter 5, Australia's Treaty Liaison Officer told the committee that his office had supported all requests by community leaders for a temporary restriction on cross-border movement.

7.18 It seems apparent that community leaders and government officials have quite different interpretations on the effectiveness of the measures used to control cross border movements during periods when the number of PNG visitors to particular islands needs to be limited. The committee notes similar differences in interpretation in relation to overstayers.

Banning individuals from visiting

7.19 Removing the entitlement to travel to the islands is another option available to Australian authorities to help them deal with people who create law and order problems. Consistent with Article 16 of the Treaty, if a traditional visitor breaches the free movement provisions, section 16 of the Commonwealth *Migration Act 1958* enables the relevant minister or his/her delegate to declare a person ineligible for free movement.⁶ According to DIAC, however, because the declaration is, 'in effect, a ban on traditional movement for life', it is used rarely. In December 2009, 30 PNG nationals were subject to section 16 declarations.⁷

7.20 Some local leaders would like to see stronger action taken under the law. Mayor Gela cited inadequate deterrence measures as a major failing. He explained:

We are well aware that article 16 exists, and that could be utilised as a tool in relation to individuals that are found in breach of the treaty arrangement; however, there are no penalties applicable to that arrangement. People are well aware of this, so they will continue to breach the treaty arrangement

4 *Committee Hansard*, 18 June 2010, p. 10.

5 *Committee Hansard*, 18 June 2010, p. 4.

6 Section 16 of the *Migration Act 1958* reads: 'The Minister may declare, in writing, that it is undesirable that a specified inhabitant of the Protected Zone continue to be permitted to enter or remain in Australia'.

7 DIAC, *Submission 16*, p. 8.

that is [in] place because there is no way of policing it; there is no way of penalising people for breaches.⁸

7.21 TSIRC called for DIAC 'to enforce the provisions of the treaty, with "overstayers" being issued with a section 16, hence not being allowed to travel again'.⁹

Refusing entry

7.22 Refusing entry to people who do not comply with the travel arrangements under the Treaty or who behave inappropriately is another way of managing illegal activity or unacceptable behaviour by PNG visitors. In this regard, Mr Heath informed the committee that since 1 July 2009, DIAC has implemented a new recording structure and protocol and established some business rules that all MMOs are now using to assess the purpose of visits. He explained:

Obviously health, shopping, collecting goods and all that are not considered traditional activities, and so we are refusing them clearance and asking them to return.¹⁰

7.23 This new system was also discussed briefly in the chapter on health.

7.24 According to DIAC officials, the tightening of the system has had a positive effect. Mr Allen referred to recently published statistics for the first part of 2010 which, when compared to statistics from 2009, showed that 'a much more rigorous approach' had been taken in relation to the assessment of traditional movements. This new approach, which is intended to be a permanent change in DIAC's operations in the Torres Strait, has resulted initially in 'a substantial increase' in the number of refused immigration clearances and an 11.7 per cent drop in the overall number of traditional visits.¹¹ As noted earlier, when explaining the number of refused clearances, Mr Heath stated that 'we are refusing clearance to people who perhaps we should have in previous years'.¹²

7.25 The following tables show the increase in the number of people refused entry since the introduction of the new system. For example, between 1 July 2009 and 31 May 2010, from a total of 23,919 traditional visitors from PNG, 4,253 were refused an immigration clearance. Of these, 1,058 were refused entry because they wanted to shop, not a traditional activity; and 607 because they arrived on a day when an official ban approved by the DFAT Liaison Officer was in place due to issues such as water shortages. These figures stand in contrast to those for the previous year,

8 *Committee Hansard*, 18 June 2010, p. 5.

9 TSIRC, *Submission 9*, p. 1.

10 *Committee Hansard*, 18 June 2010, p. 22.

11 *Committee Hansard*, 18 June 2010, p. pp. 12–13 and 21.

12 *Committee Hansard*, 18 June 2010, p. 21.

where only 589 were refused an immigration clearance from 27,079 traditional visits from PNG.

7.26 Mr Kerlin explained that DIAC had also recently undertaken efforts to reduce the number of overstayers, including through engagement with island councillors and communities, traditional visitors and other agencies.¹³

Committee view

7.27 The committee acknowledges the preliminary success of DIAC's recent efforts to strengthen its management of the movement of traditional visitors to the Torres Strait. It also notes that the visitor guidelines should assist MMOs not only to educate people in the Torres Strait about the correct procedures to be followed for crossing the border but also act as a reference point to help explain the reasons when they refuse entry.

Table 7.1: Traditional Movements (1 July –31 May 2010)

ISLAND	2009-10*		2008-09*	
	Traditional Visits from PNG	No. of PNG visitors transiting	Traditional Visits from PNG	% difference
Saibai	13,600	643	15,815	-14.0%
Boigu	7,297	93	7,898	-7.6%
Dauan	1,272	3	1,130	12.6%
Erub (Darnley)	757	122	721	5.0%
Iama (Yam)	339	-	433	-21.7%
Masig (Yorke)	264	-	172	53.5%
Mer (Murray)	193	-	128	50.8%
Badu	110	-	95	15.8%
Mabuiag	29	6	57	-49.1%
Kubin (Moa)	26	-	23	13.0%
Warraber (Sue)	24	9	53	-54.7%
St. Pauls (Moa)	7	-	22	-68.2%
Ugar (Stephen)	1	118	498	-99.8%
Poruma (Coconut)	0	-	34	-100%
TOTAL	23,919	994	27,079	-11.7%

13 John Kerlin, *Committee Hansard*, 17 December 2009, p. 43.

Table 7.2: Refused Immigration Clearances (1 July to 31 May 2010)

ISLAND	Health	Shopping	Accompanying Pax Refused*	Banned on Visits	PNG from non-Treaty village	Collecting goods	Search & Rescue	Law Enforcement	Third Country National	Other	2009-10* TOTAL	2008-09* TOTAL
Saibai	690	966	653	601	151	82	-	2	1	147	3293	140
Boigu	464	-	345	-	15	-	6	-	-	12	842	405
Dauan	-	92	-	6	2	-	-	-	-	3	103	-
St Pauls (Moa)	-	-	-	-	-	-	-	-	-	8	8	-
Erub (Darnley)	3	-	-	-	-	-	-	-	-	1	4	31
Iama (Yam)	-	-	-	-	-	-	2	-	-	-	2	3
Mabuiag	-	-	-	-	1	-	-	-	-	-	1	-
Masig (Yorke)	-	-	-	-	-	-	-	-	-	-	-	9
Mer (Murray)	-	-	-	-	-	-	-	-	-	-	-	1
TOTAL	1157	1058	998	607	169	82	8	2	1	171	4253	589

*e.g. escorts for patients seeking health treatment; passengers on board vessel with a person banned under section 16 or from a non-Treaty village; etc

Identification of PNG traditional inhabitants

7.28 The ability to establish a visitor's identity is a critical factor in determining *bona fide* arrivals. But, as Mr Allen explained, the more structured arrangements governing normal air and commercial sea arrivals are 'not appropriate to the particular needs of traditional visitation in the Torres Strait'.¹⁴ Thus, as noted previously, because traditional inhabitants do not require formal travel documentation, Australian authorities can experience difficulties confirming their identity: effectively unable to 'determine who is a genuine traditional inhabitant'. This situation where the identity of visitors travelling through the region cannot be formally verified presents problems as evident in the differing interpretations about who is or is not an overstayer. It also has serious implications for law enforcement agencies.

7.29 The Queensland Government argued that a formal identification method for PNG nationals traversing Australian waters was 'an issue that requires further

14 Stephen Allen, *Committee Hansard*, 17 December 2009, pp. 13–14.

consideration in the context of treaty governance arrangements'.¹⁵ Commissioner Atkinson, Queensland Police, underlined the level of discontent with the current identification system and noted that the movement of people from PNG concerns the police force and, in his view, needs to be managed. He noted that biometrics and facial-recognition technology may well offer a potential capability in the future.¹⁶ Mayor Gela also informed the committee of the 'need to have some sort of identification measure in place—whether it be a thumbprint or photo ID'.¹⁷

7.30 This lack of rigour in the visitor pass system has implications for the effective management of Australia's borders especially with regard to organised crime and the monitoring of people of interest to the police. Mr Allen informed the committee that DIAC was always looking for appropriate enhancements to its existing arrangements in the region.¹⁸ The committee explores the options for improving the identification system in the Torres Strait later in chapter 12 when considering border security.

7.31 In this chapter the committee considered the measures Australian border enforcement agencies take to educate PNG visitors about the arrangements for gaining entry to the islands in the Torres Strait and procedures at the border to prevent breaches of these arrangements. In the following chapter, the committee focuses on policing matters associated with the conduct of visitors after they have gained entry.

15 Queensland Government, *Submission 20*, p. 7. The 2006 review of the Department's operations in the Torres Strait noted that the method of recording the movements of traditional inhabitants required a 'significant revamp and to the extent practicable needs to be a computerised database'. It added that the department's office locations are poorly equipped and equipment needs to be upgraded. D G When, *Review of the Department of Immigration and Multicultural Affairs' Operation in the Torres Strait*, 1 March 2006, paragraphs 1.13 and 1.1.17.

16 *Committee Hansard*, 25 March 2010, p. 16.

17 *Committee Hansard*, 18 June 2010, p. 11.

18 Stephen Allen, *Committee Hansard*, 17 December 2009, pp. 13–14.