

# Chapter 18

## Extent of Commonwealth responsibilities

18.1 The inquiry's terms of reference were broad and the committee has endeavoured to represent the full range of views and opinions presented to it in evidence. Some witnesses, however, referred to matters that either did not fit neatly under the terms of reference or were outside the committee's purview. In this chapter, the committee discusses briefly some of these matters which include waste management, the Horn Island airport and villages in PNG who believe that they have been disadvantaged by the Treaty.

### Commonwealth and local council responsibilities

18.2 During the inquiry, the Torres Shire Council (TSC) raised a number of local matters that did not relate directly to the Treaty but which touched on Commonwealth responsibilities.

#### *Safe disposal of Commonwealth vehicles*

18.3 One issue covered the safe disposal of vehicles, and, although a council matter, did have relevance for Australian government agencies operating in the strait. Councillor Stephen referred to waste management in the region, notably the 'many old cars that find their graveyards in the islands', as a major problem for the local council. Although all the vehicles that come into the Torres Strait are domestic cargo, once they enter the strait, they are deemed to be in a quarantine zone and have to have any residual soil removed before they can be taken out of the region. The derelict cars also provide a reservoir for mosquito breeding.

18.4 Councillor Stephen informed the committee that the cost for council to transport one car from Thursday Island to Horn Island was about \$1,000. Mr Bernard McCarthy, TSC, estimated that there were approximately 900 to 1,000 motor vehicles discarded in the Torres Strait. Many of these now abandoned cars once belonged to public servants who purchased the vehicles for use on Thursday Island during their two-year or three-year tenures. According to Councillor Stephen, it is hard to trace the owners because once the public servant leaves, 'the locals buy the vehicle, which is on its last legs anyway, so it stays on the side of the road and we then pick up the impost'.<sup>1</sup> The council had considered imposing a bond system for cars coming from Cairns to the Torres Strait. Councillor Stephen informed the committee that they have 'had several talks with quarantine and with our MOU with TSRA to get some things happening in that area, mainly recycling'.<sup>2</sup>

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1 *Committee Hansard*, 24 March 2010, p. 21.

2 *Committee Hansard*, 24 March 2010, p. 20-21.

18.5 The committee is of the view that, considering many of the derelict vehicles were originally purchased by Commonwealth public servants, the Australian Government should take some responsibility for ensuring the safe, clean and efficient removal from the Torres Strait of such motor vehicles.

### **Recommendation 36**

**18.6 The committee recommends that the Australian Government recognise that the removal of derelict vehicles from the islands is a major environmental concern and one that requires close consideration. The committee believes that the Australian Government should take some responsibility for the safe disposal of vehicles purchased by Commonwealth officers for use in the Torres Strait.**

#### *Horn Island Airport*

18.7 The airport on Horn Island is another local issue that has a Commonwealth connection. Councillor Stephen noted that the Horn Island airport 'is an international airport for us in this region'. He stated:

...whilst it is owned by the Torres Shire Council, it is a regional access point for the islands north of us, especially as it is the first port of call here that has been gazetted under the Quarantine Act. As the first port of call, it is a clearance port for international aircraft...Horn Island is recorded as the busiest regional airport in Queensland, meaning it is not just for domestic flights but also for the international flights that we have.<sup>3</sup>

18.8 According to the councillor, the airport not only provides access to the mainland but 'is the only airport that can provide emergency support for any emergency incidents in the Torres Strait'.<sup>4</sup> The Torres Shire Council, which is a small council with a small rate base, is responsible for running this major and important piece of infrastructure and has sought funding from both the state and Australian governments to allow it to strengthen the main runway to allow access for the heavier aircraft, the Q400.<sup>5</sup>

18.9 In December 2009, the Queensland Premier and the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs announced an additional \$3.1 million in joint funding that would ensure that the \$7.2 million project to upgrade the airport would go ahead.<sup>6</sup> Councillor Stephen explained, however, that:

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3 *Committee Hansard*, 24 March 2010, p.19.

4 *Committee Hansard*, 24 March 2010, p. 20.

5 *Committee Hansard*, 24 March 2010, pp. 19–20.

6 The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Horn Island airport upgrade', Joint Media Release q Anna Bligh MP, Queensland Premier, Jim Turnour MP, Member for Leichhardt, Jason O'Brien MP, Queensland Member for Cook, 17 December 2009, <http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/default.aspx?Month=12> (accessed 4 March 2010).

While the cost of the overall funding is \$7.2 million, we believe that that was the base that we needed to allow the Q400 to land. There was a lot of other infrastructure that we had to cut out—for example, lighting. We now know that there could be a security obligation placed on the airport if the Q400 does operate, so council has been mindful of that. We have been continually lobbying both state and Commonwealth to ensure that if there is that impost placed on the council we will also have that support in funding not only to establish that infrastructure for security but also for the ongoing maintenance and operation costs for such assets as have been added on to the airport.<sup>7</sup>

18.10 Mr McCarthy informed the committee that lighting at the airport was very antiquated.<sup>8</sup> Councillor Stephen indicated further that the flying doctors use the airport, and the council has 'to cater for night flying and their coming into our area'. He stated that the airport needs to have appropriate lighting but, at this time, that upgrade has been taken off the list and will probably happen in stage 2 of the development.<sup>9</sup>

### **Recommendation 36**

**18.11 The committee recommends that the Australian Government consider additional funding for Horn Island airport especially in the areas related to safety, security and border control.**

18.12 On a very different matter, the committee received submissions from a number of PNG villages presenting their views on the Treaty.

### **Non Treaty villages**

18.13 The Treaty defines traditional inhabitants from PNG as citizens of that country who live in the protected zone or the adjacent coastal area of PNG who 'maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities'. Mr Murphy explained that:

In the early years of the operation of the treaty, people were left basically to self-identify. Torres Strait Islanders know who the people are who they have had traditional relationships with, so there are interpersonal connections that allow people to say who it is. But there was a lot of flexibility and leeway for people from villages which are not now treaty villages to come across.<sup>10</sup>

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7 *Committee Hansard*, 24 March 2010, p. 20.

8 *Committee Hansard*, 24 March 2010, p.26.

9 *Committee Hansard*, 24 March 2010, p. 26.

10 *Committee Hansard*, 18 June 2010, p. 43.

18.14 He understood that before 2000, DFAT made a request to the PNG Department of Foreign Affairs for a clearer indication of the people to whom Australia had granted these privileges. The third person note exchanged between Australia and PNG in 2000 sought to clarify, without formally amending the Treaty, what was meant by 'adjacent coastal areas' and the term 'in and in the vicinity of the protected zone'. It identified villages in PNG that were deemed to be Treaty villages. Mr Murphy described for the committee the various PNG political interests that were involved in producing this list of Treaty villages and suggested that when it came back to Australia, 'of course the people in the department of foreign affairs did not know the situation on the ground there'.<sup>11</sup>

18.15 The committee received submissions from a number of villages from the neighbouring region in PNG claiming that they have, and continue to have, legitimate rights in the Treaty area: that they were engaged in traditional cross-border movements long before PNG's independence. They produced detailed accounts of their strong and long-standing links to the strait. For example, Mr Sawehame Iabu Sawehame detailed the travels, discoveries and settlement of his ancestors in the Torres Strait and on the mainland of Australia.<sup>12</sup>

18.16 At the moment, however, the Treaty does not recognise people from these villages as 'original inhabitants of the customary land on the coast of PNG and in the seas of the Torres Strait' and as such, they do not have the right of free movement. Some of these villages question the legal status of the Treaty, suggesting that a number of its key provisions have deprived them of their rights to cultural heritage and way of life. In their view, these provisions are unlawful and the Treaty breaches common law and their statutory rights.<sup>13</sup>

18.17 Speaking on behalf of the Gizra tribe, Mr Daniel O'Gorman told the committee that the Treaty 'should be amended so as to include some additional villages in PNG'. He explained that residents of the 13 Treaty villages are 'able to cross the border and conduct fishing et cetera in Australian waters; however, PNG people who are not members of the treaty are unable to do that, and that includes people from the Gizra tribe'. According to Mr O'Gorman:

The tribe occupies an area not far from Saibai at all; in fact, it takes about 10 minutes by little dinghy to get from Saibai to these particular villages. The difficulty is that a lot of the villages that are part of the treaty are further inland than, for example, the villages that form the Gizra Tribe. That, as I understand it, is quite a source of frustration not only for members of the Gizra Tribe but for some other inhabitants in the general area.<sup>14</sup>

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11 *Committee Hansard*, 18 June 2010, pp. 43–44.

12 *Submission 31*. Mr Sawehame, Ulotrisi Clan Chief, Head of Sawehame Family, Masaingle.

13 *Submission 4*, paragraphs 8 and 36; *Submission 8*, paragraphs 24–30 and *Submission 31*.

14 *Committee Hansard*, 25 March 2010, pp. 44–45.

18.18 He explained further that they want no additional rights to those currently exercised by Torres Strait islanders which is the most important thing'.<sup>15</sup> Also, he noted that the type of submission made by the Gizra tribe to the committee was also 'made to the PNG minister for foreign affairs about 18 months ago. We have not heard anything back'.<sup>16</sup>

18.19 Mr Peter Niwia Sawabbari, writing in his capacity as Chairman of the Masaingle Association, went further in petitioning the Australian Government through the committee for, among other things, the territorial boundary line of Australia to be moved southward closer to the Cape York Peninsula. He argued that the 'so-called Treaty Villages representatives brought to Sydney to observe the 1978 signing of the Border Treaty consisted largely of Kiwai island settlers who are not the original people of Torres Strait'.<sup>17</sup> On the other hand, he maintained that:

The Masaingle cultivated and maintained gardens on Badu, Moa, Yam and Murray Islands for food production. The reefs, islets and coral cays were our fishing and hunting grounds, and at times we took shelter from storms or slept in their sheltered waters at night during voyages.<sup>18</sup>

18.20 He informed the committee that the Masaingle sailed freely between the islands to visit relatives and to attend traditional family and tribal gatherings, feasts, funerals and sacred ceremonies and to exchange goods. According to Mr Sawabbari, the Treaty has removed their right to freedom of travel, to interact, visit relatives and extended family and maintain customary contact and obligations. In his view, it has 'unlawfully dispossessed us of our land and sea tenure and wrongfully granted access to other persons to harvest our sea resources'. He did not recognise the Australia–PNG border and the border treaty and wanted the historical wrong corrected by returning to his people what was 'rightfully theirs'—'our birthright, our life, our past and our future'.<sup>19</sup>

18.21 Mayor Gela noted that there were reasons to believe that some of the current villages named were 'not the original villages that traded with the Torres Strait, some of which are excluded and now wish to be recognised under the treaty'. Although he was of the view that the communities are 100 per cent behind the Treaty being updated to reflect the current needs of the Torres Strait and Western Province, he stated:

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15 *Committee Hansard*, 25 March 2010, p. 45.

16 *Committee Hansard*, 25 March 2010, p. 47.

17 *Submission 8*, p. [8]. Mr Sawabbari also appeared before the committee in his capacity as 'a Melanesian leader of his people and as the leader of the original people of the islands of the Torres Strait.'

18 *Submission 8*, pp. [1–2].

19 *Committee Hansard*, 18 June 2010, p. 56.

Our position is that in the current climate we cannot allow any additional villages to come on board until...what is in place is strengthened and what needs to be in place is implemented—and there is no flexibility around it.<sup>20</sup>

18.22 He informed the committee that the debate about which villages should be Treaty villages 'needs to happen on their side; we cannot manage or dictate to them who should have right of way and who should not'.<sup>21</sup>

18.23 With regard to communities being added to the list of Treaty villages, Mr Campbell quoted from the official 2000 document:

'The Australian High Commission further proposes that the identification of these villages should not exclude the application of free movement provisions to traditional inhabitants of additional villages if at some point in the future their inclusion is deemed appropriate by the traditional inhabitants of PNG and Australia, in consultation with governments of both countries and in accordance with the provisions of the treaty.'<sup>22</sup>

18.24 According to Mr Young, Australia's position remains the same as stated to the PNG Government a number of years ago: 'that the Australian government is willing to receive any approach from the government of Papua New Guinea in regard to villages they would like added to the list that already contains those that can access the treaty provisions'. He indicated that at this stage, such a request had not been forthcoming.<sup>23</sup> Ms Jennifer Rawson, DFAT, added that while the Australian Government would 'certainly be prepared to listen to and discuss any such request' from the government of PNG, it had not formed a view whether any such request would be accommodated. She explained that if there were to be an accommodation, it would not be an amendment to the Treaty.<sup>24</sup>

### ***Committee view***

18.25 The committee understands that a number of villages along the coast adjacent to the Torres Strait maintain that they should be included as Treaty villages and are able to produce evidence that establishes their traditional connection to the Torres Strait. It understands that the 2000 exchange of notes contemplated that at some future stage additional villages may wish to be included as Treaty villages. The Australian Government has indicated that it is prepared to receive and discuss any such request from the PNG Government. Even though the committee believes that any changes to the status of Treaty villages should be initiated by the PNG Government, it is of the

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20 *Committee Hansard*, 18 June 2010, p. 6

21 *Committee Hansard*, 18 June 2010, p. 6.

22 *Committee Hansard*, 17 December 2010, p. 5.

23 *Committee Hansard*, 18 June 2010, p. 23.

24 *Committee Hansard*, 18 June 2010, p. 24.

view that the Australian Government should be aware of the views of these villages on the Treaty and their rights.

## **Conclusion**

18.26 In this chapter, the committee brought to the Australian Government's attention a number of matters that were raised during the course of the inquiry that were outside the key ideas that shaped this report. In the following chapter, the committee returns to these major themes and, as a conclusion to the report, draws together the committee's recommendations under a number of major headings.